

By Mr. Roche of Springfield, petition of Richard P. Roche for the imposition of an excise tax on intrastate telephone service for the purpose of funding the state employees retirement system. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Seven.

AN ACT IMPOSING AN EXCISE TAX ON INTRASTATE TELEPHONE SERVICE FOR THE PURPOSE OF FUNDING THE STATE EMPLOYEES RETIREMENT SYSTEM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Said chapter 63 is hereby further amended by
2 adding after section 52A the following section: —

3 *Section 52B. (a)* Whenever used in this section the following
4 term shall have the following meanings: —

5 1. "Local telephone service", (i) the access to a local telephone
6 system, and the privilege of telephonic quality communication
7 with substantially all persons having telephone or radio telephone
8 stations constituting a part of such local telephone system, and
9 (ii) any facility or service provided in connection with a service
10 described in clause (i), to which the subscriber is entitled upon
11 payment of a charge or charges other than a toll charge. The term
12 "local telephone service" does not include any service which is a
13 toll telephone service or a private communication service, as
14 defined in this subsection.

15 2. "toll telephone service," (i) a telephonic quality communica-
16 tion for which there is a toll charge which varies in amount with
17 the distance and elapsed transmission time of each individual
18 communication and the charge is paid within this com-
19 monwealth, and (ii) a service which entitles the subscriber, upon
20 payment of a periodic charge (determined as a flat amount or
21 upon the basis of total elapsed transmission time, to the privilege
22 of an unlimited number of telephonic communications to or from

23 all or a substantial portion of the persons having telephone or
24 radio telephone stations in a specified area which is outside the
25 local telephone system area in which the station provided with
26 this service is located.

27 3. teletypewriter exchange service", the access from a
28 teletypewriter or other data station to the teletypewriter exchange
29 system of which such station is a part, and the privilege of
30 intercommunication by such station with substantially all persons
31 having teletypewriter or other data stations constituting a part of
32 the same teletypewriter exchange system, to which the subscriber
33 is entitled upon payment of a charge or charges (whether such
34 charge or charges are determined as a flat periodic amount, on
35 the basis of distance and elapsed transmission time, or in some
36 other manner).

37 4. "private communication service", (i) the communication
38 service furnished to a subscriber in consideration of a charge
39 which entitles the subscriber to exclusive or priority use of any
40 communication channel or groups of channels (regardless of
41 whether such channel or groups of channels may be connected
42 through switching with a service described in paragraph 1, 2 (ii)
43 or 3 for which a separate charge is paid); (ii) switching capacity,
44 extension lines and stations, or other associated services which
45 are provided in connection with, and are necessary or unique to
46 the use of, channels described in clause (i); and (iii) the channel
47 mileage which connects a telephone station located outside a local
48 telephone system area with a central office in such local telephone
49 system; except that such term does not include any communica-
50 tion service for which a separate charge is not made.

51 5. "taxpayer", any person furnishing local telephone service,
52 toll telephone service or teletypewriter exchange service.

53 (b) There is hereby imposed on amounts paid for local
54 telephone service, toll telephone service and teletypewriter
55 exchange service furnished within this commonwealth in the year
56 nineteen hundred and seventy-eight an excise equal to one per
57 cent of the amount so paid, in the year nineteen hundred and
58 seventy-nine an excise equal to two per cent of the amount so
59 paid, in the year nineteen hundred and eighty an excise equal to
60 three per cent of the amount so paid, in the year nineteen hundred
61 and eighty-one an excise equal to four per cent of the amount so
62 paid, and in the year nineteen hundred and eighty-two and in

63 succeeding years an excise equal to five per cent of the amount so
64 paid. The taxes imposed by this subsection shall be paid by the
65 person paying for the service and shall be collected by the
66 taxpayer.

67 2. In the case of amounts paid pursuant to bills rendered on or
68 after January first (on which a new tax rate goes into effect) for
69 services for which no previous bill was rendered, the new tax rate
70 shall apply to such amounts except with respect to amounts paid
71 for any such services as were rendered more than two months
72 before such January first. A new tax rate shall not apply with
73 respect to amounts paid for services rendered more than two
74 months before the January first on which such new rate goes into
75 effect. As used in this paragraph, the term "new tax rate" includes
76 the initial imposition of the tax.

77 (c) The following shall be exempt from the excise imposed by
78 this section:—

79 1. Service paid for by inserting coins in coin-operated
80 telephones available to the public with respect to local telephone
81 service or with respect to toll telephone service, if the charge for
82 such toll telephone service is less than twenty-five cents; except
83 that where such coin-operated telephone service is furnished for
84 a guaranteed amount, the amounts paid under such guarantee
85 plus any fixed monthly or other periodic charge shall be subject
86 to tax.

87 2. Any payment received from any person for toll telephone
88 service and teletypewriter exchange service used in the collection
89 of news for the public press, or a news ticker service furnishing a
90 general news service similar to that of the public press, or radio
91 broadcasting, or in the dissemination of news through the public
92 press, or a news ticker service furnishing a general news service
93 similar to that of the public press, or by means of radio
94 broadcasting, if the charge for such service is billed in writing to
95 such person.

96 3. Any payment received for services furnished to an
97 international organization, to the American National Red Cross,
98 or to the commonwealth and the subdivisions thereof.

99 4. Any payment received from the government of the United
100 States or any agencies or instrumentalities thereof, to the extent
101 that such payment is immune from taxation under the
102 constitution or laws of the United States.

103 5. Any payment received for any toll telephone service which
104 originates within a combat zone, as defined in section one
105 hundred and twelve of the Federal Internal Revenue Code of
106 nineteen hundred and fifty-four, as amended, from a member of
107 the armed forces of the United States performing service in such
108 combat zone, as determined under such section, provided a
109 certificate, setting forth such facts as the commissioner may by
110 regulation prescribe, is furnished to the person receiving such
111 payment.

112 6. Only one payment of tax under this section shall be required
113 with respect to the tax on any service, notwithstanding the fact
114 that the lines or stations of one or more persons are used in
115 furnishing such service.

116 7. The amount paid for any toll telephone service described in
117 paragraph 2 (ii) of subsection (a) to the extent that the amount so
118 paid is for use by a common carrier, telephone or telegraph
119 company, or radio broadcasting station or network in the
120 conduct of its business as such.

121 8. So much of any amount paid for the installation of any
122 instrument, wire, pole, switchboard, apparatus or equipment as is
123 properly attributable to such installation.

124 9. Any payment received for any services furnished which the
125 commonwealth is prohibited from taxing under the constitution
126 or laws of the United States.

127 10. Any payment received from a nonprofit educational
128 organization. The term "nonprofit educational organization"
129 shall mean an educational organization described in section five
130 hundred and three (b) (2) of the Federal Internal Revenue Code
131 of nineteen hundred and fifty-four, as amended, which is exempt
132 from taxation under section five hundred and one (a) of said
133 Code. The term shall also include a school operated as an activity
134 of an organization described in section five hundred and one (c)
135 (3) of said Code which is exempt from taxation under section five
136 hundred and one (a) of said Code, if such school normally
137 maintains a regular faculty and curriculum and normally has a
138 regularly enrolled body of pupils or students in attendance at the
139 place where its educational activities are regularly carried on.

140 (d) If a bill is rendered for local telephone service or toll
141 telephone service, the amount on which the tax with respect to

142 such services shall be based shall be the sum of all charges for
143 such services included in the bill; except that the person who
144 renders the bill groups individual items for purposes of rendering
145 the bill and computing the tax, then the amount on which the tax
146 with respect to each such group shall be based shall be the sum of
147 all items within that group, and the tax on the remaining items
148 not included in any such group shall be based on the charge for
149 each item separately. If the tax imposed by this section with
150 respect to toll telephone service is paid by inserting coins in coin-
151 operated telephones, the tax shall be computed to the nearest
152 multiple of five cents, except that where the tax is midway
153 between multiples of five cents, the next higher multiple shall
154 apply.

155 (e) The taxes imposed by this section shall be added to and
156 become part of the charges for such services made by the taxpayer
157 and shall be payable to the taxpayer on the due date of the bill for
158 such charges. Such taxes shall be a debt from the person paying
159 for the services to the taxpayer and shall be recoverable at law in
160 the same manner as other debts. The taxpayer may apply and use
161 any deposit left with him by the person paying for the services to
162 satisfy therefrom any tax imposed by this section and unpaid by
163 such person. The taxpayer may discontinue local telephone
164 service for failure to pay the taxes imposed by this section.

165 (f) Every taxpayer shall, for each calendar month, on or before
166 the twentieth day of the month following the close of such
167 calendar month, make a return to the commissioner sworn to by
168 its treasurer or assistant treasurer, or in their absence or
169 incapacity by any other principal officer, in such form as the
170 commissioner, with the approval of the commission, shall
171 prescribe, and pay over to the commissioner the taxes collected
172 under the provisions of this section during such calendar month.

173 (g) Every taxpayer shall keep and preserve suitable records of
174 charges and payments for local telephone service, toll telephone
175 service and teletypewriter exchange service and other books and
176 accounts as the commission may require to determine the amount
177 of tax due under this section. Such records shall be open to
178 inspection and examination at any reasonable time by the
179 commissioner or his duly authorized representative and shall,
180 unless the commissioner consents in writing to an earlier

181 destruction, be preserved for three years after the date the return
182 was filed or the date it was due, whichever occurs later and for
183 such further period as may be agreed upon for the assessment of
184 any tax.

185 (h) All provisions of this chapter relative to the assessment,
186 collection, payment, abatement, verification and administration
187 of taxes, including penalties, applicable to domestic business
188 corporations, as defined in section thirty, shall, so far as
189 pertinent, be applicable to taxes under this section.

190 (i) The commission shall have authority to make such rules
191 and regulations as, in its opinion, are reasonably necessary to
192 effectuate the purposes and intent of this section.

193 (j) All sums received by the commissioner from the tax
194 imposed by this section as taxes, interest thereon, fees, penalties,
195 forfeitures, costs of suits or fines, less all amounts refunded
196 thereon, together with any interest or cost paid on account of
197 such refunds, shall be paid into the treasury of the commonwealth
198 and shall be credited to the pension fund of the state employees
199 retirement system.

1 SECTION 2. This act shall take effect on January first,
2 nineteen hundred and seventy-eight.

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