

City of St. Charles, Illinois

Ordinance No. 1998-M-37

**An Ordinance Amending Title 3, "Revenue and Finance,"
by Adding Section 3.40, "Telecommunications Tax,"
of the St. Charles Municipal Code**

**Adopted by the
City Council
of the
City of St. Charles
May 18, 1998**

**Published in pamphlet form by
authority of the City Council
of the city of St. Charles,
Kane and Du Page Counties,
Illinois, May 22, 1998**



City Clerk

(S E A L)

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Sample Form

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**An Ordinance Amending Title 3, "Revenue And Finance,"
By Adding Section 3.40, "Telecommunications Tax,"
of the St. Charles Municipal Code**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES,
KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:**

1. That Title 3, "Revenue and Finance," of the St. Charles Municipal Code, be and is hereby amended by the addition of this Section 3.40, entitled "Telecommunications Tax.," as follows:

TELECOMMUNICATIONS TAX

Section 3.40.010. Imposition.

A. A tax is impose don the following acts or privileges:

1. The act or privilege of originating in the City of St. Charles or receiving in the City of St. Charles intrastate telecommunications by a person at the rate of four percent (4%) of the gross charge for such telecommunications purchased at retail from a retailer by such person. However, such tax is not imposed on such act or privilege to the extent such act or privilege may not, under the Constitution of the United States, be made the subject of taxation by municipalities in this State.
2. The act or privilege of originating in the City of St. Charles or receiving in the City of St. Charles interstate telecommunications by a person at the rate of three percent (3%) of the gross charge for such telecommunications purchased at retail from a retailer by such person. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this paragraph, any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against any tax enacted pursuant to this paragraph to the extent of the amount of such tax properly due and paid in such other state which was not previously allowed as a credit

against any other state or local tax in this state. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

- B. The tax authorized by this Section shall be collected from the taxpayer by a retailer maintaining a place of business in this State and making or effectuating the sale at retail and shall be remitted by such retailer to the City of St. Charles. Any tax required to be collected pursuant to an ordinance authorized by this Section and any such tax collected pursuant to an ordinance authorized by this Section and any such tax collected by such retailer shall constitute a debt owed by the retailer to the City of St. Charles. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use. The tax authorized by this Section shall constitute a debt of the purchaser to the retailer who provides such taxable services until paid, and if unpaid, is recoverable at law in the same manner as the original charge for such taxable services. If the retailer fails to collect the tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to the City of St. Charles.

Whenever possible, the tax authorized by this Section shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications.

Section 3.04.020. Definitions.

For the purposes of the taxes authorized by this Section:

- A. "Amount paid" means the amount charged to the taxpayer's service address in the City of St. Charles regardless of where such amount is billed or paid.
- B. "Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in the City of St. Charles and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without deduction on account of the cost of such telecommunications, the cost of the materials used, labor

or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. However, "gross charge" shall not include:

1. Any amounts added to a purchaser's bill because of a charge made pursuant to (i) the tax imposed by this Section; (ii) additional charges added to a purchaser's bill pursuant to Section 9-222 of the Public Utilities Act; (iii) the tax imposed by the Telecommunications Excise Tax Act; or (iv) the tax imposed by Section 4251 of the Internal Revenue Code;
2. Charges for a sent collect telecommunications received outside municipal boundaries of the City of St. Charles;
3. Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
4. Charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are segregated and separately identified from other charges;
5. Charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;
6. Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Section has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between

the corporations and not the generation of profit for the corporation rendering such service;

7. Bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made); or
 8. Charges paid by inserting coins in coin-operated telecommunication devices.
- C. "Interstate telecommunications" means all telecommunications that either originate or terminate outside this State.
 - D. "Intrastate telecommunications" means all telecommunications that originate and terminate within this State.
 - E. "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, or a receiver, trustee, guardian, or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, county, or other political subdivision of this State.
 - F. "Purchase at retail" means the acquisition, consumption or use of telecommunications through a sale at retail.
 - G. "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Section. The City of St. Charles may, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who to the satisfaction of the City, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in the City in the same manner and subject to the same requirements as a retailer maintaining a place of business within the City.

- H. "Retailer maintaining a place of business in this State," or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.
- I. "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other political subdivisions of this State, and between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the tax has already been paid to a retailer and the gross charges made by one such corporation to another corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for resale.
- J. "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. If this is not a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.
- K. "Taxpayer" means a person who individually or through his agents, employees or permittees, engages in an act or privilege of originating in the City of St. Charles or receiving in the City of St. Charles telecommunications and who incurs a tax liability under any ordinance authorized by this Section.
- L. "Telecommunications," in addition to the usual and popular meaning includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, telewriter services, computer exchange

services, cellular mobile telecommunications service, specialized mobile radio services, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable as sales for resale.

- M. "City" means the City of St. Charles, Illinois, a municipal corporation.

Section 3.40.030. Resellers of Telecommunications.

If a person who originates or receives telecommunications in the City claims to be a reseller of such telecommunications, such person shall apply to the City for a resale number. Such applicant shall state facts which will show the City why such applicant is not liable for tax under this ordinance on any of such purchases and shall furnish such additional information as the City may reasonably require.

Upon approval of the application, the City shall assign a resale number to the applicant and shall certify such number to the applicant. The City may cancel any number which is obtained through misrepresentation, or which is used to send or receive such telecommunications tax-free, when such actions in fact are not for resale, or which no longer applies because of the person's having discontinued the making of resales.

Except as provided hereinabove in this Section, the act or privilege of sending or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number for the City of St. Charles and furnishes that number to the retailer in connection

with certifying to the retailer that any sale to such person is non-taxable because of being for resale.

Section 3.40.040. Returns; Filing, Contents, Payment of Tax.

- A. On or before the last day of July, 1998, each retailer shall make a return to the City Treasurer for the month of June, stating:
 - 1. Its name;
 - 2. Its principal place of business;
 - 3. The gross charges during those months upon the basis of which the tax is imposed;
 - 4. Amount of tax;
 - 5. Such other reasonable and related information as the City may require.

- B. On or before the last day of every month thereafter, each retailer shall make a like return to the City Treasurer for a corresponding one (1) month period.

- C. The retailer making the return herein provided for shall, at the time of making such return, pay to the City Treasurer the amount of tax herein imposed; provided that in connection with any return the retailer may, if he so elects, report and pay an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings and the taxable gross charges.

Section 3.40.050. Erroneous payment.

If it shall appear that an amount of tax has been paid which was not due under the provisions of this ordinance, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this ordinance from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three years prior to the filing of a claim therefor shall be so credited.

Section 3.40.060. Books and Records of Retailer.

Every retailer under this Ordinance shall keep books, records and other documents which are adequate to reflect that the tax imposed by this Ordinance is being collected in the proper amount.

imposed by this Ordinance is being collected in the proper amount. All books and records and other papers and documents required by this Ordinance to be kept shall, at all times during business hours of the day, be subject to inspection by the City or its duly authorized agents and employees. Books and records reflecting gross charges during any period with respect to which the tax is imposed shall be preserved until the expiration of three years following the period the tax was incurred, unless the City, in writing, authorizes their destruction or disposal at an earlier date.

Section 3.40.070. Failure to Make Return or Fraudulent Return.

Any retailer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Ordinance, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars and, in addition, shall be liable in a civil action for the amount of tax due, plus attorney's fees, costs and prejudgment interest.

Section 3.40.80. Action to Recover Tax.

No action to recover any amount of the tax due under the provisions of this Ordinance shall be commenced more than three (3) years after the due date of such amount.

2. That after the adoption and approval hereof, this Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council; or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 18th day of May, 1998.

PASSED by the City Council of the City of St. Charles, Illinois, this 18th day of May, 1998.

APPROVED by the Mayor of the City of St. Charles, Illinois,
this 18th day of May, 1998.

Susan Kenkhari
Mayor

ATTEST:

Kristie Colarud
City Clerk

COUNCIL VOTE:

Ayes : 11
Nays : 1
Absent: 0

APPROVED AS TO FORM:

Timothy D. Conrad
City Attorney

DATE: MAY 13, 1998

State of Illinois)
)
) ss.
Counties of Kane and DuPage)

Certificate

I, KRISTIE A. DARULA, certify that I am the duly elected and acting municipal clerk of the city of St. Charles, Kane and DuPage Counties, Illinois.


I further certify that on May 18, 1998, the Corporate Authorities of such municipality passed and approved Ordinance No. 1998-M-37, entitled

"An Ordinance Amending Title 3, "Revenue and Finance," by
Adding Section 3.40, "Telecommunications Tax," of the
St. Charles Municipal Code",

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 1998-M-37, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on May 22, 1998, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 26th day of May, 1998.



Municipal Clerk

(SEAL)