

CHAPTER 99**(HB 236)**

AN ACT relating to Internet protocol television.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 136.602 is amended to read as follows:

As used in KRS 136.600 to 136.660:

- (1) "Cable service" means the provision of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the provider or by one (1) or more other communications service providers. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, and other similar services;
- (2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber-optic, or similar medium or method now in existence or later devised.
 - (a) "Communications service" includes but is not limited to:
 1. Local and long-distance telephone services;
 2. Telegraph and teletypewriter services;
 3. Prepaid calling services, and postpaid calling services;
 4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
 5. Channel services involving a path of communications between two (2) or more points;
 6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
 7. Caller ID services, ring tones, voice mail and other electronic messaging services;
 8. Mobile telecommunications service as defined in 4 U.S.C. sec. 124(7); and
 9. Voice over Internet Protocol (VOIP);
 - (b) "Communications services" does not include information services~~[, cable service,]~~ or **multichannel video programming**~~[satellite broadcast and wireless cable]~~ service;
- (3) "Department" means the Department of Revenue;
- (4) "End user" means the person who utilized the multichannel video programming service. In the case of an entity, "end user" means the individual who used the service on behalf of the entity;
- (5) "Engaged in business" means:
 - (a) Having any employee, representative, agent, salesman, canvasser, or solicitor operating in this state, under the authority of the provider, its subsidiary, or related entity, for the purpose of selling, delivering, taking orders, or performing any activities that help establish or maintain a marketplace for the provider;
 - (b) Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, agent or representative, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;
 - (c) Having real or tangible personal property in this state;
 - (d) Providing communications service by or through a customer's facilities located in this state;
 - (e) Soliciting orders from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or payment of the order utilizes the

services of any financial institution, communications system, radio or television station, cable service, direct broadcast satellite or wireless cable service, print media, or other facility or service located in this state; or

- (f) Soliciting orders from residents of this state on a continuous regular, systematic basis if the provider benefits from an agent or representative operating in this state under the authority of the provider to repair or service tangible personal property sold by the retailer;
- (6) "Gross revenues" means all amounts received in money, credits, property, or other money's worth in any form, by a provider for furnishing multichannel video programming service or communications service in this state excluding amounts received from:
- (a) Charges for Internet access as defined in 47 U.S.C. sec. 151; and
- (b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision upon the purchase, sale, use, or other consumption of communications services or multichannel video programming services that is permitted or required to be added to the sales price of the communications service or multichannel video programming service. This exclusion does not include any amount that the provider has retained as a reimbursement for collecting and remitting the tax to the appropriate taxing jurisdiction in a timely manner;
- (7) "In this state" means within the exterior limits of the Commonwealth of Kentucky and includes all territory within these limits owned by or ceded to the United States of America;
- (8) "Multichannel video programming service" means *programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include but not be limited to:*
- (a) Cable service;~~{and}~~
- (b) Satellite broadcast and wireless cable service; *and*
- (c) *Internet protocol television provided through wireline facilities without regard to delivery technology;*
- (9) "Person" means and includes any individual, firm, corporation, joint venture, association, social club, fraternal organization, general partnership, limited partnership, limited liability partnership, limited liability company, nonprofit entity, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;
- (10) "Place of primary use" means the street address where the end user's use of the multichannel video programming service primarily occurs;
- (11) "Political subdivision" means a city, county, urban-county government, consolidated local government, or charter county government;
- (12) "Provider" means any person receiving gross revenues for the provision of multichannel video programming service or communications service in this state;
- (13) "Purchaser" means the person paying for multichannel video programming service;
- (14) "Resale" means the purchase of a multichannel video programming service by a provider required to collect the tax levied by KRS 136.604 for sale, or incorporation into a multichannel video programming service for sale, including but not limited to:
- (a) Charges paid by multichannel video programming service providers for transmission of video or other programming by another provider over facilities owned or operated by the other provider; and
- (b) Charges for use of facilities for providing or receiving multichannel video programming services;
- (15) "Retail purchase" means any purchase of a multichannel video programming service for any purpose other than resale;
- (16) "Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication;
- (17) "Sale" means the furnishing of a multichannel video programming service for consideration;

- (18) (a) "Sales price" means the total amount billed by or on behalf of a provider for the sale of multichannel video programming services in this state valued in money, whether paid in money or otherwise, without any deduction on account of the following:
1. Any charge attributable to the connection, movement, change, or termination of a multichannel video programming service; or
 2. Any charge for detail billing;
- (b) "Sales price" does not include any of the following:
1. Charges for installation, reinstallation, or maintenance of wiring or equipment on a customer's premises;
 2. Charges for the sale or rental of tangible personal property;
 3. Charges for billing and collection services provided to another multichannel video programming service provider;
 4. Bad check charges;
 5. Late payment charges;
 6. Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision, upon the purchase, sale, use, or consumption of any multichannel video programming service, that is permitted or required to be added to the sales price of the multichannel video programming service; or
 7. Internet access as defined in 47 U.S.C. sec. 151;
- (19) "Satellite broadcast and wireless cable service" means point-to-point or point-to-multipoint distribution services that include but are not limited to direct broadcast satellite service and multichannel multipoint distribution services, with programming or voice transmitted or broadcast by satellite, microwave, or any other equipment directly to the purchaser. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, two (2) way service, and other similar services;
- (20) "School district" means a school district as defined in KRS 160.010 and 160.020; and
- (21) "Special district" means a special district as defined in KRS 65.005(1)(a) that currently levies on any provider or its customers the public service corporation property tax under KRS 136.120.

➔Section 2. KRS 160.603 is amended to read as follows:

No school district board of education shall levy any of the school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648, except the levy required by KRS 160.614(3) **and (6)**, until after compliance with the following:

- (1) The school district board of education desiring to levy any one (1) of these taxes shall give notice of any proposed levy of one (1) of the school taxes. Notwithstanding any statutory provisions to the contrary, notice shall be given by causing to be published, at least one (1) time in a newspaper of general circulation published in the county or by posting at the courthouse door if there be no such newspaper, the fact that such levy is being proposed. The advertisement shall state that the district board of education will meet at a place and on a day fixed in the advertisement, not earlier than one (1) week and not later than two (2) weeks from the date of the advertisement, for the purpose of hearing comments and complaints regarding the proposed increase and explaining the reasons for such proposal.
- (2) The school district board of education shall conduct a public hearing at the place and on the date advertised for the purpose of hearing comments and complaints regarding the proposed levy and explaining the reasons for such proposal.
- (3) In the event that a combined taxing district desires to levy any one (1) of these taxes, the boards of education shall make a joint advertisement and hold a joint hearing in the manner prescribed heretofore for an individual school district.

➔Section 3. KRS 160.6131 is amended to read as follows:

As used in KRS 160.613 to 160.617:

- (1) "Department" means the Department of Revenue;
- (2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.
 - (a) "Communications service" includes but is not limited to:
 1. Local and long-distance telephone services;
 2. Telegraph and teletypewriter services;
 3. Postpaid calling services;
 4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
 5. Channel services involving a path of communications between two (2) or more points;
 6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
 7. Caller ID services, ring tones, voice mail, and other electronic messaging services;
 8. Mobile wireless telecommunications service and fixed wireless service as defined in KRS 139.195; and
 9. Voice over Internet Protocol (VOIP).
 - (b) "Communications service" does not include any of the following if the charges are separately itemized on the bill provided to the purchaser:
 1. Information services;
 2. Internet access as defined in 47 U.S.C. sec. 151;
 3. Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;
 4. The sale of directory and other advertising and listing services;
 5. Billing and collection services provided to another communications service provider;
 6. Cable service, satellite broadcast, satellite master antenna television, ~~and~~ wireless cable service, including direct-to-home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996, **and Internet protocol television provided through wireline facilities without regard to delivery technology**;
 7. The sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale, including:
 - a. Carrier access charges, excluding user access fees;
 - b. Right of access charges;
 - c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;
 - d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and
 - e. Charges for use of facilities for providing or receiving communications service;

8. The sale of communications services provided to the public by means of a pay phone;
 9. Prepaid calling services and prepaid wireless calling service;
 10. Interstate telephone service, if the interstate charge is separately itemized for each call; and
 11. If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records;
- (3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased;
 - (4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services;
 - (5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas;
 - (6) "Cable service" has the same meaning as provided in KRS 136.602;
 - (7) "Satellite broadcast and wireless cable service" has the same meaning as provided in KRS 136.602;~~and~~
 - (8) "Ring tones" has the same meaning as provided in KRS 136.602; *and*
 - (9) ***"Multichannel video programming service" has the same meaning as in Section 1 of this Act.***

➔Section 4. KRS 160.614 is amended to read as follows:

- (1) A utility gross receipts license tax initially levied by a school district board of education on or after July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable service in addition to the gross receipts derived from the furnishing of the utility services defined in KRS 160.6131.
- (2) A utility gross receipts license tax initially levied by a school district board of education prior to July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable service, in addition to the gross receipts derived from the furnishing of the utility services defined in KRS 160.6131, if the school district board of education repeats the notice and hearing requirements of KRS 160.603, but only as to the levy of the tax on the gross receipts derived from the furnishing of cable service.
- (3) A utility gross receipts license tax initially levied by a school district board of education on or after July 1, 2005, shall include the gross receipts derived from the furnishing of direct satellite broadcast and wireless cable service in addition to the gross receipts derived from the furnishing of utility services defined in KRS 160.6131 and cable service.
- (4) Any school district that has cable service included in the base of a utility gross receipts tax levied prior to July 1, 2005, shall, as of July 1, 2005, include gross receipts derived from the furnishing of direct satellite broadcast and wireless cable service in the base of its utility gross receipts tax at the same rate as applied to cable service, unless the school district board of education chooses to opt out of this requirement by following the procedures set forth in subsection (5) of this section.
- (5) Any school district board of education may elect to opt out of the base expansion required by subsection (4) of this section. However, any district electing to opt out of the provisions of subsection (4) of this section shall also remove from the base of its utility gross receipts tax all gross receipts from the furnishing of cable service. To opt out of the provisions of subsection (4) of this section, a school district board of education shall, before May 1, 2005:
 - (a) Determine the amount of revenue that will be lost from removing gross receipts of cable service from the base of the utility gross receipts tax, and how that revenue will be replaced; and
 - (b) Provide written notice of the intent to opt out of the base expansion required by subsection (4) of this section to the Department of Revenue, the Department of Education, all cable service providers operating in the district, and the public.
 1. Notice to the public shall be accomplished through the publication at least one (1) time in a newspaper of general circulation in the county, or by a posting at the courthouse door if there is no such newspaper, of the fact that the district board has elected to opt out of the base expansion required by subsection (4) of this section. The notice shall include the following information:

- a. The amount of revenue that will be lost from removing gross receipts of cable service from the base of the utility gross receipts tax and how that revenue will be replaced; and
 - b. The date, time, and location of a meeting of the board, not earlier than one (1) week or later than two (2) weeks from the date of the notice, for the purpose of hearing comments regarding the proposed action of the board, and explaining the reasons for the proposed action.
2. The board of education shall conduct a public hearing at the place and on the date and time provided in the notice for the purpose of hearing comments regarding the proposed action of the board, and explaining the reasons for the proposed action.
- (6) *A utility gross receipts license tax initially levied by a school district board of education on or after July 1, 2009, shall include the gross receipts derived from the furnishing of multichannel video programming service in addition to the gross receipts derived from the furnishing of utility services.*
- (7) *Any school district board of education that has cable service and direct satellite broadcast and wireless cable service included in the base of a utility gross receipts tax levied prior to July 1, 2009, shall, as of July 1, 2009, include gross receipts derived from the furnishing of Internet protocol television service provided through wireline facilities without regard to delivery technology, in the base of its utility gross receipts tax at the same rate as applied to cable service and direct satellite broadcast and wireless cable service.*

➔Section 5. This Act takes effect July 1, 2009.

Signed by the Governor March 25, 2009.