

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SECTIONS 3.68.050 AND 3.68.160 AND BY ADDING SECTION 3.68.065 TO CLARIFY ITS ORIGINAL INTENT AND TO REMOVE OBSOLETE REFERENCES IN THE TELEPHONE USERS TAX

WHEREAS, Chapter 3.68 of the Long Beach Municipal Code imposes a tax on telephone communications services by referring to definitions in the federal excise tax law administered by the Internal Revenue Service (IRS). The common understanding of the IRS definitions at the time the City amended its telephone users tax in 1990 (Ordinance No. C-6744) was set forth in the IRS' Revenue Ruling 79-404; and

WHEREAS, on May 25, 2006, the IRS announced that it has now changed its interpretation of the definitions in the federal excise tax and specifically revoked Notices adopted in 2005 which had reaffirmed Revenue Ruling 79-404; and

WHEREAS, the City Council does not wish to adopt the Internal Revenue Service's new understanding of the definitions of the federal excise tax, but rather wishes to continue to impose the City's telephone users tax as it has been historically imposed; and

WHEREAS, by continuing to impose the telephone users tax in the manner it has historically been imposed, the City Council seeks to ensure that those ratepayers entitled to the tax reduction approved by voters under Proposition J in 2000 continue to receive the benefit of that tax reduction; and

WHEREAS, the amendments made under this Ordinance are not intended to make any change in the way in which the tax is calculated, imposed or

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1 administered. Therefore the changes made by this Ordinance describing the tax base
2 of the telephone users tax, and clarifying certain administrative requirements, are not
3 intended to constitute a change in methodology or a tax increase for purposes of
4 Proposition 218 and shall be interpreted in light of that intent;

5 NOW, THEREFORE, the City Council of the City of Long Beach ordains
6 as follows:

7
8 Section 1. Section 3.68.050 of the Long Beach Municipal Code is hereby
9 amended to read as follows:

10 3.68.050 Telephone users tax.

11 A. There is imposed a tax upon every person in the City using
12 telephone communication services including services for intrastate,
13 interstate, or international calls, and using any teletypewriter exchange
14 services in the City or mobile or cellular telephone communication when
15 the owner or lessee of the telephone has a billing address in the City. The
16 term "telephone communication services" includes all voice transmission
17 services, regardless of the technology employed, including voice
18 transmission services provided in combination with other services,
19 included but not limited to voice transmission services provided in
20 combination with image transmission services, regardless of when the
21 media or technology utilized in providing such services is developed or put
22 into commercial use. Except as otherwise provided in Section 3.68.010
23 above, the tax imposed by this Section shall be at the rate of ten percent
24 (10%) of the charges made for such services and shall be paid by the
25 person paying for such services. Interstate calls shall be deemed to
26 include calls to the District of Columbia.

27 B. The following shall be exempt from the tax imposed by this
28 Section:

1 1. Charges paid for by inserting coins in coin-operated
2 telephones available to the public with respect to local telephone service,
3 or with respect to toll telephone service if the charge for such toll
4 telephone service is less than twenty-five (25) cents; except that where
5 such coin-operated telephone service is furnished for a guaranteed
6 amount, the amounts paid under such guarantee plus any fixed monthly
7 or other periodic charge shall be subject to the tax.

8 2. Except with respect to local telephone service, on any
9 charges for services used in the collection of news for the public press, or
10 a news ticker service furnishing a general news service similar to that of
11 the public press, or radio broadcasting, or in the dissemination of news
12 through the public press, or a news ticker service furnishing a general
13 news service similar to that of the public press, or by means of radio
14 broadcasting, if the charge for such service is billed in writing to such
15 person.

16 3. Charges for services furnished to an international
17 organization or to the American National Red Cross.

18 4. Charges for any toll telephone service which originates
19 within a combat zone, as defined in Section 112 of the Internal Revenue
20 Code, from a member of the Armed Forces of the United States
21 performing service in such combat zone, as determined under such
22 section, provided a certificate, setting forth such facts as the Secretary of
23 the U.S. Treasury may by regulations prescribe, is furnished to the person
24 receiving such payment.

25 5. Charges for any long distance telephone service to the
26 extent that the amount so paid is for use by a common carrier, telephone
27 or telegraph company, or radio broadcasting station or network in the
28 conduct of its business as such.

1 6. Amounts paid by a nonprofit hospital for services
2 furnished to such organization. For purposes of this Subsection, the term
3 “nonprofit hospital” means a hospital referred to in Internal Revenue Code
4 section 170(b)(1)(A)(iii) which is exempt from income tax under Internal
5 Revenue Code Section 501(a).

6 7. Charges for services or facilities furnished to the
7 government of any state, or any political subdivision thereof, or the District
8 of Columbia.

9 8. Charges paid by a nonprofit educational organization for
10 services or facilities furnished to such organization. For purposes of this
11 Subsection, the term “nonprofit educational organization” means an
12 educational organization described in Internal Revenue Code Section
13 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue
14 Code Section 501(a). The term also includes a school operated as an
15 activity of an organization described in Internal Revenue Code Section
16 501(c)(3) which is exempt from income tax under Internal Revenue Code
17 Section 501(a), if such school normally maintains a regular faculty and
18 curriculum and normally has a regularly enrolled body of pupils or
19 students in attendance at the place where its educational activities are
20 regularly carried on.

21 9. Charges for maritime mobile services as defined in
22 Section 2.1 of title 47 of the Code of Federal Regulations as such section
23 existed on January 1, 1970.

24 C. The tax imposed in this Section shall be collected from the
25 service user by the person providing the telephone communications
26 services or the teletypewriter exchange services. The amount of tax
27 collected from the twenty sixth (26th) day of each month through the
28 twenty fifth (25th) day of the following month shall be remitted to the City

1 Clerk on or before the twenty sixth (26th) day of such following month, or,
2 at the option of the person required to collect and remit the tax, an
3 estimated amount of tax collected, measured by billings of the previous
4 month, shall be remitted to the Clerk on or before the twentieth (20th) day
5 of each month.

6
7 Sec. 2. Section 3.68.160 of the Long Beach Municipal Code is hereby
8 amended to read as follows:

9 3.68.160 Refunds.

10 A. Whenever the amount of any tax has been overpaid or paid
11 more than once or has been erroneously or illegally collected or received
12 by the City Clerk or City Treasurer-City Tax Collector under this Chapter, it
13 may be refunded as provided in this Section.

14 B. A service supplier may claim a refund or take as credit against
15 taxes collected and remitted the amount overpaid, paid more than once,
16 or erroneously or illegally collected or received, when it is established in a
17 manner prescribed by the City Treasurer-City Tax Collector that the
18 service user from whom the tax has been collected did not owe the tax;
19 provided, however, that neither a refund nor a credit shall be allowed
20 unless the amount of the tax so collected has either been refunded to the
21 service user or credited to charges subsequently payable by the service
22 user to the person required to collect and remit.

23 C. No refund shall be paid under the provisions of this Section
24 unless the claimant established his right thereto by written records
25 showing entitlement thereto.

26 D. No refund shall be paid under the provisions of this Section
27 unless the claimant has submitted a claim pursuant to Section 3.68.160 of
28 this Chapter.

1 Sec. 3. Section 3.68.065 of the Long Beach Municipal Code is hereby
2 added to read as follows:

3 3.68.065 Segregation of non-taxable charges.

4 As used in this Chapter, the term "charges" shall include the value
5 of all consideration provided by the service user in exchange for utility
6 services. If a non-taxable service and a taxable service are billed together
7 under a single charge, the entire charge shall be deemed taxable unless
8 the service supplier identifies, by verifiable data, based upon its books
9 and records that are kept in the regular course of business, in a manner
10 that is consistent with generally accepted accounting principles, the non-
11 taxable component of the charge. The service supplier has the burden of
12 proving the proper apportionment of taxable and non-taxable charges.

13
14 Sec. 4. Severability. Should any provision of this Ordinance, or its
15 application to any person or circumstance, be determined by a court of competent
16 jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall
17 have no effect on any other provision of this Ordinance or the application of this
18 Ordinance to any other person or circumstance and, to that end, the provisions hereof
19 are severable.

20
21 Sec. 5. Construction. Sections 1 and 2 of this Ordinance are declaratory
22 of existing law and express the intent of the City in the adoption of the utility users tax
23 on telephones by Ordinance No. C-6897 in 1990 and the adoption of this Ordinance
24 therefore does not constitute a revision in the methodology by which the City calculates
25 the tax and this Ordinance shall be interpreted in light of that intent.

26
27 Sec. 6. Effective Date; Transitional Clause. This Ordinance shall take
28 effect on the thirty-first day after adoption as provided by Section 210 of the Charter of

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1 the City. However, any claim that would have been timely if presented on the day
2 before this Ordinance becomes effective which claim would be untimely under the
3 requirements of Section 3.68.160 of the Long Beach Municipal Code adopted hereby
4 may, notwithstanding this Ordinance; be presented not later than the forty-fifth (45th)
5 day after the adoption of this Ordinance.
6

7 Sec. 7. The City Clerk shall certify to the passage of this Ordinance by
8 the City Council and cause it to be posted in three conspicuous places in the City of
9 Long Beach, and it shall take effect on the thirty-first day after it is approved by the
10 Mayor.

11 I hereby certify that the foregoing ordinance was adopted by the City
12 Council of the City of Long Beach at its meeting of _____, 2006, by the
13 following vote:

14 Ayes: Councilmembers: _____
15 _____
16 _____
17 _____

18 Noes: Councilmembers: _____
19 _____
20 _____

21 Absent: Councilmembers: _____
22 _____
23 _____

City Clerk

25 Approved: _____ _____
26 (Date) (Mayor)

27 HAM:fl
28 8/29/06
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