

STATEMENTS OF POLICY

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 60]

Telecommunications Service

The Department of Revenue (Department) has adopted a statement of policy under the authority contained in § 3.2 (relating to statements of policy) regarding telecommunications services, to read as set forth in Annex A.

This statement of policy adds § 60.20 (relating to telecommunications service) and shall take effect upon publication in the *Pennsylvania Bulletin*.

The Department is setting forth its interpretation of the 1991 statutory changes set forth in sections 201(m), 202(c) and 204(5) of the Tax Reform Code of 1971 (TRC) (72 P. S. §§ 7201(m), 7202(c) and 7204(5)) regarding telephone, telegraph and telecommunication services. This statement of policy is the result of an ongoing dialogue with numerous companies within the telecommunications industry.

Subsection (a) defines numerous terms used in § 60.20. Subsection (b) provides the scope of taxation effective October 1, 1991. Subsection (c) details the effect the service address has on the taxation of various telecommunication services.

Subsection (d) provides examples of telecommunication services exempt from tax. Subsection (e) explains that the purchase of a telecommunications service for resale occurs if the purchaser does not use the telecommunications service itself but rather resells it in the ordinary course of business. The subsection also provides examples of exempt sales for resale.

Subsection (f) provides that, to the extent tax is due on the purchase of an international or interstate telecommunication service, a credit will be granted for taxes legally due and paid to another jurisdiction, if the other jurisdiction grants similar credit for taxes paid to the Commonwealth. Provisions relating to local sales and use tax are addressed in subsection (g). Subsection (h) provides that the purchase, use, lease, repair or maintenance of telecommunications equipment and supplies, such as telephones and wires, is subject to Sales and Use Tax, unless the purchaser is entitled to claim an exclusion under § 32.21, § 32.22 or § 32.34 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions; sales to the United States Government or within areas subject to the jurisdiction of the Federal Government; and public utilities).

Specific questions relating to information provided in this statement of policy may be directed to the Department of Revenue, Office of Chief Counsel, Department 281061, Harrisburg, PA, 17128-1061.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-396. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 60. SALES AND USE TAX
PRONOUNCEMENTS—STATEMENTS OF POLICY

§ 60.20. Telecommunications service.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Airtime—A component of a telecommunications service that is charged on a basis that reflects the time span of the communication.

Basic local telephone service—The provision of an access line and dial tone, to a fixed location, for purposes of sending or receiving a telecommunication service within a local calling area, regardless of whether the purchaser has limited or unlimited access to a private or a party line. The term also includes installation service, providing and restoring access lines, touch tone service, 911 service and telecommunications relay service.

Cell site—The geographic area covered by receiving and transmitting equipment that provides cellular mobile telecommunications service directly to or from a subscriber.

Channel—A pathway for the transmission of information between a sending point and a receiving point.

Commercial use—The use or consumption other than a residential use.

Enhanced telecommunication services—

(i) Services, offered over a telecommunications network, which employ computer processing applications that include one or more of the following:

(A) Acts on the format, content, code, protocol or similar aspects of the purchaser's transmitted information.

(B) Provides the purchaser additional, different or restructured information.

(C) Involves the purchaser's interaction with stored information.

(ii) Examples of enhanced telecommunication services include electronic publishing, Internet access, voice mail and electronic mail services. Services utilizing any of the computer processing applications in subparagraph (i) solely for the management, control or operation of a telecommunications system or the management of a telecommunications service is not an enhanced telecommunication service.

International telecommunications service—A telecommunications service that either originates in this Commonwealth and terminates outside the United States, or originates outside the United States and terminates in this Commonwealth.

Interstate telecommunications service—A telecommunications service that either originates in this Commonwealth and terminates in another state, or originates in another state and terminates in this Commonwealth.

IntraState telecommunications service—A telecommunications service that originates and terminates within this Commonwealth, regardless of routing.

Private line—A dedicated, nontraffic sensitive telecommunications service for a single purchaser that entitles the purchaser to the exclusive or priority use of a communications channel, or group of channels, between specified locations.

Residential use—The use or consumption within that portion of a structure used as a home, dwelling, private residence, condominium, housing cooperative, prefabricated building, camper, summer home, motor home or similar place of abode. The term includes the use or consumption by a condominium association or housing cooperative association that acts on behalf of residents who use the condominium or housing cooperative units as their personal residences. The term does not include the use or consumption of a telecommunications service for commercial purposes at a purchaser's private residence.

Subscriber line charge—An access charge paid directly by the purchaser of a telephone service to a local exchange carrier to defray the cost of providing local exchange access.

Telecommunications service—

(i) Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form, which affect or are intended to affect meaningful communications by electronic or electromagnetic means by means of wire, cable, satellite, light waves, microwaves, radio waves or other transmission media.

(ii) Except as provided in subparagraph (iii), the term includes all types of telecommunication transmissions such as:

- (A) Local, toll or wide-area telephone service.
- (B) Private line service.
- (C) Telegraph service.
- (D) Radio repeater service.
- (E) Wireless communication service.
- (F) Personal communications system (PCS) service.
- (G) Cellular mobile telecommunication service.
- (H) Specialized mobile radio service.
- (I) Stationary two-way radio service.
- (J) Paging service.

(iii) The term does not include:

- (A) Subscriber charges for access to a video dial tone system.
- (B) Charges to video programmers for the transport of video programming.
- (C) Enhanced telecommunication services.

Video dial tone service—A common carrier service for the transport of a video programming service to a subscriber.

Video programming service—Video or information programming, whether in digital or analog format, that is provided by a cable television operator, or is of the type that would generally be considered comparable to programming provided by a cable television operator, and upon which the cable television operator pays a franchise fee. The term does not include on-line, interactive information services to the extent that access to these services

is accomplished through use of a dial-up or telephone line, or a wireless or direct-to-home satellite transmission.

(b) *Scope.*

(1) *General.* Effective October 1, 1991, the sale at retail or use of an international or interstate telecommunications service charged to a service address in this Commonwealth or an intraState telecommunications service is subject to tax.

(2) *Purchase price.* The total amount charged for an international, interstate or intraState telecommunications service is taxable, regardless of whether the charge is based upon a flat rate or a message unit rate.

(3) *Private line service.* If the telecommunications service is a private line service, both of the following charges are taxable:

(i) Charges imposed for each channel termination point in this Commonwealth.

(ii) Charges for that portion of the channel within this Commonwealth determined by mileage or other reasonable method.

(4) *Ancillary services.* Services that are ancillary to the provision of telecommunication services are taxable, such as directory assistance service, the connection or disconnection of telecommunications services or equipment, call forwarding, caller identification and call waiting.

(5) *Prepaid telephone calling cards.* The sale of prepaid telephone calling cards, which allow the holders of the cards to use a predetermined number of minutes or set dollar amount of a telecommunications service, are not subject to Pennsylvania Sales Tax. The sale of the cards are considered to be the sale of a right to future telecommunication services and not a sale of tangible personal property. Once a telecommunications service that originates within this Commonwealth is made with the use of a prepaid telephone calling card, the call is subject to tax as a telecommunications service.

(i) The purchase price subject to tax is the consideration for the telecommunication service that is charged by the telecommunication service provider. This consideration is the value, expressed in terms of money, of the units or minutes that are reduced from the card upon each use. The tax shall be remitted to the Department by the telecommunications service provider.

(ii) The telecommunications provider or other entity that sells the debit cards is the consumer of the plastic or paper cards. Because the cards are not tangible personal property purchased for resale, the telecommunications provider or other entity shall pay tax upon its purchase of the cards.

(iii) The rules pertaining to debit cards under this subsection apply whether the card is transferred to a retail customer for consideration or as part of a promotional program.

(6) *Internet access.* Service charges associated with the provision of Internet access by an Internet or on-line service provider, including flat rate monthly, installation and hourly charges, are considered enhanced telecommunication charges and are not subject to sales and use tax. Telecommunication charges incurred by an Internet service provider to deliver Internet access to its subscribers are subject to tax. Local, toll or long distance telephone charges incurred by a subscriber to transmit signals from a computer to the Internet service provider are subject to tax, subject to the exceptions listed in subsection (d).

(c) *Service address.*

(1) If telecommunications equipment is designed to originate or receive a telecommunications service at a fixed location, the service address is the location of the equipment from which the purchaser originates or receives the telecommunications service. The following are examples involving a service address at a fixed location:

(i) Bruce calls New York from his home telephone located in this Commonwealth. Because Bruce's telephone is designed to originate a telecommunications service at a fixed location in this Commonwealth, the service address is in this Commonwealth. Because the telephone call also originates in this Commonwealth, the telecommunications service is subject to Pennsylvania Sales and Use Tax.

(ii) Jonathan places a collect call from New Jersey to Mary's home phone in this Commonwealth. Because it is a collect call, Mary is the purchaser of the telecommunications service. Because Mary's telephone is designed to receive a telecommunications service at a fixed location in this Commonwealth, the service address is in this Commonwealth. The collect call is subject to Pennsylvania Sales and Use Tax because it is received in this Commonwealth and its service address is in this Commonwealth.

(2) If telecommunications service equipment is designed to originate or receive a telecommunications service at a mobile location, the service address is the subscriber's primary use of the telecommunications equipment as defined by telephone number, authorization code or location in this Commonwealth where bills are sent. If the mobile telephone switching office or similar facility first receiving the telecommunication is outside the subscriber's assigned service area (that is, the subscriber is "roaming"), the service address is deemed to be the location of that mobile telephone switching office or similar facility. In the case of airtime service, a mobile telecommunications service provider may elect to define service address as being the location of the initial cell site used by the service provider's customer to originate the call or, if the customer receives a call, the cell site that connects the call to the receiver. The following are examples involving a service address at a mobile location:

(i) Cara, a Pennsylvania resident, purchases a paging service that covers Pennsylvania, New York and New Jersey. To activate the paging service, the paging service provider has antennas located throughout the tristate area that emit a signal corresponding to Cara's pager. Cara's pager is activated while she is attending a conference in New York City. Cara's service address is defined as her billing address in this Commonwealth because her pager is designed to receive a telecommunications service from a mobile location. The paging service originates in this Commonwealth because the paging service provider's signals originate from antennas located in this Commonwealth. Because the service originates in this Commonwealth and is charged to a service address in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(ii) Janis, a Pennsylvania resident, calls Newark, New Jersey from her cellular telephone while driving through Scranton, Pennsylvania, which is within her assigned cellular telephone service area. The cellular telephone service provider sends Janis's phone bills to her residence in this Commonwealth. Accordingly, the service address is deemed to be Janis's billing address. Because the call originates in this Commonwealth and the service address is in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(iii) Katie, a Pennsylvania resident, calls New York from her cellular telephone while driving through Maine,

which is outside her assigned cellular telephone service area. Accordingly, the service address is defined as the mobile telephone switching office in Maine that transmits the signal. Because the service address is in Maine and the telecommunication originates and terminates outside this Commonwealth, the call is not subject to Pennsylvania Sales and Use Tax.

(iv) Mike, a New York resident, calls Ohio from his cellular telephone while driving through this Commonwealth, which is outside his assigned cellular telephone service area. Accordingly, the service address is defined as the mobile telephone switching office in this Commonwealth that transmits the signal. Because the service originates in this Commonwealth, and the service address is deemed to be in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(v) Joe, a resident of Valley Forge, Pennsylvania, calls his office in Philadelphia, Pennsylvania, from his cellular telephone while driving in Cherry Hill, New Jersey. The call originates and terminates within his assigned cellular mobile telephone service area, which encompasses both this Commonwealth and New Jersey. Joe's service provider elects to use the cell site method for determining service address and determines that the initial cell site used to originate the call was located in Cherry Hill, New Jersey. Although Joe's cellular telephone call terminated in this Commonwealth and his billing address is in this Commonwealth, the call is not subject to Pennsylvania sales tax, because the location of the call's service address, under the cell site method, is in New Jersey.

(3) The service address of an intraState telecommunications service is deemed to be in this Commonwealth regardless of how or where billed or paid.

Example: Gregg places a call from Philadelphia, Pennsylvania to Scranton, Pennsylvania. He charges the call to a third party located outside this Commonwealth. Because the call originates and is received in this Commonwealth, the entire charge is taxable. The fact that Gregg charges the call to a third party located outside this Commonwealth is irrelevant.

(4) If the charge for an international or interstate telecommunications service is paid by a credit or payment mechanism that does not relate to a service address, such as a debit or credit card, or when the service is charged to equipment at a location that does not constitute a service address, the service address is deemed to be the location at which the telecommunications service originated.

(i) *Example:* Jack calls Massachusetts from a pay telephone located in this Commonwealth and uses his prepaid telephone debit card to pay for the call. Because a prepaid telephone debit card is not related to a service address, the service address is deemed to be this Commonwealth, the origination of the call. Because the call also originates in this Commonwealth, the charge is subject to Pennsylvania Sales and Use Tax.

(ii) *Example:* John calls New York from a telephone in this Commonwealth and charges the call to his calling card, a credit payment mechanism related to his home telephone in Florida. Because the telecommunications service was charged to equipment at a location that did not constitute a service address from which the call either originated or terminated, the service address is deemed to be this Commonwealth, the origination of the call. Therefore, because the call originates in this Commonwealth, it is subject to Pennsylvania Sales and Use Tax.

(5) The service address of a private line telecommunications service is deemed to be in this Commonwealth to

the extent that charges for the service are attributed to this Commonwealth under subsection (b)(4).

(d) *Exemptions from tax.* The following telecommunication services are exempt from tax:

(1) Basic local telephone service purchased directly by the purchaser solely for the purchaser's own residential use.

(2) Subscriber line charges purchased directly by the purchaser solely for the purchaser's own residential use.

(3) Telegrams paid for in cash at a telegraph office.

(4) Sales for resale of a telecommunications service as described in subsection (e).

(5) A telecommunications service purchased by a charitable organization as defined under § 32.1 (relating to definitions) that holds an exemption number issued by the Department under § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and non-profit educational institutions) and satisfies the requirements for a tax-exempt purchase under § 32.21.

(6) A telecommunications service purchased by a governmental entity as defined in § 32.22 or § 32.23 (relating to sales to the United States Government or within areas subject to the jurisdiction of the Federal Government; and sales to the Commonwealth or its political subdivisions and sales by the Commonwealth and its political subdivisions).

(7) A telecommunications service that is predominately used directly in manufacturing, processing, public utility, farming, dairying, agriculture, horticulture or floriculture, as defined in § 32.1.

(8) A telephone call paid for by inserting money into a telephone that accepts a direct deposit of money to operate.

(9) A telecommunications service purchased by an entity otherwise exempt from Pennsylvania Sales and Use Tax under any Federal or State law not enumerated in this subsection.

(e) *Resale exemption.*

(1) *Purchase for resale.* The purchase of a telecommunications service for resale occurs if the purchaser does not use the telecommunications service itself but rather resells the telecommunications service in the ordinary course of business. A purchase for resale does not occur when an enhanced telecommunication services provider acquires telecommunications services, regardless of whether the cost of the telecommunications services is separately stated on the invoice to the enhanced telecommunication service provider's customer.

(2) *Examples:*

(i) A guest at a hotel places a long distance telephone call. The call is handled through the hotel's switchboard. The guest is charged \$5 per minute and the guest's bill separately states this charge. The hotel may claim the resale exemption on the charge for the guest's call that it receives from the long distance telephone company providing service to the hotel.

(ii) A university purchases telecommunications services in bulk and then resells these services to individual students, faculty members or other retail purchasers. The university may claim the resale exemption on its pur-

chase of the telecommunication service that is resold to retail purchasers.

(iii) Interexchange telephone company IXC pays access charges to local exchange telephone company LEC for switched access service so that it may place a customer's long distance telephone call. IXC may claim resale on the access charge.

(iv) ISP, an Internet service provider, purchases telecommunication services to provide Internet access to its customers. Because ISP renders an enhanced telecommunication service, it cannot claim resale upon its purchase of telecommunication services that it uses to provide its enhanced service.

(v) XYZ Co. is an information services provider located in this Commonwealth that sells sports gambling information for \$5 per minute to customers who access the information through a "900" telephone number. XYZ Co. purchased the "900" telephone number from a long distance telephone company for a flat monthly fee of \$2,000. Although the \$5 per minute fee is listed on the customer's telephone bill, this charge does not represent the customer's charge for the "900" telephone call. Instead, the \$5 per minute charge represents the purchase price of XYZ Co.'s sports gambling information retrieved by means of the "900" telephone number. XYZ Co. cannot claim resale upon its purchase of its \$2,000 per month "900" telephone number because it is using this telecommunication service to render its sports information service. Accordingly, XYZ Co. shall pay Sales Tax upon its purchase of the "900" telephone number because the calls terminate in this Commonwealth and are charged to XYZ Co.'s service address in this Commonwealth.

(f) *Credits against tax.*

(1) To the extent that tax is due on the purchase of an international or interstate telecommunications service, a credit will be granted for taxes that were legally due and paid to another jurisdiction, if the other jurisdiction grants a similar credit for taxes paid to the Department. A credit cannot exceed the amount of tax owed to the Department on the same transaction.

(2) Credits against local tax will be applied in accordance with § 60.16 (relating to local sales, use and hotel occupancy tax).

(g) *Local sales and use tax.*

(1) A telecommunications service provider shall collect and remit local tax if the telecommunications service is provided to a service address in a county or other local jurisdiction that has enacted a local tax.

(2) In the case of airtime service, a cellular mobile telecommunications service provider may elect to use the cell site method for determining the service address as being in a county or other local jurisdiction that has enacted a local tax in a manner similar to that described in subsection (c)(2).

(h) *Telecommunications equipment and supplies.* The purchase, use, lease, repair or maintenance of telecommunications equipment and supplies, such as telephones and wires, is subject to Sales and Use Tax, unless the purchaser is entitled to claim an exclusion under the provisions of § 32.21, § 32.22 or § 32.34 (relating to public utilities).

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