

Streamlined Sales and Use Tax Agreement

Section 314: TELECOMMUNICATION AND RELATED SERVICES SOURCING RULE

A. Except for the defined telecommunication services in subsection (C), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

B. Except for the defined telecommunication services in subsection (C), a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

C. The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

1. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.

2. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.

4. A sale of a private communication service is sourced as follows:

a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

b. Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

d. Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction

based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

D. The sale of Internet access service is sourced to the customer's place of primary use.

E. The sale of an ancillary service is sourced to the customer's place of primary use.

Compiler's note: On April 16, 2005 Section 314, subdivision (C)(3) was amended by inserting "or a sale of a prepaid wireless calling service" after "service" in the first line; and by deleting "mobile telecommunications service that is a prepaid telecommunications" and inserting "prepaid wireless calling" in its place. Member states shall comply with this amendment no later than January 1, 2008. Compiler's note: On December 14, 2006 Section 314 was amended by the addition of D and E.

Section 315: TELECOMMUNICATION SOURCING DEFINITIONS

For the purpose of Section 314, the following definitions apply:

- A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
- B. "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services", including but not limited to "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".
- C. "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.
- D. "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- E. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
- F. "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.
- G. "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.
- H. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- I. "Mobile Telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- J. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
- K. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism

such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

L. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

M. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

N. "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

O. "Service address" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in subsection O(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the location in subsection O(1) and O(2) are not known, the service address means the location of the customer's place of primary use.

Compiler's note: On April 16, 2005, section 315(J) was amended by inserting " , except a prepaid wireless calling service" after "telecommunications service in the second sentence. The former 315(L) and (M) were renumbered to 315(M) and (N) and a new Section 513(L) was inserted. The cross references in 315(N) were changed to account for the renumbering. Member states shall comply with the amendments to this section no later than January 1, 2008.

Compiler's note: On December 14, 2006 Section 315 was amended to add a new subsection B "ancillary services" and a renumbering of the remaining subsections and cross references.

TELECOMMUNICATIONS

Tax Base/Exemption Terms:

“Ancillary services” means services that are associated with or incidental to the provision of “telecommunications services”, including but not limited to “detailed telecommunications billing”, “directory assistance”, “vertical service”, and “voice mail services”.

“Conference bridging service” means an “ancillary service” that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include the “telecommunications services” used to reach the conference bridge.

“Detailed telecommunications billing service” means an “ancillary service” of separately stating information pertaining to individual calls on a customer’s billing statement.

“Directory assistance” means an “ancillary service” of providing telephone number information, and/or address information.

“Vertical service” means an “ancillary service” that is offered in connection with one or more “telecommunications services”, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including “conference bridging services”.

“Voice mail service” means an “ancillary service” that enables the customer to store, send or receive recorded messages. “Voice mail service” does not include any “vertical services” that the customer may be required to have in order to utilize the “voice mail service”.

“Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;

B. Installation or maintenance of wiring or equipment on a customer’s premises;

C. Tangible personal property;

D. Advertising, including but not limited to directory advertising.

E. Billing and collection services provided to third parties;

F. Internet access service;

G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

H. “Ancillary services”; or

I. Digital products “delivered electronically”, including but not limited to software, music, video, reading materials or ring tones.

“800 service” means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

“900 service” means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for: collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.

“Fixed wireless service” means a “telecommunications service” that provides radio communication between fixed points.

“Mobile wireless service” means a “telecommunications service” that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, “telecommunications services” that are provided by a commercial mobile radio service provider.

“Paging service” means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

Compiler’s note: The Governing Board issued an interpretation of “paging service” on August 17, 2010. That interpretation can be found in the Library of Interpretations.

“Prepaid calling service” means the right to access exclusively “telecommunications services”, which must be paid for in advance and which enables the origination of calls using an access

number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

“Prepaid wireless calling service” means a “telecommunications service” that provides the right to utilize “mobile wireless service” as well as other non-telecommunications services including the download of digital products “delivered electronically”, content and “ancillary services”, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

“Private communications service” means a “telecommunications service” that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

“Value-added non-voice data service” means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

Modifiers of Sales Tax Base/Exemption Terms:

The following terms can be used to further delineate the type of “telecommunications service” to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

“**Coin-operated telephone service**” means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.

“**International**” means a “telecommunications service” that originates or terminates in the 17 United States and terminates or originates outside the United States, respectively. United States 18 includes the District of Columbia or a U.S. territory or possession.

“**Interstate**” means a “telecommunications service” that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

“**Intrastate**” means a “telecommunications service” that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

“**Pay telephone service**” means a “telecommunications service” provided through any pay telephone.

“**Residential telecommunications service**” means a “telecommunications service” or “ancillary services” provided to an individual for personal use at a residential address, including an

individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, “telecommunications service” is considered residential if it is provided to and paid for by an individual resident rather than the institution.

The terms “ancillary services” and “telecommunications service” are defined as a broad range of services. The terms “ancillary services” and “telecommunications service” are broader than the sum of the subcategories. Definitions of subcategories of “ancillary services” and “telecommunications service” can be used by a member state alone or in combination with other subcategories to define a narrower tax base than the definitions of “ancillary services” and “telecommunications service” would imply. The subcategories can also be used by a member state to provide exemptions for certain subcategories of the more broadly defined terms. A member state that specifically imposes tax on, or exempts from tax, local telephone or local telecommunications service may define “local service” in any manner in accordance with Section 327 of the Agreement, except as limited by other sections of this Agreement.

Compiler’s note: On April 16, 2005 the telecommunications definitions were added to the Agreement. Member 15 states shall adopt and utilize these definitions no later than January 1, 2008.