

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1138 Session of 2023

INTRODUCED BY WAXMAN, SAMUELSON, SCHLOSSBERG, BRENNAN, HILL- EVANS, GALLAGHER, SANCHEZ, MADDEN, VENKAT, PIELLI, MALAGARI, WARREN, PARKER, CERRATO, KRAJEWSKI, PISCIOTTANO, BOROWSKI, CEPHAS, KENYATTA, T. DAVIS, HANBIDGE, DELLOSO, CEPEDA-FREYTIZ, HARKINS, BRIGGS AND GUZMAN, MAY 10, 2023

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 12, 2023

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in sales and use tax, further providing for
11 definitions and for imposition of tax; and, in gross receipts
12 tax, further providing for imposition of tax.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Sections 201(k)(19), (m)(1), (o)(18) and (rr),
16 202(e.1) and (g) and 1101(a), (a.1), (c.1), (j) and (k) of the
17 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
18 of 1971, are amended to read:

19 Section 201. Definitions.--The following words, terms and
20 phrases when used in this Article II shall have the meaning
21 ascribed to them in this section, except where the context

1 clearly indicates a different meaning:

2 * * *

3 (k) "Sale at retail."

4 * * *

5 [(19) The rendition for a consideration of a mobile
6 telecommunications service.]

7 * * *

8 (m) "Tangible personal property."

9 (1) Corporeal personal property including, but not limited
10 to, goods, wares, merchandise, steam and natural and
11 manufactured and bottled gas for non-residential use,
12 electricity for non-residential use, prepaid telecommunications,
13 premium cable or premium video programming service, spirituous
14 or vinous liquor and malt or brewed beverages and soft drinks,
15 interstate telecommunications service originating or terminating
16 in the Commonwealth and charged to a service address in this
17 Commonwealth, intrastate telecommunications service with the
18 exception of (i) subscriber line charges and basic local
19 telephone service for residential use [and] (ii) charges for
20 telephone calls paid for by inserting money into a telephone
21 accepting direct deposits of money to operate and (iii) mobile
22 telecommunications services, provided further, the service
23 address of any intrastate telecommunications service is deemed
24 to be within this Commonwealth or within a political
25 subdivision, regardless of how or where billed or paid. In the
26 case of any such interstate or intrastate telecommunications
27 service, any charge paid through a credit or payment mechanism
28 which does not relate to a service address, such as a bank,
29 travel, credit or debit card, but not including prepaid
30 telecommunications, is deemed attributable to the address of

1 origination of the telecommunications service.

2 * * *

3 (o) "Use."

4 * * *

5 [(18) The obtaining of mobile telecommunications service by
6 a customer.]

7 * * *

8 (rr) "Telecommunications service." Any one-way transmission
9 or any two-way, interactive transmission of sounds, signals or
10 other intelligence converted to like form which effects or is
11 intended to effect meaningful communications by electronic or
12 electromagnetic means via wire, cable, satellite, light waves,
13 microwaves, radio waves or other transmission media. The term
14 includes all types of telecommunication transmissions, such as
15 local, toll, wide-area or any other type of telephone service;
16 private line service; telegraph service; radio repeater service;
17 wireless communication service; personal communications system
18 service; [cellular telecommunication service;] specialized
19 mobile radio service; stationary two-way radio service; and
20 paging service. The term does not include any of the following:

21 (1) Subscriber charges for access to a video dial tone
22 system.

23 (2) Charges to video programmers for the transport of video
24 programming.

25 (3) Charges for access to the Internet. Access to the
26 Internet does not include any of the following:

27 (A) The transport over the Internet or any proprietary
28 network using the Internet protocol of telephone calls,
29 facsimile transmissions or other telecommunications traffic to
30 or from end users on the public switched telephone network if

1 the signal sent from or received by an end user is not in an
2 Internet protocol.

3 (B) Telecommunication services purchased by an Internet
4 service provider to deliver access to the Internet to its
5 customers.

6 (4) Mobile telecommunications services.

7 * * *

8 Section 202. Imposition of Tax.--* * *

9 [(e.1) (1) Notwithstanding any other provision of this
10 article, the sale or use of prepaid mobile telecommunications
11 service evidenced by the transfer of tangible personal property
12 shall be subject to the tax imposed by subsections (a) and (b).]

13 (2) The sale or use of prepaid mobile telecommunications
14 service not evidenced by the transfer of tangible personal
15 property shall be subject to the tax imposed by subsections (a)
16 and (b) and shall be deemed to occur at the purchaser's billing
17 address or the location associated with the mobile telephone
18 number or the point of sale, whichever is applicable.

19 (3) Notwithstanding clause (2), the sale or use of prepaid
20 mobile telecommunications service not evidenced by the transfer
21 of tangible personal property shall be taxed at the rate of six
22 per cent of the receipts collected on each sale if the service
23 provider elects to collect the tax imposed by this article on
24 receipts of each sale. The service provider shall notify the
25 department of its election and shall collect the tax on receipts
26 of each sale until the service provider notifies the department
27 otherwise.]

28 * * *

29 [(g) Notwithstanding any other provisions of this article
30 and in accordance with the Mobile Telecommunications Sourcing

1 Act (4 U.S.C. § 116), the sale or use of mobile
2 telecommunications services which are deemed to be provided to a
3 customer by a home service provider under section 117(a) and (b)
4 of the Mobile Telecommunications Sourcing Act shall be subject
5 to the tax of six per cent of the purchase price, which tax
6 shall be collected by the home service provider from the
7 customer, and shall be paid over to the Commonwealth as herein
8 provided if the customer's place of primary use is located
9 within this Commonwealth, regardless of where the mobile
10 telecommunications services originate, terminate or pass
11 through. For purposes of this subsection, words and phrases used
12 in this subsection shall have the same meanings given to them in
13 the Mobile Telecommunications Sourcing Act.]

14 * * *

15 Section 1101. Imposition of Tax.--(a) General Rule.--Every
16 pipeline company, conduit company, steamboat company, canal
17 company, slack water navigation company, transportation company,
18 and every other company, association, joint-stock association,
19 or limited partnership, now or hereafter incorporated or
20 organized by or under any law of this Commonwealth, or now or
21 hereafter organized or incorporated by any other state or by the
22 United States or any foreign government, and doing business in
23 this Commonwealth, and every copartnership, person or persons
24 owing, operating or leasing to or from another corporation,
25 company, association, joint-stock association, limited
26 partnership, copartnership, person or persons, any pipeline,
27 conduit, steamboat, canal, slack water navigation, or other
28 device for the transportation of freight, passengers, baggage,
29 or oil, except motor vehicles and railroads, and every limited
30 partnership, association, joint-stock association, corporation

1 or company engaged in, or hereinafter engaged in, the
2 transportation of freight or oil within this State, and every
3 telephone company[,] or telegraph company [or provider of mobile
4 telecommunications services] now or hereafter incorporated or
5 organized by or under any law of this Commonwealth, or now or
6 hereafter organized or incorporated by any other state or by the
7 United States or any foreign government and doing business in
8 this Commonwealth, and every limited partnership, association,
9 joint-stock association, copartnership, person or persons,
10 engaged in telephone or telegraph business [or providing mobile
11 telecommunications services] in this Commonwealth, shall pay to
12 the State Treasurer, through the Department of Revenue, a tax of
13 forty-five mills with a surtax equal to five mills upon each
14 dollar of the gross receipts of the corporation, company or
15 association, limited partnership, joint-stock association,
16 copartnership, person or persons received from:

17 (1) passengers, baggage, oil and freight transported wholly
18 within this State; and

19 (2) telegraph or telephone messages transmitted wholly
20 within this State and telegraph or telephone messages
21 transmitted in interstate commerce where such messages originate
22 or terminate in this State and the charges for such messages are
23 billed to a service address in this State, except gross receipts
24 derived from:

25 (i) the sales of access to the Internet, as set forth in
26 Article II, made to the ultimate consumer;

27 (ii) the sales for resale to persons, partnerships,
28 associations, corporations, or political subdivisions subject to
29 the tax imposed by this article upon gross receipts derived from
30 such resale of telecommunications services, including:

1 (A) telecommunications exchange access to interconnect with
2 a local exchange carrier's network;

3 (B) network elements on an unbundled basis; and

4 (C) sales of telecommunications services to interconnect
5 with providers of mobile telecommunications services; and

6 (iii) the sales of telephones, telephone handsets, modems,
7 [tablets and related accessories, including cases,] chargers,
8 [holsters,] clips, hands-free devices[, screen protectors] and
9 batteries[; and].

10 [(3) mobile telecommunications services messages sourced to
11 this Commonwealth based on the place of primary use standard set
12 forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. §
13 117), except gross receipts derived from:

14 (i) the sales of access to the Internet, as set forth in
15 Article II, made to the ultimate consumer;

16 (ii) the sales for resale to persons, partnerships,
17 associations, corporations or political subdivisions subject to
18 the tax imposed by this article upon gross receipts derived from
19 such resale of mobile telecommunications services, including
20 sales of mobile telecommunications services to interconnect with
21 providers of telecommunications services; and

22 (iii) the sales of telephones, telephone handsets, modems,
23 tablets and related accessories, including cases, chargers,
24 holsters, clips, hands-free devices, screen protectors and
25 batteries.]

26 (a.1) Credit.--Telegraph or telephone companies [or
27 providers of mobile telecommunications services] that pay a
28 gross receipts tax to another state on messages or services
29 which are taxable under this article are entitled to a credit
30 against the tax due under this article. The credit allowed with

1 respect to the messages or services shall not exceed the tax
2 under this article with respect to the messages or services.

3 * * *

4 [(c.1) Safe Harbor Base year.--For purposes of the estimated
5 tax requirements under sections 3003.2 and 3003.3, the "safe
6 harbor base year" tax amount for providers of mobile
7 telecommunications services shall be the amount that would have
8 been required to be paid by the taxpayer if the taxpayer had
9 been subject to this article.]

10 * * *

11 [(j) Schedule for Estimated Payments.--

12 (1) For calendar year 2004, the following schedule applies
13 to the payment of the tax under subsection (a) (3):

14 (i) Forty per cent of the estimated tax shall be due on
15 March 15, 2004.

16 (ii) Forty per cent of the estimated tax shall be due on
17 June 15, 2004.

18 (iii) Twenty per cent of the estimated tax shall be due on
19 September 15, 2004.

20 (2) For calendar years after 2004, the payment of the
21 estimated tax under subsection (a) (3) shall be due in accordance
22 with section 3003.2.

23 (k) Penalty for Substantial Underpayment of Initial
24 Estimated Gross Receipts Tax.--

25 (1) If the amount of the estimated gross receipts tax on
26 account of a taxpayer's first applicable taxable year under
27 subsection (a) (3) paid by a due date in subsection (j) is
28 underpaid, a penalty shall be imposed in the amount of five per
29 cent of the underpayment per month for the period of the
30 underpayment, up to a maximum of twenty-five per cent of the

1 underpayment.

2 (2) The penalty imposed by this subsection is in addition to
3 any interest imposed on underpayments by section 3003.3.]

4 Section 2. This act shall take effect January 1, 2024, or
5 ~~immediately~~ IN 90 DAYS, whichever is later. <--