

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2429 Session of
2002

INTRODUCED BY McNAUGHTON, SAYLOR, TULLI AND BOYES,
MARCH 14, 2002

REFERRED TO COMMITTEE ON FINANCE, MARCH 14, 2002

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," further defining "tangible personal property" and
11 "telecommunications service"; defining "mobile
12 telecommunications service"; further providing for rules
13 relating to the sourcing of the sales and use tax relating to
14 certain mobile telecommunications services; and providing for
15 special rules for telecommunications services.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Section 201(m) and (rr) of the act of March 4,
19 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,
20 amended or added April 23, 1998 (P.L.239, No.45) and May 24,
21 2000 (P.L.106, No.23), are amended and the section is amended by
22 adding a clause to read:

23 Section 201. Definitions.--The following words, terms and
24 phrases when used in this Article II shall have the meaning

1 ascribed to them in this section, except where the context
2 clearly indicates a different meaning:

3 * * *

4 (m) "Tangible personal property." Corporeal personal
5 property including, but not limited to, goods, wares,
6 merchandise, steam and natural and manufactured and bottled gas
7 for non-residential use, electricity for non-residential use,
8 prepaid telecommunications, premium cable or premium video
9 programming service, spirituous or vinous liquor and malt or
10 brewed beverages and soft drinks, interstate telecommunications
11 service originating or terminating in this Commonwealth and
12 charged to a service address in this Commonwealth (other than
13 mobile telecommunications service), intrastate
14 telecommunications service with the exception of (i) subscriber
15 line charges and basic local telephone service for residential
16 use and (ii) charges for telephone calls paid for by inserting
17 money into a telephone accepting direct deposits of money to
18 operate, provided further, the service address of any intrastate
19 telecommunications service [is] (other than mobile
20 telecommunications service) shall be deemed to be within this
21 Commonwealth or within a political subdivision, regardless of
22 how or where billed or paid[.], intrastate and interstate mobile
23 telecommunications services which are deemed to be provided to a
24 customer by a home service provider under 4 U.S.C. § 117(a)
25 (relating to sourcing rules), subject to the specific exceptions
26 in 4 U.S.C. § 116(c) (relating to rules for determining State
27 and local government treatment of charges related to mobile
28 telecommunications services), if the place of primary use of
29 that customer is located within this Commonwealth, without
30 regard to whether individual transmissions originate or

1 terminate within this Commonwealth. Mobile telecommunications
2 services shall not include charges billed to a customer whose
3 primary place of use is outside this Commonwealth. In the case
4 of any [such] interstate or intrastate telecommunications
5 service (other than mobile telecommunications services), any
6 charge paid through a credit or payment mechanism which does not
7 relate to a service address, such as a bank, travel, credit or
8 debit card, but not including prepaid telecommunications, is
9 deemed attributable to the address of origination of the
10 telecommunications service.

11 * * *

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

26 (1) Subscriber charges for access to a video dial tone
27 system.

28 (2) Charges to video programmers for the transport of video
29 programming.

30 (3) Charges for access to the Internet. Access to the

1 Internet does not include any of the following:

2 (A) The transport over the Internet or any proprietary
3 network using the Internet protocol of telephone calls,
4 facsimile transmissions or other telecommunications traffic to
5 or from end users on the public switched telephone network if
6 the signal sent from or received by an end user is not in an
7 Internet protocol.

8 (B) Telecommunication services purchased by an Internet
9 service provider to deliver access to the Internet to its
10 customers.

11 * * *

12 (aaa) "Mobile telecommunications service." Commercial
13 mobile radio service, as defined in 47 CFR § 20.3 (relating to
14 definitions). For purposes of applying the provisions of this
15 article to mobile telecommunications services, words and phrases
16 used in 4 U.S.C. § 124 (relating to definitions) shall have the
17 meanings given to such words and phrases in that act.

18 Section 2. The act is amended by adding a section to read:

19 Section 228. Special Rules for Telecommunications
20 Services.--(a) The provisions of 4 U.S.C. §§ 116 (relating to
21 rules for determining State and local government treatment of
22 charges related to mobile telecommunications services) through
23 126 (relating to no inference) shall apply for purposes of this
24 article to the sale or use of mobile telecommunications
25 services.

26 (b) (1) In order to assign the place of primary use for
27 mobile telecommunications services pursuant to the Mobile
28 Telecommunications Sourcing Act (Public Law 106-252, 114 Stat.
29 626) the secretary may choose whether to furnish home service
30 providers with a database that matches addresses with taxing

jurisdictions or to allow home service providers to employ an enhanced zip code in lieu of providing a database.

(2) A home service provider that uses a database furnished by the secretary or, if no database is provided, an enhanced zip code, shall be held harmless from any tax, charge or fee liability that otherwise would be due solely as a result of reliance on such database or enhanced zip code, provided that the home service provider complies with the provisions of 4 U.S.C. §§ 119 (relating to electronic databases for nationwide standard numeric jurisdictional codes), 120 (relating to procedure if no electronic database provided) and 121 (relating to correction of erroneous data for place of primary use).

(3) A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use.

(4) A home service provider that relies on information provided by the customer shall be held harmless from any tax, charge or fee liability that otherwise would be due solely as a result of reliance on such information, provided that the home service provider complies with the provisions of 4 U.S.C. §§ 121 and 122 (relating to determination of place of primary use).

(c) (1) If a customer believes that an amount of tax, charge, fee or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer and any other information that the home service provider reasonably requires to process the request.

1 (2) Within sixty days of receiving a notice under this
2 section, the home service provider shall review its records. If
3 the review shows that the amount of tax, charge, fee, assignment
4 of place of primary use or taxing jurisdiction is in error, then
5 the home service provider shall correct the error and refund or
6 credit the amount of tax, charge or fee erroneously collected
7 from the customer for a period of up to two years from the date
8 of the customer's written notice. If this review shows that the
9 amount of tax, charge, fee, assignment of place of primary use
10 or taxing jurisdiction is correct, then the home service
11 provider shall provide a written explanation to the customer.

12 (3) The procedures in this section shall be the first course
13 of remedy available to a customer who seeks correction of
14 assignment of place of primary use or taxing jurisdiction or a
15 refund of or other compensation for taxes, charges or fees
16 erroneously collected by the home service provider, and no cause
17 of action based upon a dispute arising from such taxes, charges
18 or fees shall accrue to the extent otherwise permitted by law
19 until a customer has exhausted the rights and procedures set
20 forth in this section.

21 (d) (1) If nontaxable charges for telecommunications
22 services are aggregated with and not separately stated from
23 charges that are subject to taxation, then the charges for
24 nontaxable telecommunications services may be subject to
25 taxation unless the home service provider can reasonably
26 identify charges not subject to taxation under this article from
27 its books and records that are kept in the regular course of
28 business.

29 (2) If charges for telecommunications services are not
30 subject to taxation, a customer may not rely upon the

1 nontaxability of charges for telecommunications services unless
2 the customer's provider separately states the charges for
3 nontaxable telecommunications services from taxable charges or
4 the provider elects, after receiving a written request from the
5 customer in the form required by the provider, to provide
6 verifiable data based upon the provider's books and records that
7 are kept in the regular course of business that reasonably
8 identify the nontaxable charges.

9 (e) For purposes of a tax imposed by a political
10 subdivision, locality or other taxing authority subordinate to
11 the Commonwealth, which tax is in whole or in part imposed on or
12 measured by reference to mobile telecommunications services, the
13 tax shall only be imposed on such mobile telecommunications
14 services to the extent they are situated to the taxing authority,
15 in accordance with the provisions of this article.

16 Section 3. The amendment or addition of sections 201 and 228
17 of the act shall not affect the interpretation of those sections
18 with respect to any issue other than the imposition of tax on a
19 sale or use of mobile telecommunications service purchased at
20 retail.

21 Section 4. If a court of competent jurisdiction enters a
22 final judgment on the merits that is based on Federal law, is no
23 longer subject to appeal and substantially limits or impairs the
24 essential elements of 4 U.S.C. §§ 116 through 126, then the
25 provisions of this act shall be invalid and have no legal effect
26 as of the date of entry of such judgment.

27 Section 5. The provisions of this act shall apply to
28 customer bills issued after August 1, 2002.

29 Section 6. This act shall take effect immediately.