
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 AND KRAJEWSKI, MAY 10, 2023

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, TECHNOLOGY AND
UTILITIES, MAY 10, 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
22 clearly indicates a different meaning:

1 * * *

2 (k) "Sale at retail."

3 * * *

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

6 * * *

7 (m) "Tangible personal property."

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

1 * * *

2 (o) "Use."

3 * * *

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

6 * * *

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

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

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

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

26 (A) The transport over the Internet or any proprietary
27 network using the Internet protocol of telephone calls,
28 facsimile transmissions or other telecommunications traffic to
29 or from end users on the public switched telephone network if
30 the signal sent from or received by an end user is not in an

1 Internet protocol.

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

5 (4) Mobile telecommunications services.

6 * * *

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

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

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

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

27 * * *

28 [(g) Notwithstanding any other provisions of this article
29 and in accordance with the Mobile Telecommunications Sourcing
30 Act (4 U.S.C. § 116), the sale or use of mobile

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

13 * * *

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

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

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

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

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

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

30 (A) telecommunications exchange access to interconnect with

1 a local exchange carrier's network;

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

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

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

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

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

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

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

25 (a.1) Credit.--Telegraph or telephone companies [or
26 providers of mobile telecommunications services] that pay a
27 gross receipts tax to another state on messages or services
28 which are taxable under this article are entitled to a credit
29 against the tax due under this article. The credit allowed with
30 respect to the messages or services shall not exceed the tax

1 under this article with respect to the messages or services.

2 * * *

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

9 * * *

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

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

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

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

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

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

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

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

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

3 Section 2. This act shall take effect January 1, 2024, or
4 immediately, whichever is later.