

HOUSE BILL NO. HB0178

Sales and use tax-telecommunications.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation and revenue; establishing
2 uniform definitions for telecommunications services;
3 amending telecommunications sourcing provisions; amending
4 the tax imposed provisions for telecommunications;
5 providing conforming amendments; and providing for an
6 effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 39-15-101(a)(viii) by creating a new
11 subparagraph (C) and by creating new paragraphs (xxxix) and
12 (xl), 39-15-103(a)(i)(C), 39-15-104(f)(xi)(E)(X) and by
13 creating a new subdivision (XIV) and 39-16-101(a) by
14 creating a new paragraph (xvii) are amended to read:

15

16 **39-15-101. Definitions.**

17

1 (a) As used in this article:

2

3 (viii) "Sales price":

4

5 (A) Shall apply to the measure subject to
6 sales tax and means the total amount or consideration,
7 including cash, credit, property and services for which
8 personal property or services are sold, leased or rented,
9 valued in money, whether received in money or otherwise,
10 without any deduction for the following:

11

12 (C) "Sales price" shall include
13 consideration received by the seller from third parties if:

14

15 (I) The seller actually receives
16 consideration from a party other than the purchaser and the
17 consideration is directly related to the price reduction or
18 discount on the sale;

19

20 (II) The seller has an obligation to
21 pass the price reduction or discount through to the
22 purchaser and one (1) of the following criteria is met:

23

1 (1) The purchaser presents a
2 coupon, certificate or other documentation to the seller to
3 claim a price reduction or discount where the coupon
4 certificate or documentation is authorized, distributed or
5 granted by a third party with the understanding that the
6 third party will reimburse any seller to whom the coupon,
7 certificate or documentation is presented;

8
9 (2) The purchaser identifies
10 himself to the seller as a member of a group or
11 organization entitled to a price reduction or discount. A
12 preferred customer card that is available to any patron
13 shall not constitute membership in such a group; or

14
15 (3) The price reduction or
16 discount is identified as a third party price reduction or
17 discount on the invoice received by the purchaser or on a
18 coupon, certificate or other documentation presented by the
19 purchaser.

20
21 (xxxix) Telecommunications definitions:

22
23 (A) "800 service" means a
24 telecommunications service that allows a caller to dial a

1 toll-free number without incurring a charge for the call.
2 The service is typically marketed under the name "800",
3 "855", "866", "877" and "888" toll-free calling, and any
4 subsequent numbers designated by the Federal Communications
5 Commission;

6
7 (B) "900 service" means an inbound toll
8 telecommunications service purchased by a subscriber that
9 allows the subscriber's customers to call in to the
10 subscriber's prerecorded announcement or live service. 900
11 service shall not include the charge for collection
12 services provided by the seller of the telecommunications
13 services to the subscriber or service or product sold by
14 the subscriber to the subscriber's customer. The service
15 is typically marketed under the name "900" service, and any
16 subsequent numbers designated by the Federal Communications
17 Commission;

18
19 (C) "Ancillary services" means services
20 that are associated with or incidental to the provision of
21 telecommunications services, including but not limited to
22 detailed telecommunications billing, directory assistance,
23 vertical service and voice mail services;

24

1 (D) "Coin-operated telephone service" means
2 a telecommunications service paid for by inserting money
3 into a telephone accepting direct deposits of money to
4 operate;

5
6 (E) "Conference bridging service" means an
7 ancillary service that links two (2) or more participants
8 of an audio or video conference call and may include the
9 provision of a telephone number. Conference bridging
10 service shall not include the telecommunications services
11 used to reach the conference bridge;

12
13 (F) "Detailed telecommunications billing
14 service" means an ancillary service of separately stating
15 information pertaining to individual calls on a customer's
16 billing statement;

17
18 (G) "Directory assistance" means an
19 ancillary service of providing telephone number information
20 or address information;

21
22 (H) "Fixed wireless service" means a
23 telecommunications service that provides radio
24 communication between fixed points;

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(J) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;

(K) "Interstate" means a telecommunications service that originates in one (1) state of the United States or a United States territory or possession, and terminates in a different state of the United States or a United States territory or possession;

(M) "Intrastate" means a telecommunications service that originates in one (1) state of the United States or a United States territory or possession and terminates in the same state of the United States or a United States territory or possession;

(N) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination or termination points of the transmission,

1 conveyance or routing are not fixed, including, by way of
2 example only, telecommunications services that are provided
3 by a commercial mobile radio service provider;

4
5 (O) "Paging service" means a
6 telecommunications service that provides transmission of
7 coded radio signals for the purpose of activating specific
8 paggers, which transmissions may include messages or sounds;

9
10 (P) "Pay telephone service" means a
11 telecommunications service provided through any pay
12 telephone;

13
14 (Q) "Prepaid calling service" means the
15 right to access exclusively telecommunications services,
16 which require advance payment and which enables the
17 origination of call using an access number or authorization
18 code, whether manually or electronically dialed, and that
19 is sold in predetermined units or dollars of which the
20 number declines with use in a known amount;

21
22 (R) "Prepaid wireless calling service"
23 means a telecommunications service that provides the right
24 to utilize mobile wireless service as well as other

1 nontelecommunications services including the download of
2 digital products delivered electronically, content and
3 ancillary services, which require advance payment that is
4 sold in predetermined units of dollars of which the number
5 declines with use in a known amount;

6
7 (S) "Private communications service" means
8 a telecommunications service that entitles the customer to
9 exclusive or priority use of a communications channel or
10 group of channels between or among termination points,
11 regardless of the manner in which the channel or channels
12 are connected, and includes switching capacity, extension
13 lines, stations and any other associated services that are
14 provided in connection with the use of the channel or
15 channels;

16
17 (T) "Residential telecommunications
18 service" means a telecommunications service or ancillary
19 services provided to an individual for personal use at a
20 residential address, including an individual dwelling unit
21 such as an apartment. In the case of institutions where
22 individuals reside such as schools or nursing homes,
23 telecommunications service is considered residential if it

1 is provided to and paid for by an individual resident
2 rather than the institution;

3

4 (U) "Telecommunications service" means the
5 electronic transmission, conveyance or routing of voice,
6 data, audio, video or any other information or signals to a
7 point, or between or among points. The term
8 telecommunications service includes such transmission,
9 conveyance or routing in which computer processing
10 applications are used to act on the form, code or protocol
11 of the content for purposes of transmission, conveyance or
12 routing without regard to whether such service is referred
13 to as voice over internet protocol services or is
14 classified by the Federal Communications Commission as
15 enhanced or value added. Telecommunications service shall
16 not include:

17

18 (I) Data processing and information
19 services that allow data to be generated, acquired, stored,
20 processed or retrieved and delivered by an electronic
21 transmission to a purchaser where the purchaser's primary
22 purpose for the underlying transaction is the processed
23 data or information;

24

1 (II) Installation or maintenance of
2 wiring or equipment on a customer's premises;

3
4 (III) Tangible personal property;

5
6 (IV) Advertising, including but not
7 limited to directory advertising;

8
9 (V) Billing and collection services
10 provided to third parties;

11
12 (VI) Internet access service;

13
14 (VII) Radio and television audio and
15 video programming services, regardless of the medium,
16 including the furnishing of transmission, conveyance and
17 routing of the services by the programming service
18 provider. Radio and television audio and video programming
19 services shall include but not be limited to cable service
20 as defined in 47 C.F.R. 20.3;

21
22 (VIII) Ancillary services; or
23

1 (IX) Digital products delivered
2 electronically including but not limited to software,
3 music, video, reading materials or ring tones.

4
5 (W) "Value-added nonvoice data service"
6 means a service that otherwise meets the definition of
7 telecommunications services in which computer processing
8 applications are used to act on the form, content, code, or
9 protocol of the information or data primarily for a purpose
10 other than transmission, conveyance or routing;

11
12 (Y) "Vertical service" means an ancillary
13 service that is offered in connection with one (1) or more
14 telecommunications services, which offers advanced calling
15 features that allow customers to identify callers and to
16 manage multiple calls and call connections, including
17 conference bridging services;

18
19 (Z) "Voice mail service" means an ancillary
20 service that enables the customer to store, send or receive
21 recorded messages. Voice mail service does not include any
22 vertical services that the customer may be required to have
23 in order to utilize the voice mail service.

24

1 (x1) "Bundled transaction" means the retail sale
2 of two (2) or more products, except real property and
3 services to real property, where the products are otherwise
4 distinct and identifiable, and the products are sold for
5 one (1) nonitemized price. A bundled transaction does not
6 include the sale of any products in which the sales price
7 varies or is negotiable based on the selection by the
8 purchaser of the products included in the transaction:

9
10 (A) "Distinct and identifiable products"
11 does not include:

12
13 (I) Packaging such as containers,
14 boxes, sacks, bags and bottles or other materials such as
15 wrapping, labels, tags and instruction guides that
16 accompany the retail sale of the products and are
17 incidental or immaterial to the retail sale thereof;

18
19 (II) A product provided free of charge
20 with the required purchase of another product. A product
21 is provided free of charge if the sales price of the
22 product purchased does not vary depending on the inclusion
23 of the product provided free of charge;

24

1 (III) Items included in the definition
2 of sales price.

3
4 (B) "One (1) nonitemized price" does not
5 include a price that is separately identified by product on
6 a binding sales or other supporting sales-related
7 documentation made available to the customer in paper or
8 electronic form including, but not limited to an invoice,
9 bill of sale, receipt, contract, service agreement, lease
10 agreement, periodic notice of rates and services, rate card
11 or price list;

12
13 (C) A transaction that otherwise meets the
14 definition of a bundled transaction as defined above, is
15 not a bundled transaction if it is:

16
17 (I) The retail sale of tangible
18 personal property and a service where the tangible personal
19 property is essential to the use of the service, and is
20 provided exclusively in connection with the service, and
21 the true object of the transaction is the service; or

22
23 (II) The retail sale of services where
24 one (1) service is provided that is essential to the use or

1 receipt of a second service and the first service is
2 provided exclusively in connection with the second service
3 and the true object of the transaction is the second
4 service; or

5
6 (III) A transaction that includes
7 taxable products and nontaxable products and the purchase
8 price or sales price of the taxable products is de minimis.
9 "De minimis" means the seller's purchase price or sales
10 price of the taxable products is ten percent (10%) or less
11 of the total purchase price or sales price of the bundled
12 products. Sellers shall use either the purchase price or
13 the sales price of the products to determine if the taxable
14 products are de minimis. Sellers shall not use a
15 combination of the purchase price and sales price of the
16 products to determine if the taxable products are de
17 minimis. Sellers shall use the full term of a service
18 contract to determine if the taxable products are de
19 minimis; or

20
21 (IV) The retail sale of exempt
22 tangible personal property and taxable tangible personal
23 property where:

24

1 (1) The transaction includes food
2 and food ingredients, drugs, durable medical equipment,
3 mobility enhancing equipment, over the counter drugs,
4 prosthetic devices or medical supplies; and

5
6 (2) Where the seller's purchase
7 price or sales price of the taxable tangible personal
8 property is fifty percent (50%) or less of the total
9 purchase price or sales price of the bundled tangible
10 personal property. Sellers shall not use a combination of
11 the purchase price and sales price of the tangible personal
12 property when making the fifty percent (50%) determination
13 of the transaction.

14
15 **39-15-103. Imposition.**

16
17 (a) Taxable event. The following shall apply:

18
19 (i) Except as provided by W.S. 39-15-105, there
20 is levied an excise tax upon:

21
22 (C) The sales price paid for intrastate
23 ~~telephone and telegraph~~ telecommunications services
24 including the consideration paid for the sale, rental or

1 leasing of any equipment or ancillary services incidental
2 thereto, and the sales price paid for intrastate calls
3 which originate and terminate in a single state and are
4 billed to a customer with a place of primary use in this
5 state from mobile telecommunications services as provided
6 by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§
7 116 through 126. The definitions and provisions of the
8 Mobile Telecommunications Sourcing Act shall apply to this
9 article;

10

11 **39-15-104. Taxation rate.**

12

13 (f) The tax rate imposed upon a transaction subject
14 to this chapter shall be sourced as follows:

15

16 (xi) The sales of the following
17 telecommunication services shall be sourced to each level
18 of taxing jurisdiction as follows:

19

20 (E) As used in paragraphs (ix) through (xi)
21 of this subsection, the following definitions apply:

22

23 (X) "Post-paid calling service" means
24 the telecommunications service obtained by making a payment

1 on a call-by-call basis either through the use of a payment
2 mechanism such as a bank card, travel card, credit card, or
3 debit card, or by charge made to a telephone number which
4 is not associated with the origination or termination of
5 the telecommunications service. A post-paid calling service
6 includes a telecommunications service, except a prepaid
7 wireless calling service, that would be a prepaid calling
8 service except it is not exclusively a telecommunications
9 service;

10
11 (XIV) "Prepaid wireless calling
12 service" means a telecommunications service that provides
13 the right to utilize mobile wireless service as well as
14 other nontelecommunications services, including the
15 download of digital products delivered electronically,
16 content and ancillary services, which must be paid for in
17 advance that is sold in predetermined units or dollars of
18 which the number declines with use in a known amount.

19
20 **39-16-101. Definitions.**

21
22 (a) As used in this article:

23
24 (xvii) Telecommunications definitions:

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(A) "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;

(B) "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 shall 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;

(C) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to

1 detailed telecommunications billing, directory assistance,
2 vertical service and voice mail services;

3

4 (D) "Coin-operated telephone service" means
5 a telecommunications service paid for by inserting money
6 into a telephone accepting direct deposits of money to
7 operate;

8

9 (E) "Conference bridging service" means an
10 ancillary service that links two (2) or more participants
11 of an audio or video conference call and may include the
12 provision of a telephone number. Conference bridging
13 service shall not include the telecommunications services
14 used to reach the conference bridge;

15

16 (F) "Detailed telecommunications billing
17 service" means an ancillary service of separately stating
18 information pertaining to individual calls on a customer's
19 billing statement;

20

21 (G) "Directory assistance" means an
22 ancillary service of providing telephone number information
23 or address information;

24

1 (H) "Fixed wireless service" means a
2 telecommunications service that provides radio communication
3 between fixed points;

4
5 (J) "International" means a
6 telecommunications service that originates or terminates in
7 the United States and terminates or originates outside the
8 United States, respectively. United States includes the
9 District of Columbia or a United States territory or
10 possession;

11
12 (K) "Interstate" means a telecommunications
13 service that originates in one (1) state of the United
14 States or a United States territory or possession and
15 terminates in a different state of the United States or a
16 United States territory or possession;

17
18 (M) "Intrastate" means a telecommunications
19 service that originates in one (1) state of the United
20 States or a United States territory or possession and
21 terminates in the same state of the United States or a
22 United States territory or possession;

23

1 (N) "Mobile wireless service" means a
2 telecommunications service that is transmitted, conveyed or
3 routed regardless of the technology used, whereby the
4 origination or termination points of the transmission,
5 conveyance or routing are not fixed, including, by way of
6 example only, telecommunications services that are provided
7 by a commercial mobile radio service provider;

8
9 (O) "Paging service" means a
10 telecommunications service that provides transmission of
11 coded radio signals for the purpose of activating specific
12 paggers which transmissions may include messages or sounds;

13
14 (P) "Pay telephone service" means a
15 telecommunications service provided through any pay
16 telephone;

17
18 (Q) "Prepaid calling service" means the
19 right to access exclusively telecommunications services,
20 which requires advance payment and which enables the
21 origination of calls using an access number or
22 authorization code, whether manually or electronically
23 dialed, and that is sold in predetermined units or dollars
24 of which the number declines with use in a known amount;

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2

(R) "Prepaid wireless calling service"

3

means a telecommunications service that provides the right

4

to utilize mobile wireless service as well as other

5

nontelecommunications services including the download of

6

digital products delivered electronically, content and

7

ancillary services, which require advance payment that is

8

sold in predetermined units of dollars of which the number

9

declines with use in a known amount;

10

11

(S) "Private communications service" means

12

a telecommunications service that entitles the customer to

13

exclusive or priority use of a communications channel or

14

group of channels between or among termination points,

15

regardless of the manner in which the channel or channels

16

are connected, and includes switching capacity, extension

17

lines, stations and any other associated services that are

18

provided in connection with the use of the channel or

19

channels;

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21

(T) "Residential telecommunications

22

service" means a telecommunications service or ancillary

23

services provided to an individual for personal use at a

24

residential address, including an individual dwelling unit

1 such as an apartment. In the case of institutions where
2 individuals reside such as schools or nursing homes,
3 telecommunications service is considered residential if it
4 is provided to and paid for by an individual resident
5 rather than the institution;

6
7 (U) "Telecommunications service" means the
8 electronic transmission, conveyance or routing of voice,
9 data, audio, video, or any other information or signals to
10 a point, or between or among points. The term
11 telecommunications service includes such transmission,
12 conveyance, or routing in which computer processing
13 applications are used to act on the form, code or protocol
14 of the content for purposes of transmission, conveyance or
15 routing without regard to whether such service is referred
16 to as voice over Internet protocol services or is
17 classified by the Federal Communications Commission as
18 enhanced or value added. Telecommunications service shall
19 not include:

20
21 (I) Data processing and information
22 services that allow data to be generated, acquired, stored,
23 processed, or retrieved and delivered by an electronic
24 transmission to a purchaser where the purchaser's primary

1 purpose for the underlying transaction is the processed
2 data or information;

3

4 (II) Installation or maintenance of
5 wiring or equipment on a customer's premises;

6

7 (III) Tangible personal property;

8

9 (IV) Advertising, including but not
10 limited to directory advertising;

11

12 (V) Billing and collection services
13 provided to third parties;

14

15 (VI) Internet access service;

16

17 (VII) Radio and television audio and
18 video programming services, regardless of the medium,
19 including the furnishing of transmission, conveyance and
20 routing of the services by the programming service
21 provider. Radio and television audio and video programming
22 services shall include but not be limited to cable service
23 as defined in 47 U.S.C. 522(6) and audio and video

1 programming services delivered by commercial mobile radio
2 service providers, as defined in 47 C.F.R. 20.3;

3
4 (VIII) Ancillary services; or

5
6 (IX) Digital products delivered
7 electronically, including but not limited to software,
8 music, video, reading materials or ring tones.

9
10 (W) "Value-added nonvoice data service"
11 means a service that otherwise meets the definition of
12 telecommunications services in which computer processing
13 applications are used to act on the form, content, code or
14 protocol of the information or data primarily for a purpose
15 other than transmission, conveyance or routing;

16
17 (Y) "Vertical service" means an ancillary
18 service that is offered in connection with one (1) or more
19 telecommunications services, which offers advanced calling
20 features that allow customers to identify callers and to
21 manage multiple calls and call connections, including
22 conference bridging services;

23

