



DEPARTMENT OF
REVENUE
STATE OF MISSISSIPPI

**AFFIDAVIT FOR
UTILITY EXEMPTION**

Form 72-620-12-1-1-000

STATE OF MISSISSIPPI, COUNTY OF _____ (County of Notary Public) BEFORE ME, the undersigned authority, on this day personally appeared _____ (Organization Representative's Name) of _____ (Organization Name), who after being by me first duly sworn, on oath deposed and said:

Under the penalty of perjury, I hereby certify that the organization named above is a (Choose only ONE of the following entities)

- Custom Processor.** I further certify that purchases of electricity, current, power, natural gas, liquefied petroleum gas or other fuel sold to the organization named above will be utilized directly in the organization's commercial operations and meets the criteria provided for in Miss. Code Ann. § 27-65-107(f).
- Technology Intensive Enterprise.** I further certify that purchases of electricity, current, power, natural gas, liquefied petroleum gas or other fuel sold to the organization named above will be utilized directly in the organization's commercial operations and meets the criteria provided for in Miss. Code Ann. § 27-65-17(1)(f).
- Public Service Company.** I further certify that the purchases of electricity, current, power, natural gas, liquefied petroleum gas or other fuel sold to the organization named above will be utilized directly in the organization's commercial operations and will be used for industrial purposes which includes that used to generate electricity, to operate an electrical distribution or transmission system, to operate pipeline compressors or pumping stations or to operate railroad locomotives. See Miss. Code Ann. § 27-65-107(f).
- Agricultural Producer or Processor.** I further certify that the purchases of electricity, current, power, natural gas, liquefied petroleum gas or other fuel sold will be used directly by the producer or processor named above in the production of poultry products, livestock products, domesticated fish products, marine agriculture products, milk products, the production of plants or food by commercial horticulturists, the processing of poultry and livestock feed and the irrigation of farm crops. See Miss. Code Ann. § 27-65-107(g).
- Fisherman, Shrimper or Oysterman.** See Miss. Code Ann. § 27-65-107(h).
- Church.** I further certify that the organization named above is a church, which is exempt from federal income taxation under 26 USCS Section 501(c)(3) and that purchases of potable water, electricity, current, power, natural gas, liquefied petroleum gas or other fuel sold to the church will be utilized on property that is primarily used for religious or educational purposes and qualifies for exemption from sales tax as provided in Miss. Code Ann. § 27-65-19(1)(a)(ii).

Furthermore, I certify and agree that if the above-named organization or I fail to adhere to the selected provision provided above, that the above-named organization and/or I will pay to the Mississippi Department of Revenue the difference between the rate paid to vendors when making eligible purchases as described herein and the regular retail rate of sales tax. Moreover, I acknowledge that failure to adhere to the provisions provided herein will result in tax being due and payable at the seven percent (7%) retail rate, a fifty percent (50%) fraud penalty and the applicable rate of interest per month provided in Miss. Code Ann. § 27-65-39, from the date of purchase until this additional tax is paid to the Mississippi Department of Revenue. Finally, I acknowledge that if the organization ceases operating as the selected eligible organization I will notify the dealer so that applicable sales tax rates may be charged on future purchases, and that failure to notify the dealer will result in liability to the organization for the tax due, including penalty and interest, as stated above.

Visit our website at www.dor.ms.gov for more information concerning each exemption.

WITNESS MY SIGNATURE, this the _____ day of _____, 20_____.

(Representative's Printed Name) (Representative's Signature)

(Organization's Mailing Street Address, City, State, Zip Code)

Work Phone # () - Alt. Phone # () - Email _____

NOTARY PUBLIC ACKNOWLEDGMENT

STATE OF MISSISSIPPI, COUNTY OF _____ (County of Notary Public) .

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, the within named _____ Representative's Name, who acknowledged that he/she is the _____ Representative's Relationship/Position of _____ Organization's Name and that in said representative capacity he/she executed the above and foregoing instrument after have been duly authorized to do so.

[Place Seal Here]

Notary Public Name: _____

Signature: _____

Commission Expiration: _____

Miss. Code Ann. § 27-65-107

MISSISSIPPI CODE of 1972

*** Current through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions ***

TITLE 27. TAXATION AND FINANCE
CHAPTER 65. SALES TAX
IN GENERAL

Miss. Code Ann. § 27-65-107 (2013)

§ 27-65-107. Exemptions; utility

[Until July 1, 2014, this section shall read as follows:]

The exemptions from the provisions of this chapter which relate to utilities or which are more properly classified as utility exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitutions of the United States or the State of Mississippi. No utility exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent utility exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

- (a) Sales and rentals of locomotives, rail rolling stock and materials for their repair, locomotive water, when made to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission.
- (b) Rentals of manufacturing machinery to a manufacturer or custom processor where such manufacturer or custom processor is engaged in, and such machinery is used in, the manufacture of containers made from timber or wood for sale. The tax, likewise, shall not apply to replacement or repair parts of such machinery used in such manufacture.
- (c) Sales of tangible personal property and services to nonprofit water associations or corporations in which no part of the net earnings inures to the benefit of any private shareholder, group or individual. Only sales of property or services which are ordinary and necessary to the operation of such organizations are exempt from tax.
- (d) Wholesale sales of tangible personal property for resale under Section 27-65-19.
- (e) From and after July 1, 2003, sales of fuel used to produce electric power by a company primarily engaged in the business of producing, generating or distributing electric power for sale.

[From and after July 1, 2014, this section shall read as follows:]

The exemptions from the provisions of this chapter which relate to utilities or which are more properly classified as utility exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitutions of the United States or the State of Mississippi. No utility exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent utility exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

- (a) Sales and rentals of locomotives, rail rolling stock and materials for their repair, locomotive water, when made to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission.
- (b) Rentals of manufacturing machinery to a manufacturer or custom processor where such manufacturer or custom processor is engaged in, and such machinery is used in, the manufacture of containers made from timber or wood for sale. The tax, likewise, shall not apply to replacement or repair parts of such machinery used in such manufacture.
- (c) Sales of tangible personal property and services to nonprofit water associations or corporations in which no part of the net earnings inures to the benefit of any private shareholder, group or individual. Only sales of property or services which are ordinary and necessary to the operation of such organizations are exempt from tax.
- (d) Wholesale sales of tangible personal property for resale under Section 27-65-19.
- (e) From and after July 1, 2003, sales of fuel used to produce electric power by a company primarily engaged in the business of producing, generating or distributing electric power for sale.
- (f) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a manufacturer, custom processor, technology intensive enterprise meeting the criteria provided for in Section 27-65-17(1)(f), or public service company for industrial purposes, which shall include that used to generate electricity, to operate an electrical distribution or transmission system, to operate pipeline compressor or pumping stations, or to operate railroad locomotives.
- (g) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a producer or processor for use directly in the production of poultry or poultry products, the production of livestock and livestock products, the production of domesticated fish and domesticated fish products, the production of marine aquaculture products, the production of plants or food by commercial horticulturists, the processing of milk and milk products, the processing of poultry and livestock feed, and the irrigation of farm crops.
- (h) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a commercial fisherman, shrimper or oysterman.

HISTORY: SOURCES: Laws, 1978, ch. 347, § 6; Laws, 1979, ch. 302, § 8; Laws, 1988, ch. 515, § 38; Laws, 1995, ch. 508, § 5; Laws, 1997, ch. 536, § 3; Laws, 2013, ch. 537, § 1, eff from and after July 1, 2014.

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Miss. Code Ann. § 27-65-17

MISSISSIPPI CODE of 1972

*** Current through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions ***

TITLE 27. TAXATION AND FINANCE
CHAPTER 65. SALES TAX
IN GENERAL

Miss. Code Ann. § 27-65-17 (2013)

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1. Aircraft Sales and Services Are Taxable
2. Professional Services Are Generally Not Taxable in Mississippi
3. Advertising in the Form of Tangible Personal Property Is Taxable in Mississippi
4. Materials Used in Manufacturing Can Be Exempt or Taxable Based on Use
5. Understanding Voluntary Compliance Agreements in Mississippi
6. Installation Charges on Tangible Personal Property Are Generally Taxable
7. Bundled Transaction May Create a Higher Liability for Certain Transactions
8. Computer Software: Canned and Custom Software Are Taxable
9. Sale for Resale Exemption and the Tax Concerns
10. Contractor's Tax and the Taxation of Residential Construction
11. Warranty and Maintenance Contracts Are Generally Taxable
12. Examining Drop Shipments in Mississippi
13. Isolated or Occasional Sales Are Exempt.
14. Treatment of Discounts and Coupons for Purposes of Mississippi Sales and Use Taxes

§ 27-65-17. Selling tangible personal property wholesale and retail

(1) (a) Except as otherwise provided in this section, upon every person engaging or continuing within this state in the business of selling any tangible personal property whatsoever there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross proceeds of the retail sales of the business.

(b) Retail sales of farm tractors and parts and labor used to maintain and/or repair such tractors shall be taxed at the rate of one and one-half percent (1- 1/2%) when made to farmers for agricultural purposes.

(c) (i) Retail sales of farm implements sold to farmers and used directly in the production of poultry, ratite, domesticated fish as defined in Section 69-7-501, livestock, livestock products, agricultural crops or ornamental plant crops or used for other agricultural purposes, and parts and labor used to maintain and/or repair such implements, shall be taxed at the rate of one and one-half percent (1- 1/2%) when used on the farm.

(ii) The one and one-half percent (1- 1/2%) rate shall also apply to all equipment used in logging, pulpwood operations or tree farming, and parts and labor used to maintain and/or repair such equipment, which is either:

1. Self-propelled, or

2. Mounted so that it is permanently attached to other equipment which is self-propelled or permanently attached to other equipment drawn by a vehicle which is self-propelled.

In order to be eligible for the rate of tax provided for in this subparagraph (ii), such sales must be made to a professional logger. For the purposes of this subparagraph (ii), a "professional logger" is a person, corporation, limited liability company or other entity, or an agent thereof, who possesses a professional logger's permit issued by the Mississippi State Tax Commission and who presents the permit to the seller at the time of purchase. The commission shall establish an application process for a professional logger's permit to be issued, which shall include a requirement that the applicant submit a copy of documentation verifying that the applicant is certified according to Sustainable Forestry Initiative guidelines. Upon a determination that an applicant is a professional logger, the commission shall issue the applicant a numbered professional logger's permit.

(d) Except as otherwise provided in subsection (3) of this section, retail sales of aircraft, automobiles, trucks, truck-tractors, semitrailers and manufactured or mobile homes shall be taxed at the rate of three percent (3%).

(e) Sales of manufacturing machinery or manufacturing machine parts when made to a manufacturer or custom processor for plant use only when the machinery and machine parts will be used exclusively and directly within this state in manufacturing a commodity for sale, rental or in processing for a fee shall be taxed at the rate of one and one-half percent (1- 1/2%).

(f) Sales of machinery and machine parts when made to a technology intensive enterprise for plant use only when the machinery and machine parts will be used exclusively and directly within this state for industrial purposes, including, but not limited to, manufacturing or research and development activities, shall be taxed at the rate of one and one-half percent (1- 1/2%). In order to be considered a technology intensive enterprise for purposes of this paragraph:

(i) The enterprise shall meet minimum criteria established by the Mississippi Development Authority;

(ii) The enterprise shall employ at least ten (10) persons in full-time jobs;

(iii) At least ten percent (10%) of the workforce in the facility operated by the enterprise shall be scientists, engineers or computer specialists;

(iv) The enterprise shall manufacture plastics, chemicals, automobiles, aircraft, computers or electronics; or shall be a research and development facility, a computer design or related facility, or a software publishing facility or other technology intensive facility or enterprise as determined by the Mississippi Development Authority;

(v) The average wage of all workers employed by the enterprise at the facility shall be at least one hundred fifty percent (150%) of the state average annual wage; and

(vi) The enterprise must provide a basic health care plan to all employees at the facility.

(g) Sales of materials for use in track and track structures to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission shall be taxed at the rate of three percent (3%).

(h) Sales of tangible personal property to electric power associations for use in the ordinary and necessary operation of their generating or distribution systems shall be taxed at the rate of one percent (1%).

(i) Wholesale sales of beer shall be taxed at the rate of seven percent (7%), and the retailer shall file a return and compute the retail tax on retail sales but may take credit for the amount of the tax paid to the wholesaler on said return covering the subsequent sales of same property, provided adequate invoices and records are maintained to substantiate the credit.

(j) Wholesale sales of food and drink for human consumption to full-service vending machine operators to be sold through vending machines located apart from and not connected with other taxable businesses shall be taxed at the rate of eight percent (8%).

(k) Sales of equipment used or designed for the purpose of assisting disabled persons, such as wheelchair equipment and lifts, that is mounted or attached to or installed on a private carrier of passengers or light carrier of property, as defined in Section 27-51-101, at the time when the private carrier of passengers or light carrier of property is sold shall be taxed at the same rate as the sale of such vehicles under this section.

(l) Sales of the factory-built components of modular homes, panelized homes and precut homes, and panel constructed homes consisting of structural insulated panels, shall be taxed at the rate of three percent (3%).

(m) Sales of materials used in the repair, renovation, addition to, expansion and/or improvement of buildings and related facilities used by a dairy producer shall be taxed at the rate of three and one-half percent (3- 1/2%). For the purposes of this paragraph (m), "dairy producer" means any person engaged in the production of milk for commercial use.

(2) From and after January 1, 1995, retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101, shall be taxed an additional two percent (2%).

(3) In lieu of the tax levied in subsection (1) of this section, there is levied on retail sales of truck-tractors and semitrailers used in interstate commerce and registered under the International Registration Plan (IRP) or any similar reciprocity agreement or compact relating to the proportional registration of commercial vehicles entered into as provided for in Section 27-19-143, a tax at the rate of three percent (3%) of the portion of the sale that is attributable to the usage of such truck-tractor or semitrailer in Mississippi. The portion of the retail sale that is attributable to the usage of such truck-tractor or semitrailer in Mississippi is the retail sales price of the truck-tractor or semitrailer multiplied by the percentage of the total miles traveled by the vehicle that are traveled in Mississippi. The tax levied pursuant to this subsection (3) shall be collected by the State Tax Commission from the purchaser of such truck-tractor or semitrailer at the time of registration of such truck-tractor or semitrailer.

(4) A manufacturer selling at retail in this state shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in this section.

HISTORY: SOURCES: Codes, 1942, § 10108; Laws, 1932, chs. 90, 91; Laws, 1934, chs. 119, 122; Laws, 1946, ch. 343; Laws, 1948, ch. 467, § 2; Laws, 1950, ch. 529; Laws, 1955, Ex Sess, ch. 109, § 9; Laws, 1958, ch. 574, § 6; Laws, 1960, ch. 167, § 1; Laws, 1962, ch. 596, §§ 1, 3; Laws, 1962, ch. 597, §§ 1, 3; Laws, 1964, ch. 532, § 1; Laws, 1964, ch. 531, § 2; Laws, 1965, Ex Sess, ch. 22, § 2; Laws, 1968, ch. 588, § 3; Laws, 1972, ch. 506, § 3; Laws, 1978, ch. 512, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 36; Laws, 1983, ch. 546, § 1; Laws, 1983, 2nd Ex Sess, ch. 6, § 5; Laws, 1984, 1st Ex Sess, ch. 10, § 3; Laws, 1985, ch. 351, § 1; Laws, 1985, ch. 516, § 2; Laws, 1987, ch. 322, § 26; Laws, 1987, ch. 426, § 1; Laws, 1988, ch. 506, § 1; Laws, 1992, ch. 419, § 3; Laws, 1992, ch. 509, § 1; Laws, 1994, ch. 563, § 7; Laws, 1998, ch. 410, § 1; Laws, 1999, ch. 452, § 1; Laws, 2005, ch. 532, § 19; Laws, 2005, 3rd Ex Sess, ch. 1, § 63; Laws, 2006, 2nd Ex Sess, ch. 1, § 1; Laws, 2007, ch. 359, § 5; Laws, 2009, ch. 493, § 1, eff from and after July 1, 2009.

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taxable and nontaxable, the portion of the price that is attributable to any nontaxable property or service shall be subject to the tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business.

3. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, audio or video programming services subject to tax under this chapter in which the price is attributable to properties or services that are subject to the tax but the tax revenue from the different properties or services are dedicated to different funds or purposes, the provider shall allocate the price among the properties or services:

a. By reasonably identifying the portion of the price attributable to each of the properties and services from its books and records kept in the regular course of business; or

b. Based on a reasonable allocation methodology approved by the department.

4. This subparagraph (vii) shall not create a right of action for a customer to require that the provider or the department, for purposes of determining the amount of tax applicable to a bundled transaction, allocate the price to the different portions of the transaction in order to minimize the amount of tax charged to the customer. A customer shall not be entitled to rely on the fact that a portion of the price is attributable to properties or services not subject to tax unless the provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the provider's books and records that are kept in the regular course of business that reasonably identifies the portion of the price attributable to the properties or services not subject to the tax.

(2) Persons making sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use or sales of potable water for residential, noncommercial or nonagricultural use shall indicate on each statement rendered to customers that such charges are exempt from sales taxes.

(3) There is hereby levied, assessed and shall be paid on transportation charges on shipments moving between points within this state when paid directly by the consumer, a tax equal to the rate applicable to the sale of the property being transported. Such tax shall be reported and paid directly to the Department of Revenue by the consumer.

[From and after July 1, 2014, this section shall read as follows:]

(1) (a) (i) Except as otherwise provided in this subsection, upon every person selling to consumers, electricity, current, power, potable water, steam, coal, natural gas, liquefied petroleum gas or other fuel, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of the business. Provided, gross income from sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use, and sales of potable water for residential, noncommercial or nonagricultural use shall be excluded from taxable gross income of the business. Provided further, upon every such seller using electricity, current, power, potable water, steam, coal, natural gas, liquefied petroleum gas or other fuel for nonindustrial purposes, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the cost or value of the product or service used.

(ii) Gross income from sales to a church that is exempt from federal income taxation under 26 USCS Section 501(c)(3) of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for heating, lighting or other use, and sales of potable water to such a church shall be excluded from taxable gross income of the business if the electricity, current, power, natural gas, liquefied petroleum gas or potable water is utilized on property that is primarily used for religious or educational purposes.

(b) (i) There is hereby levied, assessed and shall be collected a tax equal to one and one-half percent (1- 1/2%) of the gross income of the business from the sale of naturally occurring carbon dioxide and anthropogenic carbon dioxide lawfully injected into the earth for:

1. Use in an enhanced oil recovery project, including, but not limited to, use for cycling, repressuring or lifting of oil; or

2. Permanent sequestration in a geological formation.

(ii) The one and one-half percent (1- 1/2%) rate provided for in this subsection shall apply to electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel that is sold to a producer of oil and gas for use directly in enhanced oil recovery using carbon dioxide and/or the permanent sequestration of carbon dioxide in a geological formation.

(c) The one and one-half percent (1- 1/2%) rate provided for in this subsection shall not apply to sales of fuel for automobiles, trucks, truck-tractors, buses, farm tractors or airplanes.

(d) (i) Upon every person providing services in this state, there is hereby levied, assessed and shall be collected:

1. A tax equal to seven percent (7%) of the gross income received from all charges for intrastate telecommunications services.

2. A tax equal to seven percent (7%) of the gross income received from all charges for interstate telecommunications services.

3. A tax equal to seven percent (7%) of the gross income received from all charges for international telecommunications services.

4. A tax equal to seven percent (7%) of the gross income received from all charges for ancillary services.

5. A tax equal to seven percent (7%) of the gross income received from all charges for products delivered electronically, including, but not limited to, software, music, games, reading materials or ring tones.

(ii) A person, upon proof that he has paid a tax in another state on an event described in subparagraph (i) of this paragraph (d), shall be allowed a credit against the tax imposed in this paragraph (d) on interstate telecommunications service charges to the extent that the amount of such tax is properly due and actually paid in such other state and to the extent that the rate of sales tax imposed by and paid in such other state does not exceed the rate of sales tax imposed by this paragraph (d).

(iii) Charges by one (1) telecommunications provider to another telecommunications provider holding a permit issued under Section 27-65-27 for services that are resold by such other telecommunications provider, including, but not limited to, access charges, shall not be subject to the tax levied pursuant to this paragraph (d).

(iv) For purposes of this paragraph (d):

1. "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 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. The term "telecommunications service" shall 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 USCS 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.

2. "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 service.

a. "Conference bridging" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging does not include the telecommunications services used to reach the conference bridge.

b. "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

c. "Directory assistance" means an ancillary service of providing telephone number information and/or address information.

d. "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.

e. "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.

3. "Intrastate" means telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession.

4. "Interstate" means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in a different United States state or United States territory or possession.

5. "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively.

(v) For purposes of paragraph (d), the following sourcing rules shall apply:

1. Except for the defined telecommunications services in item 3 of this subparagraph, the sales of telecommunications services sold on a call-by-call basis shall be sourced to:

a. Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or

b. Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

2. Except for the defined telecommunications services in item 3 of this subparagraph, 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.

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

a. 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 Telecommunication Sourcing Act.

A. A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. The home service provider shall be entitled to rely on the applicable residential or business street address supplied by such customer, if the home service provider's reliance is in good faith; and the home service provider shall be held harmless from liability for any additional taxes based on a different determination of the place of primary use for taxes that are customarily passed on to the customer as a separate itemized charge. A home service provider shall be allowed to treat the address used for purposes of the tax levied by this chapter for any customer under a service contract in effect on August 1, 2002, as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement. Month-to-month services provided after the expiration of a contract shall be treated as an extension or renewal of such contract or agreement.

B. If the commissioner determines that the address used by a home service provider as a customer's place of primary use does not meet the definition of the term "place of primary use" as defined in subitem a.A. of this item 3, the commissioner shall give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination; however, the customer shall have the opportunity, prior to such notice of determination, to demonstrate that such address satisfies the definition.

C. The department has the right to collect any taxes due directly from the home service provider's customer that has failed to provide an address that meets the definition of the term "place of primary use" which resulted in a failure of tax otherwise due being remitted.

b. A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

A. The seller's telecommunications system; or

B. Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

c. A sale of a prepaid calling service or prepaid wireless calling service shall be subject to the tax imposed by this paragraph if the sale takes place in this state. If the customer physically purchases a prepaid calling service or prepaid wireless calling service at the vendor's place of business, the sale is deemed to take place at the vendor's place of business. If the customer does not physically purchase the service at the vendor's place of business, the sale of a prepaid calling card or prepaid wireless calling card is deemed to take place at the first of the following locations that applies to the sale:

A. The customer's shipping address, if the sale involves a shipment;

B. The customer's billing address;

C. Any other address of the customer that is known by the vendor; or

D. The address of the vendor, or alternatively, in the case of a prepaid wireless calling service, 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 (1) 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 (2) customer channel termination points located in different jurisdictions and which segments of a channel are separately charged is sourced fifty percent (50%) 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 (1) 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.

5. A sale of ancillary services is sourced to the customer's place of primary use.

(vi) For purposes of subparagraph (v) of this paragraph (d):

1. "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.

2. "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

4. "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 telecommunications service. 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.

5. "Customer channel termination point" means the location where the customer either inputs or receives the communications.

6. "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

7. "Home service provider" has the meaning ascribed to such term in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

8. "Mobile telecommunications service" has the meaning ascribed to such term in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

9. "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, the place of primary use must be within the licensed service area of the home service provider.

10. "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 telecommunications service.

11. "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.

12. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary service, 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.

13. "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.

14. "Service address" means:

a. 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.

b. If the location in subitem a of this item 14 is not known, 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.

c. If the location in subitems a and b of this item 14 are not known, the location of the customer's place of primary use.

(vii) 1. For purposes of this subparagraph (vii), "bundled transaction" means a transaction that consists of distinct and identifiable properties or services which are sold for a single nonitemized price but which are treated differently for tax purposes.

2. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, or audio or video programming services taxed under this chapter in which the price of the bundled transaction is attributable to properties or services that are taxable and nontaxable, the portion of the price that is attributable to any nontaxable property or service shall be subject to the tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business.

3. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, audio or video programming services subject to tax under this chapter in which the price is attributable to properties or services that are subject to the tax but the tax revenue from the different properties or services are dedicated to different funds or purposes, the provider shall allocate the price among the properties or services:

a. By reasonably identifying the portion of the price attributable to each of the properties and services from its books and records kept in the regular course of business; or


b. Based on a reasonable allocation methodology approved by the department.

4. This subparagraph (vii) shall not create a right of action for a customer to require that the provider or the department, for purposes of determining the amount of tax applicable to a bundled transaction, allocate the price to the different portions of the transaction in order to minimize the amount of tax charged to the customer. A customer shall not be entitled to rely on the fact that a portion of the price is attributable to properties or services not subject to tax unless the provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the provider's books and records that are kept in the regular course of business that reasonably identifies the portion of the price attributable to the properties or services not subject to the tax.

(2) Persons making sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use or sales of potable water for residential, noncommercial or nonagricultural use shall indicate on each statement rendered to customers that such charges are exempt from sales taxes.

(3) There is hereby levied, assessed and shall be paid on transportation charges on shipments moving between points within this state when paid directly by the consumer, a tax equal to the rate applicable to the sale of the property being transported. Such tax shall be reported and paid directly to the Department of Revenue by the consumer.

HISTORY: SOURCES: Codes, 1942, § 10109; Laws, 1932, chs. 90, 91; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1944, ch. 129, § 2; Laws, 1955, Ex Sess, ch. 109, § 10; Laws, 1956, ch. 419, § 3; Laws, 1958, ch. 574, § 7; Laws, 1964, ch. 531, § 3; Laws, 1968, ch. 588, § 4; Laws, 1972, ch. 506, § 2; Laws, 1978, ch. 490, §§ 1, 2; Laws, 1979, ch. 302, § 7; Laws, 1982, Ex Sess, ch. 17, § 37; Laws, 1983, 2nd Ex Sess, ch. 6, § 6; Laws, 1984, 1st Ex Sess, Ch. 10, § 4; Laws, 1985, ch. 351, § 2; Laws, 1992, ch. 419, § 4; Laws, 1993, ch. 473, § 1; Laws, 1997, ch. 536, § 2; Laws, 1998, ch. 519, § 1; Laws, 2000, ch. 303, § 6; Laws, 2001, ch. 464, § 1; Laws, 2002, ch. 520, § 1; Laws, 2004, ch. 306, § 1; Laws, 2005, 3rd Ex Sess, ch. 1, § 64; Laws, 2006, ch. 461, § 1; Laws, 2007, ch. 329, § 1; Laws, 2009, ch. 475, § 1; Laws, 2012, ch. 507, § 1; Laws, 2013, ch. 310, § 1; Laws, 2013, ch. 537, § 2, eff from and after July 1, 2014.

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