

- For Information
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BOARD OF GOVERNANCE
INFORMAL ISSUE PAPER

Streamlined Sales and Use Tax Agreement (SSUTA)

Proposal 15 – Motion to Add the Telecommunications Related Definitions to the Library of Definitions, Appendix C, Part II, Product Definitions

I. Issue

Should the Board of Governance grant authority to its representative to vote on the motion to add the telecommunications related definitions to the SSUTA Library of Definitions, Appendix C, Part II, Product Definitions, as proposed by Mr. Stephen Kranz of Washington D. C.?

Should the Board of Governance vote on the motion to add the telecommunications related definitions to the SSUTA Library of Definitions, Appendix C, Part II, Product Definitions? (Exhibit 1 provides the proposed definitions. Exhibit 2 provides the motion.)

II. Staff Recommendation

Staff recommends the Board of Governance authorize its representative to “abstain” from the vote on the motion to add the telecommunications related definitions to the SSUTA Library of Definitions, Appendix C, Part II, Product Definitions.

III. Background

The SSUTA provides uniform definitions in Appendix C, Library of Definitions, which member states are required to adopt as part of the SSUTA. Although the SSUTA provides sourcing rules for telecommunications services and definitions of certain terms applicable to those rules, uniform definitions of telecommunications services and other related terms have yet to be established and adopted as part of the SSUTA. The Streamlined Sales Tax Project has been developing telecommunications definitions for several years and it is staffs’ understanding the proposed definitions represent this effort.

Based upon a preliminary review of the proposed definitions, the definitions appear consistent with like definitions provided under California’s Emergency Telephone Users Surcharge Law. However, California does not apply sales or use tax to telecommunications or utility service charges. Charges for telecommunications

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related services are generally subject to California excise taxes or fees. Since the SSUTA provides for a uniform application of sales and use tax, not excise taxes or privilege taxes, no in-depth analysis of the proposal was performed.

IV. Summary

Adding the telecommunications related definitions to the SSUTA Library of Definitions would generally not have an impact on California's current policies or procedures since charges for telecommunications related services are generally not subject to sales or use tax in California. The proposed telecommunications related definitions are generally consistent with the definitions provided under the California Emergency Telephone Users Surcharge Law.

For the reasons stated above, staff recommends the Board of Governance "abstain" from the vote on this proposed amendment.

Prepared by Lynda Cardwell, Sales and Use Tax Department
Current as of March 29, 2005

PART II

Product Definitions

TELECOMMUNICATIONS

Tax Base/Exemption Terms

The terms “ancillary services” and “telecommunications services” are defined as a broad range of services. The terms “ancillary services” and “telecommunications services” are broader than the sum of the subcategories. Definitions of subcategories of ancillary services and telecommunications services can be used alone or in combination with other subcategories to define a narrower tax base than the definitions of ancillary services and telecommunications services would imply. The subcategories can also be used to provide exemptions for certain subcategories of the more broadly defined terms.

“Ancillary services” means services as hereinafter provided 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 services.

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

“Directory assistance” means the ancillary service of providing telephone number information, and/or address information.

“Vertical service” means an ancillary service that is offered in connection with one or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections.

“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.

“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 or among points. The term “telecommunications services” includes such transmission services 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 services are referred to as enhanced or value added services.

Telecommunications service does not include:

- A. The offering of a capability that allows data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the primary purpose of the underlying transaction is the data. It does not include the processing or manipulation of data where the primary purpose of the underlying transaction is to allow the transmission, conveyance or routing of the data;

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 including any medium used to transmit these services;

H. Ancillary services; or

I. Digital products delivered electronically, including but not limited to software, downloaded music or reading materials.

“800 service” means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The call is charged to the recipient rather than the originator. 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.

“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” does not include the charge for: collection services provided by the telecommunications provider 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.

“Fixed wireless service” means a telecommunications service that provides radio communication between fixed points.

“Local service” means a telecommunications service that may be defined by the member state in accordance with Section 327 of the Streamlined Agreement.

“Mobile wireless service” means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a CMRS provider.

“Network access service” means the offering of access to another telecommunications provider’s telecommunications systems, network elements or facilities.

“Paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

“Private communications service” means a telecommunication 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.

Modifiers of Tax Base/Exemption Terms

The following terms can be used to further delineate the type of telecommunications service to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

“International” means a telecommunications service that originates or terminates in the United States (including the District of Columbia or US territory or possession) and terminates or originates outside the United States (including the District Columbia or US territory or possession).

“Interstate” means a telecommunications service that originates in one US state (including the District of Columbia or US territory or possession) and terminates in a different US state (including the District of Columbia or US territory or possession).

“Intrastate” means a telecommunications service that originates in one US state (including the District of Columbia or US territory or possession) and terminates in the same US state (including the District of Columbia, or US territory or possession).

“Residential service” means a telecommunications service or ancillary service provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid by an individual resident rather than the institution.

AMENDMENT # 15 – OFFERED BY STEPHEN KRANZ, WASHINGTON, D.C.

Motion to adopt the following telecommunications related definitions in Part II, Product Definitions, of the Agreement, as these definitions are set out in the current version of the SSTP white paper:

Telecommunications services

Value added nonvoice services

Ancillary services

Detailed telecommunications billing service

Directory assistance

Vertical service

Voice mail service

Telecommunications service

800 service

900 service

Fixed wireless service

Local service

Mobile wireless service

Network access service

Paging service

Private communications service

International

Interstate

Intrastate

Residential service

Streamlined Sales Tax Project
Issue Paper
December 17, 2004

Telecommunications and Related Definitions

Background - Need for Uniformity in Definitions

Most proponents of sales tax simplification have called for uniform definitions of terms as a key component of the simplification effort. Benefits of uniform definitions include the ability to efficiently develop taxability matrices and to make expeditious determinations on the taxability of products and services for state and local sales tax purposes. The need for definitional uniformity of telecommunications terms is no different than for any other vendor of non-telecommunications products and services.

In November 1999, members of the telecommunications industry submitted a paper entitled *Proposal for State and Local Taxation of the Telecommunications Industry* to the Advisory Commission on Electronic Commerce, outlining ways to simplify state and local taxes imposed on telecommunications services. That paper specifically endorsed nationwide uniform definitions:

All states would adopt uniform definitions of terms relevant to the taxation of telecommunications services, such as local telephone service, mobile service, etc. This will greatly simplify the compliance burden of telecommunications providers by making it much easier to determine which of their services are subject to tax in a particular state.

Proposed Definitions of Telecommunications Terms

The Streamlined Sales Tax Project developed a series of uniform definitions, which were ultimately contained in the "Library of Definitions" in the Streamlined Sales and Use Tax Agreement (as amended November 19, 2003; hereinafter referred to as the "Streamlined Agreement"). Although the Streamlined Agreement provides sourcing rules for telecommunications services and definitions of certain terms applicable to those rules, uniform definitions of "telecommunications services" and other related terms have not yet been established for purposes of imposition and exemption.

When the Project first began discussing telecommunications definitions, it explored two approaches to taxation: (1) a broad definition of "telecommunications services," with states excluding certain specified services from taxation, and (2) a restrictive definition of "telecommunications services," with additional services, defined separately, that states could choose to impose tax on independently from "telecommunications services." A decision was made by the Project to work with the latter approach.

The Project Steering Committee invited industry participants to submit suggestions for definitions to include in the agreement to allow states to match their existing tax bases as precisely as possible. The industry members of the Telecommunications Tax Reform Initiative¹ voluntarily submitted proposed

¹ The Telecommunications Tax Reform Initiative was a joint industry/government effort to develop ways to simplify and modernize taxation of telecommunications services, property and providers. Government representation included individuals from multistate organizations as well as individual states. Industry participants represented a broad range of telecommunications service providers.

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definitions to the Project in response to their invitation. Attachment 1 includes the model definitions submitted to the Project, as revised after review and input from the states.

Note: The definitions for telecommunications service and related services to be used by states in imposing sales and use taxes are those contained in this paper and in the Streamlined Agreement. Telecommunications service definitions used for other purposes, such as Federal Communications Commission definitions do not apply for purposes of state sales and use taxation of telecommunications services.

Using the Uniform Definitions

The effort for uniform definitions is NOT an effort for uniform tax bases across states. Defined terms will have the same meaning across the states, yet the definitions are intended to allow states to mirror their current treatment as closely as possible by enabling states to choose to tax or exempt specific services.

The proposed definitions are product-based. Being consistent with Section 316 of the Streamlined Agreement as it applies to exemptions, because telecommunications service and certain related services are defined, a state who chooses to tax such services must use the definitions in the library and cannot exclude from imposition a part of the items included within a definition unless the Streamlined Agreement sets out definitions for part of the items as an acceptable variation.

The enumerated definitions may be used for both tax imposition purposes and tax exemption purposes as described below:

- If a state chooses to broadly impose tax on telecommunications services, it must use the definition of "telecommunications services" in Attachment 1. By doing so, the state will automatically impose tax on all telecommunications services including residential telecommunications service, telegraph service and Voice over Internet Protocol, as well as 800 service, 900 service, fixed wireless service, local service, mobile wireless service, network access service, paging service, and private communications service, unless the state provides a specific exception or exemption for one or more of such services. Such an exception or exemption must be one of the defined terms in Attachment 1. Only if an exemption or exception is needed would the state need to define one of the subsets of "telecommunications services." For example, a state that wishes to tax telecommunications services but exempt 800 service, 900 service, paging service, and private communications service would impose tax on "telecommunications services except 800 service, 900 service, paging service, and private communications service" and adopt the definitions of telecommunications service, 800 service, 900 service, paging service, and private communications service. A state that chooses to impose tax on telecommunications services cannot exclude or exempt from tax an item that is a telecommunications service if there is no definition in the Agreement.
- Alternatively, if a state chooses to tax only limited types of telecommunications services, rather than the broad category with exceptions, it would impose tax only on these limited types of services and it must use the defined terms in Attachment 1. For example, a state can choose to tax only 900 or 800 services, because those terms are defined.
- A state imposing tax on a broader group of services that includes telecommunications must use the definition of "telecommunications services" in Attachment 1. As an example, a state imposing tax

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on "communication services," must include language stating such communication services include telecommunications services (and ancillary services if a state wishes to tax them as a part of communication services).

- A state that currently imposes sales and use tax on telecommunications services only if they originate and terminate in a state will have to amend its law to impose the tax on "intrastate" telecommunications services only, and adopt the definition of "intrastate" services in Attachment 1. A state that currently imposes sales and use tax on telecommunications services that originate or terminate in a state will have to amend its law to impose the tax on both "intrastate" and "interstate" services, and adopt the definitions of "intrastate" and "interstate" services in Attachment 1.
- A state can limit the imposition on telecommunications services to a specific use (e.g., residential), or entity (calling center).
- "Telecommunications services" does not include telephone answering services. Although the service may involve transmission of information (e.g., the person answering the telephone may transmit a message to the customer via telecommunications and separately have paid any tax on the use of that service), the primary purpose of the transaction is the answering service rather than the transmission of the message. Therefore, if a state chose to tax both "telecommunications services" and telephone answering services, it would have to specifically impose tax on telephone answering services.
- A state can choose to impose tax on any one or all of the ancillary services, which are not telecommunications services. It may, for example, impose tax on "ancillary services, except detailed telecommunications billing service and directory assistance." Or, instead of imposing tax on "ancillary services," in general, a state may impose tax on any one or more of the specific ancillary services (for example, voice mail services).
- States that impose sales and use tax on telecommunications services, but provide exemptions for services furnished through the use of pay telephones, will have to specifically provide these exemptions in their laws. The Project will develop definitions to provide states with two options for such exemptions, one for coin pay telephone calls and one for all other pay telephone calls.

There is nothing in these definitions to prohibit a state from imposing sales or use tax on services that are outside the scope of the telecommunications-related definitions in this paper. For example, a state could impose tax on additional services such as radio and television audio and video programming services. Such services are excluded from the definition of "telecommunications services" and are not specifically defined so as to limit what radio or television services a state can tax.

The definitions in this paper are not distinguished by who sells the service. For example, there is no provision in the definition of "telecommunications service" that limits the product to only transmission services sold by a telephone company. However, a state may choose to limit the imposition of tax on telecommunications services to those services provided by certain entities or by providing an entity based exemption. For example, a state may deem the transfer of telecommunications services by a hotel not to be a sale. Alternatively, if a state deems the hotel to be a retailer when it separately charges for telephone usage, then such charges are for telecommunications services regardless of whether charged on a call-by-call, per-minute, or other basis.

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Caution: It is understood that states will make every effort to use these definitions and not create excise or other taxes to circumvent them.

See Attachment 2 for examples of how two different states can apply these definitions to match their existing tax bases as closely as possible.

Note: (1) This paper does not address bundling specifically for telecommunications services, as this issue is being handled separately with other bundling issues.

(2) For services excluded from telecommunications services, states are not restricted in determining whether telecommunications services used in providing such services are or are not for resale.