New Hampshire Department of Revenue Administration
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TECHNICAL INFORMATION RELEASE
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The purpose of this information release is to advise communication services retailers and taxpayers of recent amendments to the communication services tax (CST) laws.

Summary

The changes have been brought about by the enactment of House Bill 1316, 2004 Laws of New Hampshire Chapter 111. These changes include: additional or amended definitions relative to various aspects of the CST; the addition of a new section of special rules for private communication services and their incorporation by reference in the imposition of tax on interstate communications services; and the establishment of a committee to study the feasibility of unbundling charges for communication services affecting the internet. Sections 1 - 7 of Chapter 111 relating to the definition changes and special rules are effective July 1, 2004 and apply to bills for services issued after December 31, 2004. Sections 8 through 12 of the new law, which pertain to the study committee, are effective May 17, 2004.

Changes to CST Definitions

“Gross Charges” (RSA 82-A:2, V). Chapter 111:1 amended this term to include private communication services charges apportioned to New Hampshire in accordance with the new special rules in RSA 82-A:4-c (see below).

“Service Address” (RSA 82-A:2, XIII). This term was revised to provide three alternatives: The principal definition of service address now means the location of the communications services equipment to which a taxpayer’s call is charged and from which the communications services originate or terminate, regardless of where the call is billed or paid. Alternatively, if the location of the communications services equipment is unknown, then service address means the origination point of the telecommunications service that is identified first. Finally, if the location of the communications services equipment and the origination point of the telecommunications service are both unknown, then service address means the place of primary use.

“Place of primary use” (RSA 82-A:2, XXI). This definition has been changed to mean the street address where the taxpayer’s use of the telecommunications service primarily occurs. The place of primary use must be the taxpayer's residential street address or the primary business street address of the taxpayer; and in the case of mobile telecommunications services, must be within the licensed service area of the home service provider.

"Paid calling service" (RSA 82-A:2, XXIII). Chapter 111:4 added this term and defined it to mean the communication service obtained by making payment through the use of a credit card, bank card, travel card, calling card, debit card, or by a charge made to a telephone number not associated with the origination or termination of the communication service.

"Private communication service" (RSA 82-A:2,XXI). This is another term added by Chapter 111:4. It is defined to mean a communication service that entitles the taxpayer to exclusive use of a communications channel, regardless of how the channels are connected. The term includes switching capacity, extension lines, stations, and any other associated services.

Revisions to the Imposition of Tax on Interstate Communications Services

Chapter 111:5 substantially modifies RSA 82-A:4 regarding the imposition of tax on interstate communications services. In addition to the tax imposed on interstate services, the communication services tax is now imposed upon the retail sale of private communication services furnished to persons in New Hampshire. The tax rate is 7 percent of the gross charge when the service is purchased on a call by call basis and either the call originates in New Hampshire and terminates outside of the state; or the call originates outside New Hampshire and terminates in the state and the service address is in this state. Tax is also imposed when the service is purchased on other than a call by call basis and is provided to a person with a place of primary use in New Hampshire. When the service involves a private communications services it will be apportioned to New Hampshire according to special rules enacted in Chapter 111:3 as RSA 82-A:4-c (see below).

RSA 82-A:4 also now imposes tax on interstate paid calling card services sold at retail to New Hampshire customers. The tax rate is 7 percent of the gross charge for the service when the origination point of the signal is in New Hampshire. The new law provides that where the system used to transport the signals is not that of the seller, the origination point is that first identified by the seller's telecommunications system or by information received by the seller from its service provider.

Revised RSA 82-A:4 does not affect the rules relative to mobile telecommunication services contained in RSA 82-A:4-b.

New Special Rules for Private Communications Services

RSA 82-A:4-c, setting forth special rules for apportioning the gross charge for private communications services, has been added by Chapter 111:6. The new law provides rules for four different situations where the charge for such services may be apportioned to New Hampshire. First, if the channel termination point is located in this state, a separate charge related to the channel termination point will be apportioned to New Hampshire. Second, if all taxpayer termination points are located within New Hampshire, then the charge for the service is apportioned to this state. Third, if the segments of a channel are separately charged, and one taxpayer termination point is located in New Hampshire and one outside the state, then 50 percent of the charge for the segments of the channel between the two taxpayer termination points is apportioned to New Hampshire. Finally, if the segments of a channel are not separately charged, and if one segment is located in New Hampshire and one or more segments channel termination points in New Hampshire over the number of channel termination points everywhere.

Transition Period

Chapter 111:7 provides a transition period from January 1, 2005 to June 30, 2005, for paid calling service providers to change their tax accounting systems to conform to the requirements of the new law. Although Sections 1-6 of the new law apply to bills issued on or after January 1, 2005, the new law allows the Department to employ the apportionment rules contained in the revised and reenacted definition of "service address" (RSA 82-A:2, XII) to prior periods in instances where a private communications services provider does not have information on mileage available as was formerly required by the law in effect prior to January 1, 2005.

Legislative Study Committee Established

A committee has been established to study the feasibility of unbundling communications services charges and other issues relative to the application of the CST to internet communications. The committee consists of three members from the Senate and three members from the House of Representatives.