

Title 35 – Mississippi State Tax Commission

Part IV – Sales and Use Tax

Subpart 06 – Utilities

Chapter 02 Telecommunications

100 Definitions

101 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. Telecommunications service also includes the 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.

101.01 Telecommunications services shall not include:

1. Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a customer whose primary purpose for the use of the service is to obtain the processed data or information.
2. Installation or maintenance of wiring or equipment on a customer's premises.
3. Tangible personal property
4. Directory advertising and other advertising.
5. Internet access service
6. Radio and television audio and video programming services regardless of the medium of delivery, and the transmission, conveyance or routing of the service by the programming service provider.
7. Ancillary services
8. Digital products delivered electronically, including software, music, video, reading materials and ring tones.

102 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.

103 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.

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

- 105 Directory Assistance means an ancillary service of providing telephone number information and/or address information.
- 106 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.
- 107 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.
- 108 Intrastate means a telecommunication services that originates in one United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession.
- 109 Interstate means a telecommunications service that originates in one United States state or United States territory or possession, and terminates in a different United States state or United States territory or possession.
- 110 International means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively.
- 111 Customer means the person or entity that contract with the seller of telecommunications services or the end user of the services if the end user is not the contracting party. A reseller of telecommunications services is not considered a customer.
- 112 End User means the person who utilizes the telecommunications service.
- 113 “Place of Primary Use” – the street address representative of where the customer’s use of mobile telecommunications services primarily occurs, either the residential street address or business street address of the customer. The place of primary use must be within the licensed service area of the home service provider.
- 114 “Home Service Provider” – the facilities-based carrier or reseller with which the customer contracts to provide mobile telecommunication services.
- 115 Call-by-call basis means any method of charging for telecommunications services where the price is measured by individual calls.
- 116 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, bank card, travel card, debit card, or by charge made to a telephone number which is not associated with the origination or termination of the service.

- 117 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 and that is sold in predetermined units or dollars which the number declines with use in a known amount.
- 118 Prepaid wireless calling service means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services such as the download of digital products 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.
- 119 Private communication 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.
- 120 Service address means 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.
- 121 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.
- 122 (Reserved)
- 200 Levy
- 201 Income received from all charges for intrastate telecommunications services is taxable at the regular retail rate of sales tax pursuant to the provisions of Miss. Code Ann. Section 27-65-19 (e)(1). When intrastate toll charges are split between two or more companies, the company doing the billing to and collecting from the customer will be responsible for collecting and remitting the applicable sales tax.
- 202 Income received from all charges for interstate telecommunications services is taxable at the regular retail rate of sales tax pursuant to the provisions of Miss. Code Ann. Section 27-65-19 (e)(2). A credit will be allowed for taxes paid to another state that are levied under the authority of that state and imposed on interstate telecommunications service. This credit will be limited to the smaller of the Mississippi retail tax due on the service or the tax properly paid to another state on the service.
- 203 Income received from all charges for international telecommunications services is taxable at the regular retail rate of sales tax pursuant to the provisions of Miss. Code Ann. Section 27-65-19(e)(3).

- 204 Income received from all charges for ancillary services is taxable at the regular retail rate of sales tax pursuant to the provisions of Miss. Code Ann. Section 27-65-19(e)(4).
- 205 Income received from all charges for products delivered electronically, including, but not limited to, software, music, games, reading materials or ring tones is subject to the regular retail rate of sales tax pursuant to the provisions of Miss. Code Ann. Section 27-65-19(e)(5).
- 206 Income received from the sale, rental, installation, maintenance or repair of tangible personal property is taxable at the regular retail rate of sales tax pursuant to Miss. Code Ann. Sections 27-65-17 and 27-65-23. Any merchandise given away or sold at a reduced amount as the result of signing a service contract, are not subject to use tax and are not treated as a withdrawal from inventory. Sales tax is due on the amount received from the customer.
- 207 Income received from the sale of a prepaid calling service or prepaid wireless calling service is taxable at the regular retail rate of sales tax at the time of sale of the service.
- 208 The gross income received from telephone answering or paging services, whether by person or machine, is taxable at the regular retail rate of sales tax pursuant to Miss. Code Ann. Section 27-65-23.
- 209 The sale of a bundled transaction shall be taxable on the total cost of the bundled transaction unless the provider can reasonably identify the non-taxable portion from its books and records kept in the regular course of business as provided for in Miss. Code Ann. Section 27-65-19 (e)(vii)(2).
- 210 (Reserved)
- 300 Sourcing Provisions
- 301 Sales of telecommunications sold on a call-by-call basis shall be sourced to Mississippi when the call either originates or terminates in Mississippi and is charged to a service address in Mississippi.
- 302 Sales of telecommunications services that are sold for a fixed or flat monthly amount and the customer is entitled to make an unlimited number of calls shall be sourced to Mississippi when billed to a customer's place of primary use in Mississippi.
- 303 Sales of mobile telecommunications services shall be sourced to Mississippi when the customer's place of primary use is in Mississippi.
- 304 Sales of private communications services where all of the customer channel termination points are located in Mississippi are intrastate services and shall be sourced to Mississippi.

- 305 Sales of private communications services with multiple customer channel termination points in multiple states are interstate or international services and shall be sourced to Mississippi on a prorated basis using the number of termination points in Mississippi to the total number of termination points.
- 306 Sales of prepaid calling services or prepaid wireless calling services shall be sourced to Mississippi when the customer physically purchases the service at the vendor's place of business in this state. If the customer does not physically purchase the service at a Mississippi business location, the sale shall be sourced to Mississippi if the customer's shipping address is in this state and the sale involves shipment; or if the customer's billing address is in Mississippi when the sale does not involve a shipment. In absence of any of the preceding, the sale of prepaid wireless calling services may be sourced based on the location associated with the mobile telephone number.
- 400 Mobile Telecommunications Provisions
- 401 A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. The home service provider, acting in good faith, is entitled to rely on the address supplied by each customer in determining place of primary use and may be held harmless from any additional tax liability resulting from a different determination of place of primary use. All customer addresses relating to service contracts in effect as of August 1, 2002 shall be deemed that customer's place of primary use for the remaining term of the contract or agreement. The home service provider must obtain valid primary use addresses for extensions or renewals of such contracts or month-to-month services provided after the expiration of a contract.
- 402 If the address used by the home service provider is determined to be incorrect, the commission shall give notice to the home service provider to change the place of primary use on a prospective basis effective with the date of the notice. However, any customer whose place of primary use is deemed incorrect shall have an opportunity to demonstrate that address is correct.
- 403 The commission has the right to collect any taxes due directly from the customer that has failed to provide an address that meets the definition of the term "place of primary use" which results in taxes being due.
- 404 (Reserved)
- 500 Wholesale Sales
- 501 Charges by one telecommunications provider to another telecommunications provider for services that are resold, including, but not limited to, access charges, are exempt provided that the purchaser holds a valid sales tax permit issued under Miss. Code Ann. Section 27-65-27 and the purchaser is either located in this state or is providing telecommunications services in this state.

- 502 (Reserved)
- 600 Sales to Direct Pay Permit Holders
- 601 Miss. Code Ann. Section 27-65-93 provides that taxes levied under Miss. Code Ann. Section 27-65-19 may be covered by the use of a direct pay permit. However, telecommunications services shall NOT be covered with the use of a direct pay permit due to the fact that interstate and intrastate charges must be reported separately by the telecommunications provider.
- 602 (Reserved)
- 700 Taxable and Non-Taxable Charges and Fees
- 701 Charges by a service supplier for county emergency telephone (E-911) services are county fees and are not subject to any sales or use tax, and shall not be considered revenue of the service supplier for any purpose (Miss. Code Ann. Section 19-5-313).
- 702 Telephone services shall be considered taxable telecommunications services. Telephone services that are subject to tax include, but are not limited to, Federal access charges, connection and disconnection charges, reconnection charges, Federal universal service fees, local telephone number portability charges, charges for establishing new services, minimum charges and telecommunications nonrecurring charges.
- 703 (Reserved)
- 800 Sales to Colleges and Universities
- 801 Charges for telephone services which are billed to “exempt” educational institutions are exempt from sales tax provided the use of the service is ordinary and necessary to the operation of the institution. Charges which are billed directly to individual students, faculty members, etc. are taxable at the regular retail rate of sales tax. When charges for telephone services are billed by the provider to the school and the school re-bills the student, the school will be considered the seller of these services and will be responsible for remitting the tax on all private use of such services pursuant to Miss. Code Ann. Section 27-65-19. The institution will also be liable for sales tax on intrastate charges to students, faculty members, etc., for sharing common long distance facilities.
- 802 (Reserved)
- 900 Purchases
- 901 Electricity purchased by telephone companies for microwave and other transmission use is taxable at the special 1 ½% rate. Purchases by licensed retailers of appliances and other merchandise for resale in the regular course of business are exempt from sales and use tax. All other purchases are subject to the regular retail rate of tax. All

telecommunications providers, with certain exceptions, are required to obtain a Direct Pay Permit for purposes of reporting and paying to the State Tax Commission the sales and use tax applicable to purchases or rentals of tangible personal property and services in lieu of payment to the vendor.

902 (Reserved)

1000 Reporting Requirements

1001 Adequate records must be maintained to substantiate tax classification of sales and purchases.

1002 No taxpayer discount is allowed on services taxed under Miss. Code Ann. Section 27-65-19.

1003 Distribution of Sales Tax by Cities must be completed as a supplement of the sales tax return by telephone companies rendering utility services.

1004 All taxes due from Intrastate Long Distance charges and Local Service charges must be reported on the sales tax return separately from all taxes due from Interstate Long Distance using the appropriate tax code categories as specified in the instructions.

1005 The tax due from the sale of components of bundled transactions must be reported separately by using the appropriate tax codes. The breakdown of actual charges should be used if available. The telecommunications provider shall allocate the price among the services by either identifying the portion of the price attributable to each service from its books and records kept in the regular course of business or based on a reasonable allocation methodology approved by the commission.

1006 (Reserved)