
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 164 Session of
2023

INTRODUCED BY R. MACKENZIE, HOGAN, KAUFER, FLOOD, GILLEN, ADAMS,
GUENST, KAUFFMAN, M. MACKENZIE, MARCELL, OWLETT AND PICKETT,
APRIL 24, 2023

REFERRED TO COMMITTEE ON FINANCE, APRIL 24, 2023

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in sales and use tax, further providing for
11 definitions, for imposition of tax and for exclusions from
12 tax; and, in gross receipts tax, further providing for
13 imposition of tax.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Sections 201(k)(19) and (o)(18) and 202(e.1) and
17 (g) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
18 Reform Code of 1971, are amended to read:

19 Section 201. Definitions.--The following words, terms and
20 phrases when used in this Article II shall have the meaning
21 ascribed to them in this section, except where the context
22 clearly indicates a different meaning:

23 * * *

1 (k) "Sale at retail."

2 * * *

3 [(19) The rendition for a consideration of a mobile
4 telecommunications service.]

5 * * *

6 (o) "Use."

7 * * *

8 [(18) The obtaining of mobile telecommunications service by
9 a customer.]

10 * * *

11 Section 202. Imposition of Tax.--* * *

12 [(e.1) (1) Notwithstanding any other provision of this
13 article, the sale or use of prepaid mobile telecommunications
14 service evidenced by the transfer of tangible personal property
15 shall be subject to the tax imposed by subsections (a) and (b).

16 (2) The sale or use of prepaid mobile telecommunications
17 service not evidenced by the transfer of tangible personal
18 property shall be subject to the tax imposed by subsections (a)
19 and (b) and shall be deemed to occur at the purchaser's billing
20 address or the location associated with the mobile telephone
21 number or the point of sale, whichever is applicable.

22 (3) Notwithstanding clause (2), the sale or use of prepaid
23 mobile telecommunications service not evidenced by the transfer
24 of tangible personal property shall be taxed at the rate of six
25 per cent of the receipts collected on each sale if the service
26 provider elects to collect the tax imposed by this article on
27 receipts of each sale. The service provider shall notify the
28 department of its election and shall collect the tax on receipts
29 of each sale until the service provider notifies the department
30 otherwise.]

1 * * *

2 [(g) Notwithstanding any other provisions of this article
3 and in accordance with the Mobile Telecommunications Sourcing
4 Act (4 U.S.C. § 116), the sale or use of mobile
5 telecommunications services which are deemed to be provided to a
6 customer by a home service provider under section 117(a) and (b)
7 of the Mobile Telecommunications Sourcing Act shall be subject
8 to the tax of six per cent of the purchase price, which tax
9 shall be collected by the home service provider from the
10 customer, and shall be paid over to the Commonwealth as herein
11 provided if the customer's place of primary use is located
12 within this Commonwealth, regardless of where the mobile
13 telecommunications services originate, terminate or pass
14 through. For purposes of this subsection, words and phrases used
15 in this subsection shall have the same meanings given to them in
16 the Mobile Telecommunications Sourcing Act.]

17 * * *

18 Section 2. Section 204 of the act is amended by adding a
19 paragraph to read:

20 Section 204. Exclusions from Tax.--The tax imposed by
21 section 202 shall not be imposed upon any of the following:

22 * * *

23 (76) The sale at retail or use of mobile telecommunications
24 service, if the purchase is pursuant to a service contract
25 between the service provider and customer and if the service
26 contract requires the customer to make periodic payments to
27 maintain the mobile telecommunications service.

28 Section 3. Section 1101(a), (a.1) and (c.1) of the act are
29 amended to read:

30 Section 1101. Imposition of Tax.--(a) General Rule.--Every

1 pipeline company, conduit company, steamboat company, canal
2 company, slack water navigation company, transportation company,
3 and every other company, association, joint-stock association,
4 or limited partnership, now or hereafter incorporated or
5 organized by or under any law of this Commonwealth, or now or
6 hereafter organized or incorporated by any other state or by the
7 United States or any foreign government, and doing business in
8 this Commonwealth, and every copartnership, person or persons
9 owing, operating or leasing to or from another corporation,
10 company, association, joint-stock association, limited
11 partnership, copartnership, person or persons, any pipeline,
12 conduit, steamboat, canal, slack water navigation, or other
13 device for the transportation of freight, passengers, baggage,
14 or oil, except motor vehicles and railroads, and every limited
15 partnership, association, joint-stock association, corporation
16 or company engaged in, or hereinafter engaged in, the
17 transportation of freight or oil within this State, and every
18 telephone company[,] and telegraph company [or provider of
19 mobile telecommunications services] now or hereafter
20 incorporated or organized by or under any law of this
21 Commonwealth, or now or hereafter organized or incorporated by
22 any other state or by the United States or any foreign
23 government and doing business in this Commonwealth, and every
24 limited partnership, association, joint-stock association,
25 copartnership, person or persons, engaged in telephone or
26 telegraph business [or providing mobile telecommunications
27 services] in this Commonwealth, shall pay to the State
28 Treasurer, through the Department of Revenue, a tax of forty-
29 five mills with a surtax equal to five mills upon each dollar of
30 the gross receipts of the corporation, company or association,

1 limited partnership, joint-stock association, copartnership,
2 person or persons received from:

3 (1) passengers, baggage, oil and freight transported wholly
4 within this State;

5 (2) telegraph or telephone messages transmitted wholly
6 within this State and telegraph or telephone messages
7 transmitted in interstate commerce where such messages originate
8 or terminate in this State and the charges for such messages are
9 billed to a service address in this State, except gross receipts
10 derived from:

11 (i) the sales of access to the Internet, as set forth in
12 Article II, made to the ultimate consumer;

13 (ii) the sales for resale to persons, partnerships,
14 associations, corporations, or political subdivisions subject to
15 the tax imposed by this article upon gross receipts derived from
16 such resale of telecommunications services, including:

17 (A) telecommunications exchange access to interconnect with
18 a local exchange carrier's network;

19 (B) network elements on an unbundled basis; and

20 (C) sales of telecommunications services to interconnect
21 with providers of mobile telecommunications services; and

22 (iii) the sales of telephones, telephone handsets, modems,
23 tablets and related accessories, including cases, chargers,
24 holsters, clips, hands-free devices, screen protectors and
25 batteries; and

26 [(3) mobile telecommunications services messages sourced to
27 this Commonwealth based on the place of primary use standard set
28 forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. §
29 117), except gross receipts derived from:

30 (i) the sales of access to the Internet, as set forth in

1 Article II, made to the ultimate consumer;
2 (ii) the sales for resale to persons, partnerships,
3 associations, corporations or political subdivisions subject to
4 the tax imposed by this article upon gross receipts derived from
5 such resale of mobile telecommunications services, including
6 sales of mobile telecommunications services to interconnect with
7 providers of telecommunications services; and

8 (iii) the sales of telephones, telephone handsets, modems,
9 tablets and related accessories, including cases, chargers,
10 holsters, clips, hands-free devices, screen protectors and
11 batteries.]

12 (a.1) Credit.--Telegraph or telephone companies [or
13 providers of mobile telecommunications services] that pay a
14 gross receipts tax to another state on messages or services
15 which are taxable under this article are entitled to a credit
16 against the tax due under this article. The credit allowed with
17 respect to the messages or services shall not exceed the tax
18 under this article with respect to the messages or services.

19 * * *

20 [(c.1) Safe Harbor Base year.--For purposes of the estimated
21 tax requirements under sections 3003.2 and 3003.3, the "safe
22 harbor base year" tax amount for providers of mobile
23 telecommunications services shall be the amount that would have
24 been required to be paid by the taxpayer if the taxpayer had
25 been subject to this article.]

26 * * *

27 Section 4. This act shall take effect in 60 days.