

2020 -- H 7532 SUBSTITUTE A

LC004445/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO TAXATION -- SALES AND USE TAXES -- LIABILITY AND
COMPUTATION

Introduced By: Representatives Kennedy, Abney, Edwards, Azzinaro, and O'Brien

Date Introduced: February 12, 2020

Referred To: House Finance

(Dept. of Revenue)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-18-7 and 44-18-7.1 of the General Laws in Chapter 44-18 entitled
2 "Sales and Use Taxes - Liability and Computation" are hereby amended to read as follows:

3 **44-18-7. Sales defined.**

4 "Sales" means and includes:

5 (1) Any transfer of title or possession, exchange, barter, lease, or rental, conditional or
6 otherwise, in any manner or by any means of tangible personal property for a consideration.
7 "Transfer of possession," "lease," or "rental" includes transactions found by the tax administrator
8 to be in lieu of a transfer of title, exchange, or barter.

9 (2) The producing, fabricating, processing, printing, or imprinting of tangible personal
10 property for a consideration for consumers who furnish, either directly or indirectly, the materials
11 used in the producing, fabricating, processing, printing, or imprinting.

12 (3) The furnishing and distributing of tangible personal property for a consideration by
13 social, athletic, and similar clubs and fraternal organizations to their members or others.

14 (4) The furnishing, preparing, or serving for consideration of food, meals, or drinks,
15 including any cover, minimum, entertainment, or other charge in connection therewith.

16 (5) A transaction whereby the possession of tangible personal property is transferred, but
17 the seller retains the title as security for the payment of the price.

18 (6) Any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate

1 commerce, of tangible personal property from the place where it is located for delivery to a point
2 in this state for the purpose of the transfer of title or possession, exchange, barter, lease, or rental,
3 conditional or otherwise, in any manner or by any means whatsoever, of the property for a
4 consideration.

5 (7) A transfer for a consideration of the title or possession of tangible personal property,
6 which has been produced, fabricated, or printed to the special order of the customer, or any
7 publication.

8 (8) The furnishing and distributing of electricity, natural gas, artificial gas, steam,
9 refrigeration, and water.

10 (9)(i) The furnishing for consideration of intrastate, interstate, and international
11 telecommunications service sourced in this state in accordance with §§ 44-18.1-15 and 44-18.1-16
12 and all ancillary services, and any maintenance services of telecommunication equipment other
13 than as provided for in § 44-18-12(b)(ii). For the purposes of chapters 18 and 19 of this title only,
14 telecommunication service does not include service rendered using a prepaid telephone calling
15 arrangement.

16 (ii) Notwithstanding the provisions of paragraph (i) of this subdivision, in accordance with
17 the Mobile Telecommunications Sourcing Act (4 U.S.C. §§ 116 -- 126), subject to the specific
18 exemptions described in 4 U.S.C. § 116(c), and the exemptions provided in §§ 44-18-8 and 44-18-
19 12, mobile telecommunications services that are deemed to be provided by the customer's home
20 service provider are subject to tax under this chapter if the customer's place of primary use is in this
21 state regardless of where the mobile telecommunications services originate, terminate, or pass
22 through. Mobile telecommunications services provided to a customer, the charges for which are
23 billed by or for the customer's home service provider, shall be deemed to be provided by the
24 customer's home service provider.

25 (10) The furnishing of service for transmission of messages by telegraph, cable, or radio
26 and the furnishing of community antenna television, subscription television, and cable television
27 services.

28 (11) The rental of living quarters in any hotel, rooming house, or tourist camp.

29 (12) The transfer for consideration of prepaid telephone calling arrangements and the
30 recharge of prepaid telephone calling arrangements sourced to this state in accordance with §§ 44-
31 18.1-11 and 44-18.1-15. "Prepaid telephone calling arrangement" means and includes prepaid
32 calling service and prepaid wireless calling service.

33 (13) The sale, storage, use, or other consumption of over-the-counter drugs as defined in §
34 44-18-7.1(h)(ii).

1 (14) The sale, storage, use, or other consumption of prewritten computer software delivered
2 electronically or by load and leave as defined in § 44-18-7.1(g)(v).

3 (15) The sale, storage, use, or other consumption of vendor-hosted prewritten computer
4 software as defined in § 44-18-7.1(g)(vii).

5 (16) The sale to, or storage, use, or other consumption by, an end-user of specified digital
6 products as defined in § 44-18-7.1(x), including the right to use the specified digital products on a
7 permanent or less than permanent basis and regardless of whether the purchaser is required to make
8 continued payments for such right.

9 (17) For the purposes of §§ 44-18-7(14) through 44-18-7(16) above, "sale" includes, but is
10 not limited to, any license, lease, or rental of the products enumerated in those sections.

11 ~~(17)~~(18) The sale, storage, use, or other consumption of medical marijuana as defined in §
12 21-28.6-3.

13 ~~(18)~~(19) The furnishing of services in this state as defined in § 44-18-7.3.

14 **44-18-7.1. Additional definitions.**

15 (a) "Agreement" means the streamlined sales and use tax agreement.

16 (b) "Alcoholic beverages" means beverages that are suitable for human consumption and
17 contain one-half of one percent (.5%) or more of alcohol by volume.

18 (c) "Bundled transaction" is the retail sale of two or more products, except real property
19 and services to real property, where (1) The products are otherwise distinct and identifiable, and
20 (2) The products are sold for one non-itemized price. A "bundled transaction" does not include the
21 sale of any products in which the "sales price" varies, or is negotiable, based on the selection by
22 the purchaser of the products included in the transaction.

23 (i) "Distinct and identifiable products" does not include:

24 (A) Packaging -- such as containers, boxes, sacks, bags, and bottles -- or other materials --
25 such as wrapping, labels, tags, and instruction guides -- that accompany the "retail sale" of the
26 products and are incidental or immaterial to the "retail sale" thereof. Examples of packaging that
27 are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and
28 express delivery envelopes and boxes.

29 (B) A product provided free of charge with the required purchase of another product. A
30 product is "provided free of charge" if the "sales price" of the product purchased does not vary
31 depending on the inclusion of the products "provided free of charge."

32 (C) Items included in the member state's definition of "sales price," pursuant to appendix
33 C of the agreement.

34 (ii) The term "one non-itemized price" does not include a price that is separately identified

1 by product on binding sales or other supporting sales-related documentation made available to the
2 customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt,
3 contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or
4 price list.

5 (iii) A transaction that otherwise meets the definition of a "bundled transaction" as defined
6 above, is not a "bundled transaction" if it is:

7 (A) The "retail sale" of tangible personal property and a service where the tangible personal
8 property is essential to the use of the service, and is provided exclusively in connection with the
9 service, and the true object of the transaction is the service; or

10 (B) The "retail sale" of services where one service is provided that is essential to the use or
11 receipt of a second service and the first service is provided exclusively in connection with the
12 second service and the true object of the transaction is the second service; or

13 (C) A transaction that includes taxable products and nontaxable products and the "purchase
14 price" or "sales price" of the taxable products is de minimis.

15 1. De minimis means the seller's "purchase price" or "sales price" of the taxable products
16 is ten percent (10%) or less of the total "purchase price" or "sales price" of the bundled products.

17 2. Sellers shall use either the "purchase price" or the "sales price" of the products to
18 determine if the taxable products are de minimis. Sellers may not use a combination of the
19 "purchase price" and "sales price" of the products to determine if the taxable products are de
20 minimis.

21 3. Sellers shall use the full term of a service contract to determine if the taxable products
22 are de minimis; or

23 (D) The "retail sale" of exempt tangible personal property and taxable tangible personal
24 property where:

25 1. The transaction includes "food and food ingredients," "drugs," "durable medical
26 equipment," "mobility enhancing equipment," "over-the-counter drugs," "prosthetic devices" (all
27 as defined in this section) or medical supplies; and

28 2. Where the seller's "purchase price" or "sales price" of the taxable tangible personal
29 property is fifty percent (50%) or less of the total "purchase price" or "sales price" of the bundled
30 tangible personal property. Sellers may not use a combination of the "purchase price" and "sales
31 price" of the tangible personal property when making the fifty percent (50%) determination for a
32 transaction.

33 (d) "Certified automated system (CAS)" means software certified under the agreement to
34 calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit

1 to the appropriate state, and maintain a record of the transaction.

2 (e) "Certified service provider (CSP)" means an agent certified under the agreement to
3 perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on
4 its own purchases.

5 (f) Clothing and related items.

6 (i) "Clothing" means all human wearing apparel suitable for general use.

7 (ii) "Clothing accessories or equipment" means incidental items worn on the person or in
8 conjunction with "clothing." "Clothing accessories or equipment" does not include "clothing,"
9 "sport or recreational equipment," or "protective equipment."

10 (iii) "Protective equipment" means items for human wear and designed as protection of the
11 wearer against injury or disease or as protections against damage or injury of other persons or
12 property but not suitable for general use. "Protective equipment" does not include "clothing,"
13 "clothing accessories or equipment," and "sport or recreational equipment."

14 (iv) "Sport or recreational equipment" means items designed for human use and worn in
15 conjunction with an athletic or recreational activity that are not suitable for general use. "Sport or
16 recreational equipment" does not include "clothing," "clothing accessories or equipment," and
17 "protective equipment."

18 (g) Computer and related items.

19 (i) "Computer" means an electronic device that accepts information in digital or similar
20 form and manipulates it for a result based on a sequence of instructions.

21 (ii) "Computer software" means a set of coded instructions designed to cause a "computer"
22 or automatic data processing equipment to perform a task.

23 (iii) "Delivered electronically" means delivered to the purchaser by means other than
24 tangible storage media.

25 (iv) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
26 optical, electromagnetic, or similar capabilities.

27 (v) "Load and leave" means delivery to the purchaser by use of a tangible storage media
28 where the tangible storage media is not physically transferred to the purchaser.

29 (vi) "Prewritten computer software" means "computer software," including prewritten
30 upgrades, that is not designed and developed by the author or other creator to the specifications of
31 a specific purchaser. The combining of two (2) or more "prewritten computer software" programs
32 or prewritten portions thereof does not cause the combination to be other than "prewritten computer
33 software." "Prewritten computer software" includes software designed and developed by the author
34 or other creator to the specifications of a specific purchaser when it is sold to a person other than

1 the specific purchaser. Where a person modifies or enhances "computer software" of which the
2 person is not the author or creator, the person shall be deemed to be the author or creator only of
3 such person's modifications or enhancements. "Prewritten computer software" or a prewritten
4 portion thereof that is modified or enhanced to any degree, where such modification or
5 enhancement is designed and developed to the specifications of a specific purchaser, remains
6 "prewritten computer software"; provided, however, that where there is a reasonable, separately
7 stated charge or an invoice or other statement of the price given to the purchaser for such
8 modification or enhancement, such modification or enhancement shall not constitute "prewritten
9 computer software."

10 (vii) "Vendor-hosted prewritten computer software" means prewritten computer software
11 that is accessed through the internet and/or a vendor-hosted server regardless of whether the access
12 is permanent or temporary and regardless of whether any downloading occurs.

13 (h) Drugs and related items.

14 (i) "Drug" means a compound, substance, or preparation, and any component of a
15 compound, substance, or preparation, other than "food and food ingredients," "dietary
16 supplements" or "alcoholic beverages":

17 (A) Recognized in the official United States Pharmacopoeia, official Homeopathic
18 Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;
19 or

20 (B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;
21 or

22 (C) Intended to affect the structure or any function of the body.

23 "Drug" shall also include insulin and medical oxygen whether or not sold on prescription.

24 (ii) "Over-the-counter drug" means a drug that contains a label that identifies the product
25 as a drug as required by 21 C.F.R. § 201.66. The "over-the-counter drug" label includes:

26 (A) A "Drug Facts" panel; or

27 (B) A statement of the "active ingredient(s)" with a list of those ingredients contained in
28 the compound, substance, or preparation.

29 "Over-the-counter drug" shall not include "grooming and hygiene products."

30 (iii) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo,
31 toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the
32 items meet the definition of "over-the-counter drugs."

33 (iv) "Prescription" means an order, formula, or recipe issued in any form of oral, written,
34 electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of

1 the member state.

2 (i) "Delivery charges" means charges by the seller of personal property or services for
3 preparation and delivery to a location designated by the purchaser of personal property or services
4 including, but not limited to: transportation, shipping, postage, handling, crating, and packing.

5 "Delivery charges" shall not include the charges for delivery of "direct mail" if the charges
6 are separately stated on an invoice or similar billing document given to the purchaser.

7 (j) "Direct mail" means printed material delivered or distributed by United States mail or
8 other delivery service to a mass audience or to addressees on a mailing list provided by the
9 purchaser or at the direction of the purchaser when the cost of the items are not billed directly to
10 the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by
11 the purchaser to the direct mail seller for inclusion in the package containing the printed material.
12 "Direct mail" does not include multiple items of printed material delivered to a single address.

13 (k) "Durable medical equipment" means equipment including repair and replacement parts
14 for same which:

15 (i) Can withstand repeated use; and

16 (ii) Is primarily and customarily used to serve a medical purpose; and

17 (iii) Generally is not useful to a person in the absence of illness or injury; and

18 (iv) Is not worn in or on the body.

19 Durable medical equipment does not include mobility enhancing equipment.

20 (l) Food and related items.

21 (i) "Food and food ingredients" means substances, whether in liquid, concentrated, solid,
22 frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are
23 consumed for their taste or nutritional value. "Food and food ingredients" does not include
24 "alcoholic beverages," "tobacco," "candy," "dietary supplements," and "soft drinks."

25 (ii) "Prepared food" means:

26 (A) Food sold in a heated state or heated by the seller;

27 (B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single
28 item; or

29 (C) Food sold with eating utensils provided by the seller, including: plates, knives, forks,
30 spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used
31 to transport the food.

32 "Prepared food" in (B) does not include food that is only cut, repackaged, or pasteurized
33 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring
34 cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part

1 401.11 of its Food Code so as to prevent food borne illnesses.

2 (iii) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners
3 in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars,
4 drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no
5 refrigeration.

6 (iv) "Soft drinks" means non-alcoholic beverages that contain natural or artificial
7 sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice,
8 or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

9 (v) "Dietary supplement" means any product, other than "tobacco," intended to supplement
10 the diet that:

11 (A) Contains one or more of the following dietary ingredients:

12 1. A vitamin;

13 2. A mineral;

14 3. An herb or other botanical;

15 4. An amino acid;

16 5. A dietary substance for use by humans to supplement the diet by increasing the total
17 dietary intake; or

18 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
19 described above; and

20 (B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or
21 if not intended for ingestion in such a form, is not represented as conventional food and is not
22 represented for use as a sole item of a meal or of the diet; and

23 (C) Is required to be labeled as a dietary supplement, identifiable by the "supplemental
24 facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

25 (m) "Food sold through vending machines" means food dispensed from a machine or other
26 mechanical device that accepts payment.

27 (n) "Hotel" means every building or other structure kept, used, maintained, advertised as,
28 or held out to the public to be a place where living quarters are supplied for pay to transient or
29 permanent guests and tenants and includes a motel.

30 (i) "Living quarters" means sleeping rooms, sleeping or housekeeping accommodations, or
31 any other room or accommodation in any part of the hotel, rooming house, or tourist camp that is
32 available for or rented out for hire in the lodging of guests.

33 (ii) "Rooming house" means every house, boat, vehicle, motor court, or other structure
34 kept, used, maintained, advertised, or held out to the public to be a place where living quarters are

1 supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

2 (iii) "Tourist camp" means a place where tents or tent houses, or camp cottages, or cabins
3 or other structures are located and offered to the public or any segment thereof for human
4 habitation.

5 (o) "Lease or rental" means any transfer of possession or control of tangible personal
6 property for a fixed or indeterminate term for consideration. A lease or rental may include future
7 options to purchase or extend. Lease or rental does not include:

8 (i) A transfer of possession or control of property under a security agreement or deferred
9 payment plan that requires the transfer of title upon completion of the required payments;

10 (ii) A transfer of possession or control of property under an agreement that requires the
11 transfer of title upon completion of required payments and payment of an option price does not
12 exceed the greater of one hundred dollars (\$100) or one percent of the total required payments; or

13 (iii) Providing tangible personal property along with an operator for a fixed or
14 indeterminate period of time. A condition of this exclusion is that the operator is necessary for the
15 equipment to perform as designed. For the purpose of this subsection, an operator must do more
16 than maintain, inspect, or set-up the tangible personal property.

17 (iv) Lease or rental does include agreements covering motor vehicles and trailers where the
18 amount of consideration may be increased or decreased by reference to the amount realized upon
19 sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).

20 (v) This definition shall be used for sales and use tax purposes regardless if a transaction
21 is characterized as a lease or rental under generally accepted accounting principles, the Internal
22 Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

23 (vi) This definition will be applied only prospectively from the date of adoption and will
24 have no retroactive impact on existing leases or rentals. This definition shall neither impact any
25 existing sale-leaseback exemption or exclusions that a state may have, nor preclude a state from
26 adopting a sale-leaseback exemption or exclusion after the effective date of the agreement.

27 (p) "Mobility enhancing equipment" means equipment, including repair and replacement
28 parts to same, that:

29 (i) Is primarily and customarily used to provide or increase the ability to move from one
30 place to another and that is appropriate for use either in a home or a motor vehicle; and

31 (ii) Is not generally used by persons with normal mobility; and

32 (iii) Does not include any motor vehicle or equipment on a motor vehicle normally
33 provided by a motor vehicle manufacturer.

34 Mobility enhancing equipment does not include durable medical equipment.

1 (q) "Model 1 Seller" means a seller that has selected a CSP as its agent to perform all the
2 seller's sales and use tax functions, other than the seller's obligation to remit tax on its own
3 purchases.

4 (r) "Model 2 Seller" means a seller that has selected a CAS to perform part of its sales and
5 use tax functions, but retains responsibility for remitting the tax.

6 (s) "Model 3 Seller" means a seller that has sales in at least five member states, has total
7 annual sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary
8 system that calculates the amount of tax due each jurisdiction, and has entered into a performance
9 agreement with the member states that establishes a tax performance standard for the seller. As
10 used in this definition, a seller includes an affiliated group of sellers using the same proprietary
11 system.

12 (t) "Prosthetic device" means a replacement, corrective, or supportive device including
13 repair and replacement parts for same worn on or in the body to:

14 (i) Artificially replace a missing portion of the body;

15 (ii) Prevent or correct physical deformity or malfunction; or

16 (iii) Support a weak or deformed portion of the body.

17 (u) "Purchaser" means a person to whom a sale of personal property is made or to whom a
18 service is furnished.

19 (v) "Purchase price" applies to the measure subject to use tax and has the same meaning as
20 sales price.

21 (w) "Seller" means a person making sales, leases, or rentals of personal property or
22 services.

23 (x) Specified digital products.

24 (i) "Specified digital products" means electronically transferred:

25 (A) "Digital audio-visual works" which means a series of related images which, when
26 shown in succession, impart an impression of motion, together with accompanying sounds, if any;

27 (B) "Digital audio works" which means works that result from the fixation of a series of
28 musical, spoken, or other sounds, including ringtones, and/or;

29 (C) "Digital books" which means works that are generally recognized in the ordinary and
30 usual sense as "books."

31 (ii) For purposes of the definition of "digital audio works," "ringtones" means digitized
32 sound files that are downloaded onto a device and that may be used to alert the customer with
33 respect to a communication.

34 (iii) For purposes of the definitions of "specified digital products," "transferred

1 electronically" means obtained by the purchaser by means other than tangible storage media.

2 (iv) For the purposes of "specified digital products," "end user" includes any person other
3 than a person who receives by contract a product "transferred electronically" for further broadcast,
4 rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or
5 exhibition of the product, in whole or in part, to another person or persons. A person that purchases
6 products "transferred electronically" or the code for "specified digital products" for the purpose of
7 giving away such products or code shall not be considered to have engaged in the distribution or
8 redistribution of such products or code and shall be treated as an end user.

9 (v) For the purposes of "specified digital products," "permanent" means perpetual or for an
10 indefinite or unspecified length of time.

11 (y) "State" means any state of the United States and the District of Columbia.

12 (z) "Telecommunications" tax base/exemption terms.

13 (i) Telecommunication terms shall be defined as follows:

14 (A) "Ancillary services" means services that are associated with or incidental to the
15 provision of "telecommunications services," including, but not limited to, "detailed
16 telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

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

21 (C) "Detailed telecommunications billing service" means an "ancillary service" of
22 separately stating information pertaining to individual calls on a customer's billing statement.

23 (D) "Directory assistance" means an "ancillary service" of providing telephone number
24 information, and/or address information.

25 (E) "Vertical service" means an "ancillary service" that is offered in connection with one
26 or more "telecommunications services," which offers advanced calling features that allow
27 customers to identify callers and to manage multiple calls and call connections, including
28 "conference bridging services."

29 (F) "Voice mail service" means an "ancillary service" that enables the customer to store,
30 send, or receive recorded messages. "Voice mail service" does not include any "vertical services"
31 that the customer may be required to have in order to utilize the "voice mail service."

32 (G) "Telecommunications service" means the electronic transmission, conveyance, or
33 routing of voice, data, audio, video, or any other information or signals to a point, or between or
34 among points. The term "telecommunications service" includes such transmission, conveyance, or

1 routing in which computer processing applications are used to act on the form, code, or protocol of
2 the content for purposes of transmission, conveyance, or routing without regard to whether such
3 service is referred to as voice over internet protocol services or is classified by the Federal
4 Communications Commission as enhanced or value added. "Telecommunications service" does
5 not include:

6 (1) Data processing and information services that allow data to be generated, acquired,
7 stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where
8 such purchaser's primary purpose for the underlying transaction is the processed data or
9 information;

10 (2) Installation or maintenance of wiring or equipment on a customer's premises;

11 (3) Tangible personal property;

12 (4) Advertising, including, but not limited to, directory advertising;

13 (5) Billing and collection services provided to third parties;

14 (6) Internet access service;

15 (7) Radio and television audio and video programming services, regardless of the medium,
16 including the furnishing of transmission, conveyance, and routing of such services by the
17 programming service provider. Radio and television audio and video programming services shall
18 include, but not be limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and video
19 programming services delivered by commercial mobile radio service providers as defined in 47
20 C.F.R. § 20.3;

21 (8) "Ancillary services"; or

22 (9) Digital products "delivered electronically," including, but not limited to: software,
23 music, video, reading materials, or ring tones.

24 (H) "800 service" means a "telecommunications service" that allows a caller to dial a toll-
25 free number without incurring a charge for the call. The service is typically marketed under the
26 name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers
27 designated by the Federal Communications Commission.

28 (I) "900 service" means an inbound toll "telecommunications service" purchased by a
29 subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded
30 announcement or live service. "900 service" does not include the charge for: collection services
31 provided by the seller of the "telecommunications services" to the subscriber, or service or product
32 sold by the subscriber to the subscriber's customer. The service is typically marketed under the
33 name "900 service," and any subsequent numbers designated by the Federal Communications
34 Commission.

1 (J) "Fixed wireless service" means a "telecommunications service" that provides radio
2 communication between fixed points.

3 (K) "Mobile wireless service" means a "telecommunications service" that is transmitted,
4 conveyed, or routed regardless of the technology used, whereby the origination and/or termination
5 points of the transmission, conveyance, or routing are not fixed, including, by way of example only,
6 "telecommunications services" that are provided by a commercial mobile radio service provider.

7 (L) "Paging service" means a "telecommunications service" that provides transmission of
8 coded radio signals for the purpose of activating specific pagers; such transmissions may include
9 messages and/or sounds.

10 (M) "Prepaid calling service" means the right to access exclusively "telecommunications
11 services," which must be paid for in advance and that enables the origination of calls using an
12 access number or authorization code, whether manually or electronically dialed, and that is sold in
13 predetermined units or dollars of which the number declines with use in a known amount.

14 (N) "Prepaid wireless calling service" means a "telecommunications service" that provides
15 the right to utilize "mobile wireless service," as well as other non-telecommunications services,
16 including the download of digital products "delivered electronically," content and "ancillary
17 services" which must be paid for in advance that is sold in predetermined units of dollars of which
18 the number declines with use in a known amount.

19 (O) "Private communications service" means a telecommunications service that entitles the
20 customer to exclusive or priority use of a communications channel or group of channels between
21 or among termination points, regardless of the manner in which such channel or channels are
22 connected, and includes switching capacity, extension lines, stations, and any other associated
23 services that are provided in connection with the use of such channel or channels.

24 (P) "Value-added non-voice data service" means a service that otherwise meets the
25 definition of "telecommunications services" in which computer processing applications are used to
26 act on the form, content, code, or protocol of the information or data primarily for a purpose other
27 than transmission, conveyance, or routing.

28 (ii) "Modifiers of Sales Tax Base/Exemption Terms" -- the following terms can be used to
29 further delineate the type of "telecommunications service" to be taxed or exempted. The terms
30 would be used with the broader terms and subcategories delineated above.

31 (A) "Coin-operated telephone service" means a "telecommunications service" paid for by
32 inserting money into a telephone accepting direct deposits of money to operate.

33 (B) "International" means a "telecommunications service" that originates or terminates in
34 the United States and terminates or originates outside the United States, respectively. United States

1 includes the District of Columbia or a U.S. territory or possession.

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

5 (D) "Intrastate" means a "telecommunications service" that originates in one United States
6 state or a United States territory or possession, and terminates in the same United States state or a
7 United States territory or possession.

8 (E) "Pay telephone service" means a "telecommunications service" provided through any
9 pay telephone.

10 (F) "Residential telecommunications service" means a "telecommunications service" or
11 "ancillary services" provided to an individual for personal use at a residential address, including an
12 individual dwelling unit such as an apartment. In the case of institutions where individuals reside,
13 such as schools or nursing homes, "telecommunications service" is considered residential if it is
14 provided to and paid for by an individual resident rather than the institution.

15 The terms "ancillary services" and "telecommunications service" are defined as a broad
16 range of services. The terms "ancillary services" and "telecommunications service" are broader
17 than the sum of the subcategories. Definitions of subcategories of "ancillary services" and
18 "telecommunications service" can be used by a member state alone or in combination with other
19 subcategories to define a narrower tax base than the definitions of "ancillary services" and
20 "telecommunications service" would imply. The subcategories can also be used by a member state
21 to provide exemptions for certain subcategories of the more broadly defined terms.

22 A member state that specifically imposes tax on, or exempts from tax, local telephone or
23 local telecommunications service may define "local service" in any manner in accordance with §
24 44-18.1-28, except as limited by other sections of this Agreement.

25 (aa) "Tobacco" means cigarettes, cigars, chewing, or pipe tobacco, or any other item that
26 contains tobacco.

27 SECTION 2. This act shall take effect upon passage.

=====
LC004445/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO TAXATION -- SALES AND USE TAXES -- LIABILITY AND
COMPUTATION

- 1 This act would expand the definition of sales to include any license, lease, or rental of
- 2 prewritten or vendor-hosted computer software and specified digital products. This act would also
- 3 define "end-user" for specified digital products.
- 4 This act would take effect upon passage.

=====
LC004445/SUB A
=====