

# **SST Developments in Telecommunications and Bundling**

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## **Agenda**

- **Current Status**
- **Discussion of Telecommunications Issues**
- **Discussion of Bundling Issues**

## Current Status

### **April 16, 2005, Meeting of Streamlined Sales Tax Implementing States – Adoption of:**

- Telecommunications Definitions
- Telecommunications Issue Papers
- Amendment to Telecommunications Sourcing Rules Originally Adopted in 2002
- Bundling Definitions
- Bundling Rules

## Background - Telecommunications

### **Telecommunications Tax Reform Initiative – joint industry and government effort to review ways to revamp state and local tax systems in view of rapidly changing industry**

- Started at approximately same time as SSTP
- TTRI provided input to SSTP Sourcing Subgroup on Telecommunications sourcing rules adopted with Agreement in 2002
- SSTP Telecommunications Subgroup formed and met for first time June 14, 2002, to address definition issues
- TTRI 2001 draft definition was presented to SSTP and provided original framework for the discussions and definitions ultimately adopted April 16, 2005

## Background - Telecommunications

### Goals of SSTP in definitions:

- Allow a state to mirror existing tax base as much as possible
- No reliance or reference on regulatory definitions – different policies behind regulation v. taxation
- Industry neutrality

## Definitions

- Broad definitions of terms:  
telecommunications services and ancillary services
- Numerous subsets of each of these terms
- The definitions may be used for both sales tax imposition and sales tax exemption purposes

## Definitions

- “Telecommunications services” 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 service” includes such 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.

## Definitions

Telecommunication services does *not* include:

- Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where purchaser’s *primary purpose* is the processed data or information
- Advertising
- Billing and collection services provided to third parties
- Installation or maintenance of wiring or equipment...
- Internet access service
- Tangible personal property
- Radio and television audio and video programming services, regardless of the medium...
- Ancillary services
- Digital products delivered electronically...

## Definitions

The broad definition of “telecommunications services” includes the following defined terms. These terms are separately defined so that a state that does not tax all “telecommunications services” may choose to levy a tax only on one or more of these services or may choose to exempt these services from their tax.

- 800 service
- 900 service
- Fixed wireless service
- Mobile wireless service
- Paging service
- Prepaid calling service
- Prepaid wireless calling service
- Private communication service
- Value-added nonvoice data service:
  - a service, which otherwise meets the definition of telecommunications service, in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing

## Definitions

- “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 services.
- States may tax all ancillary services by adopting the broad definition or may choose to tax or exempt some of the services by adopting the separate terms.

➤ The following terms are separately defined ancillary services:

- Conference Bridging Service
- Detailed Telecommunication Billing Service
- Directory Assistance
- Vertical Service
- Voice Mail Service

## Definition Modifiers

The following defined terms can be used to further delineate the type of telecommunications services to be taxed or exempted:

- Coin-operated Telephone Service
- International
- Interstate
- Intrastate
- Pay Telephone Service
- Residential Telecommunications Service

Also adopted definition of “telecommunications nonrecurring charges” which a state could choose to exclude from its definition of “sales price” so that these charges would not be a part of the price upon which tax is levied.

## Telecommunications Sourcing Change

“Prepaid wireless calling service” was defined for sourcing purposes, and a new sourcing rule was adopted for this service.

- *“Prepaid wireless calling service”* means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, 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.

Sourcing change provides for the sourcing to be the same as a prepaid calling service except that it includes the option to source this service to the location associated with the mobile telephone service.

## Bundled Transaction

### History:

- Lack of uniformity among states
- Market trend toward bundling products
- Retailers sought guidance

### Bundling Subgroup:

- SSTP subgroup formed August 2001
- Broad v. Narrow definition?

## Bundled Transaction Definition

A bundled transaction is the retail sale of two or more products, except real property and services to real property, where

1. the products are otherwise distinct and identifiable, and
2. the products are sold for one non-itemized price.

A bundled transaction **does not** include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

## Bundled Transaction Definition

- Not distinct and identifiable products
  - Incidental packaging
  - Products provided free of charge with purchase
  - Items included in definition of sale price
    - Cost of materials or expenses
    - Services necessary to complete the sale
    - Delivery charges
    - Installation charges
- One non-itemized price

## Exclusions From Definition

### **Subjective – true object test**

- Applies when:
  - Essential to the use of the service;
  - Provided exclusively in connection with service; and
  - Objective is service
- Applies to:
  - Tangible property with service
  - Service with service



## Exclusions From Definition

### Objective – 10% de minimis test

#### ➤ Applies when:

- Taxable and non-taxable products sold together
- Taxable portion is 10% or less of the total “price”
- “Price” – use purchase price or sales price but not both

#### ➤ Applies to:

- All types of products regardless of the characterization of a product as tangible personal property, digital good, service or intangible property

## Exclusions From Definition

### Objective - 50% primary test - applies only if the taxable and nontaxable items are the following:

- Food and food ingredients
  - Candy
  - Dietary supplements
  - Soft drinks
  - Prepared food
- Health care products
  - Drugs
  - Durable medical equipment
  - Mobility enhancing equipment
  - Prosthetic devices
  - Medical supplies (undefined)

## Streamlined Requirements for Bundled Transactions by January 1, 2008

- States must amend sales price definition to delete subsection F related to tangible property bundled together
- States must adopt and utilize term and definition to determine tax treatment in the state
- State's use of term is only restricted as to other limitations and requirements in the Agreement.
- All states must adopt uniform rule for bundled transactions of:
  - Telecommunications
  - Internet access
  - Ancillary services
  - Audio or video services

## Uniform Bundling Rule

Applies to bundled transactions of Internet access, telecommunications, ancillary and audio or video services:

Service provider has option to unbundle based on ***reasonable and verifiable*** standards the non-taxable portion or portion subject to lower tax rate from its ***books and records***.

# Questions?

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