

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

AN ACT relating to taxation and revenue; establishing uniform definitions for telecommunications services; amending telecommunications sourcing provisions; amending the tax imposed provisions for telecommunications; providing conforming amendments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 39-15-101(a)(viii) by creating a new subparagraph (C) and by creating new paragraphs (xxxix) and (xl), 39-15-103(a)(i)(C), 39-15-104(f)(xi)(E)(X) and by creating a new subdivision (XIV) and 39-16-101(a) by creating a new paragraph (xvii) are amended to read:

39-15-101. Definitions.

(a) As used in this article:

(viii) "Sales price":

(A) Shall apply to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property and services for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(C) "Sales price" shall include consideration received by the seller from third parties if:

(I) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to the price reduction or discount on the sale;

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

(II) The seller has an obligation to pass the price reduction or discount through to the purchaser and one (1) of the following criteria is met:

(1) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(2) The purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron shall not constitute membership in such a group; or

(3) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(xxxix) Telecommunications definitions:

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

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

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

(C) "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;

(D) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(E) "Conference bridging service" 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. Conference bridging service shall not include the telecommunications services used to reach the conference bridge;

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

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

(G) "Directory assistance" means an ancillary service of providing telephone number information or address information;

(H) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points;

(J) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;

(K) "Interstate" means a telecommunications service that originates in one (1) state of the United States or a United States territory or possession, and terminates in a different state of the United States or a United States territory or possession;

(M) "Intrastate" means a telecommunications service that originates in one (1) state of the United States or a United States territory or possession and terminates in the same state of the United States or a United States territory or possession;

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

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

(O) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers, which transmissions may include messages or sounds;

(P) "Pay telephone service" means a telecommunications service provided through any pay telephone;

(Q) "Prepaid calling service" means the right to access exclusively telecommunications services, which require advance payment and which enables the origination of call using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(R) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content and ancillary services, which require advance payment that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(S) "Private communications service" means a telecommunications 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 the 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 the channel or channels;

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

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

(U) "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 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. Telecommunications service shall not include:

(I) 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 the purchaser's primary purpose for the underlying transaction is the processed data or information;

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

(III) Tangible personal property;

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

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

(V) Billing and collection services provided to third parties;

(VI) Internet access service;

(VII) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of the services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 C.F.R. 20.3;

(VIII) Ancillary services; or

(IX) Digital products delivered electronically including but not limited to software, music, video, reading materials or ring tones.

(W) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services 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;

(Y) "Vertical service" means an ancillary service that is offered in connection with one (1) 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;

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

(Z) "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.

(xl) "Bundled transaction" means the retail sale of two (2) or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one (1) nonitemized 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:

(A) "Distinct and identifiable products" does not include:

(I) Packaging such as containers, boxes, sacks, bags and bottles or other materials such as wrapping, labels, tags and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof;

(II) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge;

(III) Items included in the definition of sales price.

(B) "One (1) nonitemized price" does not include a price that is separately identified by product on a binding sales or other supporting sales-related

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card or price list;

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

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

(II) The retail sale of services where one (1) service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(III) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers shall not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

contract to determine if the taxable products are de
minimis; or

(IV) The retail sale of exempt
tangible personal property and taxable tangible personal
property where:

(1) The transaction includes food
and food ingredients, drugs, durable medical equipment,
mobility enhancing equipment, over the counter drugs,
prosthetic devices or medical supplies; and

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

(D) When a bundled transaction includes a
telecommunications service, ancillary service, internet
access or audio or video programming service:

(I) If the price of the bundle is
attributable to products that are taxable and products that
are nontaxable, the portion of the price attributable to
the nontaxable products may be subject to tax unless the
provider can identify by reasonable and verifiable
standards such portion from its books and records that are
kept in the regular course of business for other purposes,
including, but not limited to nontax purposes;

(II) If the price of the bundle is
attributable to products that are subject to tax at

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

different rates, the total price may be treated as attributable to the products subject to tax at the highest rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to nontax purposes.

39-15-103. Imposition.

(a) Taxable event. The following shall apply:

(i) Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(C) The sales price paid for intrastate ~~telephone and telegraph~~ telecommunications services including the consideration paid for the sale, rental or leasing of any equipment or ancillary services incidental thereto, and the sales price paid for intrastate calls which originate and terminate in a single state and are billed to a customer with a place of primary use in this state from mobile telecommunications services as provided by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 through 126. The definitions and provisions of the Mobile Telecommunications Sourcing Act shall apply to this article;

39-15-104. Taxation rate.

(f) The tax rate imposed upon a transaction subject to this chapter shall be sourced as follows:

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

(xi) The sales of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(E) As used in paragraphs (ix) through (xi) of this subsection, the following definitions apply:

(X) "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 payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

(XIV) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications 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.

39-16-101. Definitions.

(a) As used in this article:

(xvii) Telecommunications definitions:

(A) "800 service" means a telecommunications service that allows a caller to dial a

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877" and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission;

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

(C) "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;

(D) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(E) "Conference bridging service" 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. Conference bridging service shall not include the telecommunications services used to reach the conference bridge;

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

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

(G) "Directory assistance" means an ancillary service of providing telephone number information or address information;

(H) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points;

(J) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;

(K) "Interstate" means a telecommunications service that originates in one (1) state of the United States or a United States territory or possession and terminates in a different state of the United States or a United States territory or possession;

(M) "Intrastate" means a telecommunications service that originates in one (1) state of the United States or a United States territory or possession and terminates in the same state of the United States or a United States territory or possession;

(N) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination or termination points of the transmission,

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider;

(O) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers which transmissions may include messages or sounds;

(P) "Pay telephone service" means a telecommunications service provided through any pay telephone;

(Q) "Prepaid calling service" means the right to access exclusively telecommunications services, which requires advance payment and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(R) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content and ancillary services, which require advance payment that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(S) "Private communications service" means a telecommunications 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 the channel or channels are connected, and includes switching capacity, extension

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

lines, stations and any other associated services that are provided in connection with the use of the channel or channels;

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

(U) "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 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. Telecommunications service shall not include:

(I) 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 the purchaser's primary purpose for the underlying transaction is the processed data or information;

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

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

(III) Tangible personal property;

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

(V) Billing and collection services provided to third parties;

(VI) Internet access service;

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

(VIII) Ancillary services; or

(IX) Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

(W) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services 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;

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

(Y) "Vertical service" means an ancillary service that is offered in connection with one (1) 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;

(Z) "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.

Section 2. W.S. 39-15-101(a)(viii)(A)(VI) is repealed.

ORIGINAL HOUSE
BILL NO. 0178

ENROLLED ACT NO. 9, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

Section 3. This act is effective January 1, 2008.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk