

ARTICLE III – REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

6/21/068/04/06

Rule ?. Telecommunication Definitions

Rule ?. Use of Uniform Telecommunication Definitions

1. Who is required to use. Uniform definitions pertaining to telecommunications that are contained in the Streamlined Sales and Use Tax Agreement shall be used by all member states in imposing sales and use taxes,

2. Use of definitions. Definitions pertaining to telecommunications and related services that are provided in the Streamlined Sales and Use Tax Agreement shall be used by member states to impose sales or use taxes. Nothing in the Agreement, its telecommunications definitions or in this rule shall be construed to require states with existing excise taxes on telecommunications and related services to modify their existing excise tax definitions.

3. Definitions not found in the Streamlined Sales and Use Tax Agreement. Definitions pertaining to telecommunications that are used for federal regulatory or tax purposes, for state or local regulatory purposes or for purposes of administering other state or local taxes may do not apply for purposes of state sales and use taxation of telecommunication services, unless such definition is specifically referenced in ~~conflict with the definitions in~~ the Streamlined Sales and Use Tax Agreement.

4. Partial exclusion of a definition is prohibited. A member state choosing to tax telecommunication services shall use applicable definitions contained in the Streamlined Sales and Use Tax Agreement and shall not exclude from imposition a part of any definition or any item included in such a definition unless the Agreement specifically permits such a variation.

5. Telecommunications definitions are not limited to products sold by certain sellers. No definition pertaining to telecommunications services and related services in the Streamlined Sales and Use Tax Agreement shall be construed to limit such definition to products sold by a particular seller (i.e., “telecommunications services” sold by a telephone company may also be sold by other vendors).

6. Use-based and entity-based exemptions. A member state may choose to limit the imposition of sales tax on telecommunications services by providing use-based or Sales and Use Tax entity based exemptions. A state's incorporation of the Streamlined Agreement definitions applicable to telecommunication services and related services shall not prohibit such state from applying "use-based" or "entity-based" ~~exemptions (i.e., a state would not be prohibited from providing or denying a resale exemption for telecommunications used in providing other services)~~ exemptions.

7. "Telecommunications services" does not include telephone answering services. The term "telecommunications services" does not include telephone answering services because the primary purpose of the transaction is the answering service rather than message transmission.

8. Definitions may be used for imposition and exemption purposes. The following provisions shall apply to member states that impose a tax on all telecommunications services and related services, all such services with certain exclusions or exemptions, or only on certain telecommunications services:

(a) A member state choosing to broadly impose a tax on telecommunications services shall use the definition of "telecommunications services" set forth in the Streamlined Sales and Use Tax Agreement. In so doing, the state will impose tax on all telecommunications services, including residential telecommunications service, telegraph service, value-added non-voice data service and voice over Internet Protocol, as well as 800 service, 900 service, fixed wireless service, local service, mobile wireless service, paging service, and private communications service, unless the state provides a specific exclusion or exemption for one or more of such services.

(b) A member state shall define any telecommunications service that it wishes to exclude or exempt from taxation exactly as it is defined in the Streamlined Sales and Use Tax Agreement. It will be necessary for the state to define one of the ~~sublets-subsets~~ of "telecommunications services" only if an exclusion or exemption is desired (i.e., a state that wishes to tax all telecommunications services except 800 service, 900, service, paging service, and private communications service would impose a tax on "all telecommunications services except 800 service, 900, service, paging service, and private communications service" and specifically adopt the Streamlined Sales and Use Tax Agreement definitions of such excluded or exempted services).

(c) A member state that imposes a tax on telecommunications services and related services shall not exclude or exempt from tax an item that is a telecommunications service if there is no definition of such an item in the Streamlined Sales and Use Tax Agreement, except as provided for local telecommunications service.

(d) ~~If a~~ member state that wishes to tax only limited types of telecommunication services, rather than the broad category with exceptions, ~~it~~ shall impose the tax only on the specific types of telecommunication services that it wishes to tax and shall use the definitions set forth in the Streamlined Sales and Use Tax Agreement to define the telecommunication services taxed (i.e., a state could choose to tax only “900 services” because such services are specifically defined in the Streamlined Sales and Use Tax Agreement).

(e) If a state imposes tax on a broad group of services that includes telecommunications services, it shall use the definition of “telecommunications services” in the Streamlined Sales and Use Tax Agreement to make it clear that such services are included in the broad group of services taxed. If a state wishes to tax Ancillary Services, it must explicitly impose its tax on Ancillary Services as defined in the Agreement (i.e., if “communication services” are taxed, the language imposing the tax must specifically state that such services include “telecommunication services” and any “ancillary” services included in the broad group of communication services taxed).

(f) A state that imposes sales and use tax on telecommunications services only if they originate and terminate in the state and that wishes to retain such a tax result under the Streamlined Sales and Use Tax Agreement shall amend its law to impose the tax on “intrastate” telecommunications services only and adopt the definition of “intrastate” services in the Streamlined Sales and Use Tax Agreement.

(g) A state that imposes sales and use tax on telecommunications services that originate or terminate in the state and that wishes to retain such a tax result under the Streamlined Sales and Use Tax Agreement shall amend its law to impose the tax on “intrastate” and “interstate” telecommunications services (and “international,” if applicable), and adopt the definitions of “intrastate” and “interstate” (and “international,” if applicable) services in the Streamlined Sales and Use Tax Agreement.

(h) A state may tax or exempt only a specific use of telecommunications services, such as residential use.

(i) A state may tax, or exclude from tax, any one or all of the “ancillary services” that are not telecommunications services. For example, the tax may be imposed on “all ancillary services except detailed telecommunications billing service and directory assistance.” Or, the tax may be imposed on any one or more of the specific ancillary services, such as “voice mail services,” rather than on “ancillary services” in general.

(kj) A state imposing tax on telecommunications services but desiring to exempt pay telephone services shall specifically provide a statutory exemption using definitions provided in the Streamlined Sales and Use Tax Agreement Library of Definitions for “pay telephone service” and/or “coin operated telephone service.”

(~~h~~k) A state imposing tax on telecommunications services but desiring to exempt value-added non-voice data services, such as encryption, device management, security authentication or data monitoring services that otherwise meet the definition of telecommunications services, shall specifically provide a statutory exemption using the definition provided in the Streamlined Sales and Use Tax Agreement Library of Definitions for “value-added nonvoice data service.”

Source: SST Telecommunications and Related Definitions Paper.