

On April 14, 2005, the Streamlined Sales Tax Project approved this paper. The definitions in Attachment 1 were approved by the Project in a teleconference on April 7, 2005. Implementing States approved the definitions and issue paper on April 16, 2005. After December 31, 2007, all member states should use the uniform definitions.

**Streamlined Sales Tax Project
Issue Paper
April 18, 2005
Telecommunications and Related Definitions**

Proposed Definitions of Telecommunications Terms

The Streamlined Sales Tax Project developed a series of uniform definitions, which were ultimately contained in the "Library of Definitions" in the Streamlined Sales and Use Tax Agreement (as amended November 16, 2004; hereinafter referred to as the "Streamlined Agreement"). Although the Streamlined Agreement provides sourcing rules for telecommunications services and definitions of certain terms applicable to those rules, uniform definitions of "telecommunications services" and other related terms have not yet been established for purposes of imposition and exemption. The Project Steering Committee invited industry participants to submit suggestions for definitions to include in the Streamlined Agreement to allow states to match their existing sales tax bases as precisely as possible. The industry members of the Telecommunications Tax Reform Initiative¹ voluntarily submitted proposed definitions to the Project in response to their invitation.

When the Project first began discussing telecommunications definitions, it explored two approaches to sales taxation: (1) a broad definition of "telecommunications services," with states excluding certain specified services from taxation, and (2) a restrictive definition of "telecommunications services," with additional services, defined separately, that states could choose to impose tax on independently from "telecommunications services." A work group of the Project agreed with industry to work with the latter approach in making its recommendations to the Project.

Attachment 1 includes the model definitions being recommended to the Project, as revised after review and input from the states. Any terms used in these definitions that have been already defined in the Streamlined Agreement (e.g., electronic) have the same meaning as provided in the Streamlined Agreement.

The definitions for telecommunications service and related services to be used by states in imposing sales and use taxes would be those proposed in this paper and ultimately included in the Streamlined Agreement. Telecommunications service definitions used for other state or

¹ The Telecommunications Tax Reform Initiative was a joint industry/government effort to develop ways to simplify and modernize taxation of telecommunications services, property and providers. Government representation included individuals from multistate organizations as well as individual states. Industry participants represented a broad range of telecommunications service providers.

local taxes, state or local regulatory purposes, or federal purposes would not apply for purposes of state sales and use taxation of telecommunications services, unless such definition is specifically referenced in the Streamlined Agreement.

This paper does not address bundling specifically for telecommunications services, as this issue is being handled separately with other bundling issues.

Using the Uniform Definitions

The effort for uniform definitions is NOT an effort for uniform sales tax bases across states. Defined terms will have the same meaning across the states, yet the definitions are intended to allow states to mirror their current treatment as closely as possible by enabling states to choose to tax or exempt specific services.

The proposed definitions are product-based. Being consistent with Section 316 of the Streamlined Agreement as it applies to exemptions, because telecommunications service and certain related services would be defined, a state choosing to tax such services must use the definitions in the library and cannot exclude from imposition a part of the items included within a definition unless the Streamlined Agreement sets out definitions for part of the items as an acceptable variation. Incorporating the definitions of telecommunications services and related services does not restrict the application of “use-based” or “entity based” exemptions. For example, there is nothing in the Streamlined Agreement or the proposed definitions that prohibits a state from providing or denying a resale exemption for telecommunications used in providing other services.

The definitions in Attachment 1 are formatted as main terms and subsets of those terms. The main terms – ancillary services and telecommunications services – are shown at the left margin. The subsets of those terms are indented under the main term. The main term includes all of its subsets.

The enumerated definitions may be used for both sales tax imposition purposes and sales tax exemption purposes as described below:

- If a state chooses to broadly impose tax on telecommunications services, it must use the definition of “telecommunications services” in Attachment 1. By doing so, 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. Such an exclusion or exemption must be one of the defined terms in Attachment 1. Only if an exclusion or exemption is needed would the state need to define one of the subsets of “telecommunications services.” For example, a state that wishes to tax telecommunications services but exempt 800 service, 900 service, paging service, and private communications service would impose tax on “telecommunications services except 800 service, 900 service, paging service, and private communications service” and adopt the definitions of telecommunications service, 800 service, 900 service, paging service, and private communications service. A state that chooses to impose tax on telecommunications services cannot exclude or exempt from tax an item that is a telecommunications service if there is no definition in the Streamlined Agreement, except as provided for local

telecommunications service. It is expected that the Streamlined Agreement may require updating as new services are developed.

- Alternatively, if a state chooses to tax only limited types of telecommunications services, rather than the broad category with exceptions, it would impose tax only on these limited types of services and it must use the defined terms in Attachment 1. For example, a state can choose to tax only 900 or 800 services, because those terms are defined.
- A state imposing tax on a broader group of services that includes telecommunications must use the definition of "telecommunications services" in Attachment 1. As an example, a state imposing tax on "communication services," must include language stating such communication services include telecommunications services (and ancillary services if a state wishes to tax them as a part of communication services).
- A state that currently imposes sales tax on telecommunications services only if they originate and terminate in a state would amend its law to impose the tax on "intrastate" telecommunications services only, and adopt the definition of "intrastate" services in Attachment 1. A state that currently imposes sales and use tax on telecommunications services that originate or terminate in a state would amend its law to impose the tax on both "intrastate" and "interstate" services (and "international," if applicable), and adopt the definitions of "intrastate" and "interstate" (and international, if applicable) services in Attachment 1.
- A state can limit the imposition or exemption on telecommunications services to a specific use (e.g., residential),.
- A state can choose to impose tax on any one or all of the ancillary services, which are not telecommunications services. It may, for example, impose tax on "ancillary services, except detailed telecommunications billing service and directory assistance." Or, instead of imposing tax on "ancillary services," in general, a state may impose tax on any one or more of the specific ancillary services (for example, voice mail services).
- States that impose sales tax on telecommunications services, but provide exemptions for services furnished through the use of pay telephones, will have to specifically provide these exemptions in their laws using the definitions in the library (pay telephone service or coin operated telephone service).
- States that impose tax on telecommunications services but wish to exempt value-added nonvoice data services, such as encryption, device management, security authentication or data monitoring services that otherwise meet the definition of telecommunications service, will have to specifically provide an exemption in their law using the definition of "value-added nonvoice data service" in the library of definitions.

"Telecommunications services" does not include telephone answering services. Although the service may involve transmission of information (e.g., the person answering the telephone may transmit a message to the customer via telecommunications and separately have paid any tax on the use of that service), the primary purpose of the transaction is the answering service rather than the transmission of the message. Therefore, if a state chose to tax both "telecommunications services" and telephone answering services, it would specifically impose tax on telephone answering services. There is nothing in the Streamlined Sales and Use Tax Agreement to prohibit a state from imposing sales or use tax on services that are outside the

scope of the telecommunications-related definitions. For example, a state could impose tax on additional services such as radio and television audio and video programming services because these services are excluded from the definition of "telecommunications services".

The definitions proposed in this paper are not distinguished by who sells the service. For example, there is no provision in the definition of "telecommunications service" that limits the product to only transmission services sold by a telephone company. However, a state may choose to limit the imposition of sales tax on telecommunications services to those services provided by certain entities or by providing an entity-based exemption. For example, a state may deem the transfer of telecommunications services by a hotel not to be a retail sale because it deems the hotel to be the consumer of the telecommunications services. Alternatively, a state could deem the hotel to be making a retail sale when it separately charges for making telephone calls, in which case such charges are for telecommunications services regardless of whether charged on a call-by-call, per-minute, or other basis.

Caution: It is understood that states will make every effort to use these definitions in imposing sales or use tax and not create a new excise or other taxes to circumvent them. There is nothing in the Agreement or these proposed definitions that requires states with existing excise taxes on telecommunications and related service to modify their excise tax definitions.

PART II

Product Definitions

TELECOMMUNICATIONS

Tax Base/Exemption Terms

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

“**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.

“**Conference bridging service**” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

“**Detailed telecommunications billing service**” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

“**Directory assistance**” means an ancillary service of providing telephone number information, and/or address information.

“**Vertical service**” means an ancillary service that is offered in connection with one 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.

“**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.

“**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 does not include:

- A. 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 such purchaser's primary purpose **for** the underlying transaction is the processed data or information;
- B. Installation or maintenance of wiring or equipment on a customer's premises;
- C. Tangible personal property;
- D. Advertising, including but not limited to directory advertising.
- E. Billing and collection services provided to third parties;
- F. Internet access service;
- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such 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 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- H. Ancillary services; or
- I. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

"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.

"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" does 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.

"Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

"Mobile wireless service" means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/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.

“Paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

“Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance 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.

“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.

“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 such 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 such channel or channels.

“Value-added non-voice data service” means 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.

Modifiers of Sales Tax Base/Exemption Terms

The following terms can be used to further delineate the type of telecommunications service to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

“Coin-operated telephone service” means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

“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 U.S. territory or possession.

“Interstate” means a telecommunications service that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

“Intrastate” means a telecommunications service that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

“Pay telephone service” means a telecommunications service provided through any pay telephone.

“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.

A member state that specifically imposes tax on, or exempts from tax, local telephone or local telecommunications service may define “local service” in any manner in accordance with Section 327 of the Agreement, except as limited by other sections of this Agreement.

Modifiers to Definitions of Sales Price and Purchase Price

“Telecommunications nonrecurring charges” means an amount billed for the installation, connection, change or initiation of telecommunications service received by the customer.

Note: For purposes of this definition, the Agreement must not only be amended to add this definition, but the definitions of sales price and purchase price must be amended to allow this exclusion (i.e., part C of the definitions must be amended to allow an exception for telecommunications nonrecurring charges).