

By Mr. Nangle of Lowell, petition of David M. Nangle relative to the taxation of telecommunications services and bundled telecommunications services. Taxation.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT TO MODERNIZE THE RULES FOR DETERMINING THE PROPER TAXING JURISDICTION FOR TELECOMMUNICATIONS SERVICES AND TO CLARIFY THE TAX TREATMENT OF BUNDLED COMMUNICATIONS SERVICE OFFERINGS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The definition of "Place of primary use" in
2 section 1 of chapter 64H of the General Laws, inserted by
3 section 25 of chapter 186 of the acts of 2002, is hereby amended
4 by striking out the word "mobile".

1 SECTION 2. The definition of "Place of primary use" in said
2 section 1 of said chapter 64H of the General Laws, as so
3 appearing, is hereby further amended by inserting after the word
4 "which" the second time it appears the following words:— in the
5 case of mobile telecommunications service.

1 SECTION 3. Said section 1 of said chapter 64H of the General
2 Laws, as so appearing, is hereby amended by inserting after the
3 definition of "Place of primary use" the following 2 definitions:—
4 "Post-paid calling service", a telecommunication service
5 obtained by making payment on a call-by-call basis either through
6 the use of a credit or payment mechanism such as a bank card,
7 travel card, credit card, or debit card, or by charge made to a tele-
8 phone number which is not associated with the origination or ter-
9 mination of the telecommunications service. A post-paid calling
10 service includes a telecommunications service that would be a
11 prepaid calling service except it is not exclusively a telecommuni-
12 cations service.

13 “Private communication service”, a telecommunications service
14 that entitles the customer to exclusive or priority use of a commu-
15 nications channel or group of channels between or among termi-
16 nation points, regardless of the manner in which such channel or
17 channels are connected, and includes switching capacity, exten-
18 sion lines, stations, and any other associated services that are pro-
19 vided in connection with the use of such channel or channels.

1 SECTION 4. The definition of “Sale at retail” in said section 1
2 of said chapter 64H of the General Laws, as amended by section
3 26 of chapter 186 of the acts of 2002, is hereby further amended
4 by striking out the fifth sentence and by inserting in place thereof
5 the following sentence:—

6 In the case of interstate telecommunication services other than
7 mobile telecommunications services, post-paid calling services
8 and private telecommunication services, the sale of such services
9 shall be deemed a sale within the commonwealth if the telecom-
10 munication is either originated or received at a location in the
11 commonwealth and the services are charged to a service address
12 located in the commonwealth.

1 SECTION 5. The definition of “Sale at retail” in said section 1
2 of said chapter 64H, as amended by section 27 of chapter 186 of
3 the acts of 2002, is hereby further amended by inserting after the
4 sixth sentence the following two sentences:— In the case of a
5 post-paid calling service, the sale of such service shall be deemed
6 a sale within the commonwealth if the origination point of the
7 telecommunications signal as first identified by either (i) the sell-
8 er’s telecommunications system, or (ii) information received by
9 the seller from its service provider, where the system used to
10 transport such signals is not that of the seller, is in this common-
11 wealth. In the case of a private communication service, the sale of
12 such service shall be deemed a sale within the commonwealth if
13 the service is apportioned to this commonwealth in accordance
14 with section X of this Chapter.

1 SECTION 6. Said section 1 of said chapter 64H of the General
2 Laws, as appearing in the 2000 Official Edition, is hereby

3 amended by inserting after the definition of “Services” the
4 following definition:—

5 “Service address”, (1) the location of the telecommunications
6 equipment to which a customer’s call is charged and from which
7 the call originates or terminates, regardless of where the call is
8 billed or paid. (2) If the location in (1) is not known, service
9 address means the origination point of the signal of the telecom-
10 munications service first identified by either the seller’s telecom-
11 munications system or in information received by the seller from
12 its service provider, where the system used to transport such sig-
13 nals is not that of the seller. (3) If the location in (1) and (2) is not
14 known, service address means the location of the customer’s place
15 of primary use.

1 SECTION 7. Chapter 64H of the General Laws, as appearing in
2 the 2000 Official Edition, is hereby amended by adding the
3 following section:—

4 A sale of private communication service is apportioned to this
5 commonwealth as follows: i. Service for a separate charge related
6 to a customer channel termination point is apportioned to this
7 commonwealth if such customer channel termination point is
8 located within this commonwealth. ii. Service where all customer
9 channel termination points are located entirely within this com-
10 monwealth is apportioned to this commonwealth. iii. Service for
11 segments of a channel between two customer channel termination
12 points one of which is located in this commonwealth and the other
13 is located within another state and which segments of channel are
14 separately charged is apportioned 50% to this commonwealth. iv.
15 Service for segments of a channel located in this commonwealth
16 and in other states and which segments are not separately billed is
17 apportioned to this commonwealth based on the percentage deter-
18 mined by dividing the number of customer channel termination
19 points in this commonwealth by the total number of customer
20 channel termination points.

1 SECTION 8. Said chapter 64H of the General Laws, as so
2 appearing, is hereby amended by adding the following section:—

3 In the case of a bundled transaction of telecommunication serv-
4 ices, if the price is attributable to services that are taxable and

5 services that are nontaxable, the portion of the price attributable to
6 the nontaxable services shall be subject to tax unless the provider
7 can reasonably identify such portion from its books and records
8 kept in the regular course of business for other purposes.

1 SECTION 9. This act shall take effect immediately, provided
2 however, that a telecommunications service provider may use the
3 rules in sections 1 through 7 of this act or any other reasonable
4 method consistently applied in all jurisdictions until bills issued
5 on or after January 1, 2004.