

SB 199-FN-A - AS INTRODUCED

2015 SESSION

15-0619
10/09

SENATE BILL ***199-FN-A***

AN ACT including prepaid communications services as taxable under the communications services tax.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Feltes, Dist 15; Sen. Hosmer, Dist 7

COMMITTEE: Ways and Means

ANALYSIS

This bill adds prepaid communications services as taxable to the retailer under the communications services tax.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT including prepaid communications services as taxable under the communications services tax.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Communications Services Tax; Purpose; Basic Communications Services Deleted. Amend RSA
2 82-A:1 to read as follows:

3 82-A:1 Statement of Purpose. It is the intent of the general court to impose a tax on those who
4 use 2-way communications services and to source mobile telecommunications services to the place of
5 primary use. It is also the intent of the general court that Internet access service [~~and basic~~
6 ~~communications services essential to public health, safety, and welfare~~] shall not be subject to the
7 tax imposed by this chapter.

8 2 Definitions; Amount Paid. Amend RSA 82-A:2, I to read as follows:

9 I. "Amount paid" means the amount charged to the taxpayer's service address in this state
10 **or the amount prepaid by a taxpayer with a service address in this state** regardless of where
11 such amount is billed or paid.

12 3 Definitions; Communications Services. Amend RSA 82-A:2, III to read as follows:

13 III. "Communications services" means services for transmitting, emitting, or receiving signs,
14 signals, writing, images, sounds or intelligence of any nature by any electromagnetic system capable
15 of 2-way communication and includes, without limitation, messages or information transmitted
16 through use of local, toll and wide area telephone service; private line services and networks,
17 whether leased, rented or owned; channel services; telegraph services; teletypewriter services; cable
18 television; computer exchange services; mobile telecommunications services; **VoIP**; facsimile
19 services; specialized mobile radio; stationary 2-way radio; paging services; or any other form,
20 whether stationary, portable or mobile, of 2-way communications; or any other transmission of
21 messages or information by electronic or similar means, between or among points by wire, cable,
22 fiber-optics, laser, microwave, radio, satellite or similar facilities. "Communications services" shall
23 not include:

24 4 Definitions; Charges for Mobile Telecommunications Services. Amend RSA 82-A:2, XV to read
25 as follows:

26 XV. "Charges for mobile telecommunications services" means any charge for, or associated
27 with, the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the
28 Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a
29 service provided as an adjunct to a commercial mobile radio service, that is billed to the taxpayer by
30 or for the taxpayer's home service provider, **or that is otherwise paid by the taxpayer directly to**

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1 ***the home service provider or through a third party vendor***, regardless of whether individual
2 transmissions originate or terminate within the licensed service area of the home service provider.

3 5 Definitions; Home Service Provider. Amend RSA 82-A:2, XVIII to read as follows:

4 XVIII. "Home service provider" means the facilities-based carrier or reseller with which the
5 taxpayer contracts for the provision of mobile telecommunications services ***or which provides***
6 ***prepaid communications services to the taxpayer.***

7 6 Definitions; Mobile Telecommunications Service. Amend RSA 82-A:2, XX to read as follows:

8 XX. "Mobile telecommunications service" means commercial mobile radio service, as defined
9 in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999. ***For the***
10 ***purposes of sourcing services, "mobile telecommunications services" includes nomadic***
11 ***VoIP.***

12 7 New Paragraphs; Definitions; Prepaid Communications Services; VoIP. Amend RSA 82-A:2 by
13 inserting after paragraph XXVI the following new paragraphs:

14 XXVII. "Prepaid communications services" means communications services purchased by a
15 taxpayer in blocks, representing units of service or unlimited service for a stated period of time,
16 directly through a retailer or through a third party vendor.

17 XXVIII. "VoIP" means voice over Internet protocol. For the purpose of sourcing
18 communications services there are 2 types of VoIP, nomadic and fixed.

19 (a) Nomadic VoIP is mobile and can be used anywhere there is an Internet connection.

20 (b) Fixed VoIP generally is not accessible outside the user's home or business.

21 8 Imposition of Tax; Reference Added. Amend RSA 82-A:4 to read as follows:

22 82-A:4 Imposition of Tax; Interstate Communications Services. Except as provided in RSA 82-
23 A:4-b ***and RSA 82-A:4-d***, a tax is imposed upon interstate communications services and private
24 communications services furnished to a person in this state and purchased at retail from a retailer
25 by such person, at the rate of 7 percent of the gross charge when such service purchased on a call-by
26 call basis originates in this state and terminates outside this state or originates outside this state
27 and terminates in this state and the service address is in this state, or when such service purchased
28 on a basis other than a call-by-call basis is provided to a person with a place of primary use in this
29 state or when such private communications services are apportioned to this state in accordance with
30 RSA 82-A:4-c. Provided however, a tax is imposed upon interstate paid calling service furnished to a
31 person in this state and purchased at retail from a retailer by such person, at the rate of 7 percent of
32 the gross charge when the origination point of the communications signal (as first identified by
33 either (a) the seller's telecommunications system, or (b) information received by the seller from its
34 service provider, where the system used to transport such signals is not that of the seller) is in this
35 state. To prevent actual multi-state taxation of communications services that are subject to taxation
36 under this section, any taxpayer, upon proof that that taxpayer has paid a tax in another state on
37 such services, shall be allowed a credit against the tax imposed in this section to the extent of the

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1 amount of such tax properly due and paid in such other state. However, such tax is not imposed on
2 communications services to the extent such services may not, under the Constitution and statutes of
3 the United States, be made the subject of taxation by the state.

4 9 New Section; Special Rules for Prepaid Communications Services. Amend RSA 82-A by
5 inserting after section 4-c the following new section:

6 82-A:4-d Special Rules for Prepaid Communications Services.

7 I. To the extent that prepaid communications services are not taxable under RSA 82-A:4-b, a
8 tax is imposed on intrastate and interstate communications services that are prepaid
9 communications services, as defined in RSA 82-A:2, XXVII, provided by a retailer to a taxpayer
10 whose primary place of use is within this state, regardless of where the communications services
11 originate, terminate, or pass through. The tax shall be imposed on the gross charge at the rate
12 specified in RSA 82-A:3 and RSA 82-A:4 and shall be collected and remitted by the retailer.

13 II. If the prepaid communications services are represented by a block of units, which units
14 are depleted as communications services are used, regardless of whether the taxpayer purchases the
15 units of service directly from the retailer or from a third party vendor:

16 (a) The tax shall be calculated on the number of units of service used each month by the
17 taxpayer, unless the retailer can reasonably identify charges not subject to tax under this chapter
18 from its books and records kept in the ordinary course of business.

19 (b) The tax shall be based on the gross charge paid by the taxpayer, regardless of any
20 contract between the third party vendor and the retailer.

21 (c) The gross charge shall be deemed tax inclusive.

22 (d) The retailer shall file returns and remit the tax collected pursuant to RSA 82-A:7.

23 III. If the prepaid communications services provide unlimited services for a stated period of
24 time, regardless of whether the taxpayer purchases the unlimited services directly from the retailer
25 or from a third party vendor:

26 (a) The tax shall be calculated on the gross charge paid by the taxpayer, regardless of
27 any contract between the third party vendor and the retailer.

28 (b) The retailer may apply its standard usage formula in determining how much of the
29 gross charge paid by the taxpayer is attributable to taxable communications services used in a
30 reporting month; otherwise, the retailer shall remit tax based on the full amount of the gross charge
31 paid by the taxpayer in the month following activation of service.

32 (c) The gross charge shall be deemed tax inclusive.

33 (d) The retailer shall file returns and remit tax collected pursuant to RSA 82-A:7.

34 10 Applicability. This act shall apply to taxable periods ending after June 30, 2015.

35 11 Effective Date. This act shall take effect July 1, 2015.

LBAO
15-0619
01/26/15

SB 199-FN-A - FISCAL NOTE

AN ACT including prepaid communications services as taxable under the communications services tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, **as introduced**, will increase state general fund revenues by \$2,000,000 in FY 2016 and each year thereafter. There will be no fiscal impact on state, county, and local expenditures, or county and local revenue.

METHODOLOGY:

The Department of Revenue Administration (DRA) states this bill establishes a sourcing rule for Voice over Internet Protocol (VoIP), provides for a definition of, and a sourcing rule for prepaid communication services, and adds prepaid communication services as taxable to the retailer. This bill would be effective July 1, 2015, and applicable to taxable periods ending after June 30, 2015. DRA states the transfer from landlines to VoIP and mobile devices and the use of prepaid communications services will continue to grow. Upon review of monthly communications services tax (CST) returns, the Department estimates that this bill will increase revenues annually in the amount of \$2,000,000 beginning in FY 2016 based on providers that do not currently charge tax on prepaid communication services or VoIP. This bill could be administered by the Department at no additional cost.