

HOUSE No. 3049

By Mr. Nangle of Lowell, petition of David M. Nangle relative to the rules used for determining the taxing jurisdiction for telecommunications services and clarifying tax treatment of bundled communications service offerings. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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 Section
2 1 of chapter 64H of the General Laws, as appearing in the 2004
3 Official Edition, is hereby amended by striking out the word
4 “mobile”.

1 SECTION 2. The definition of “Place of primary use” in said
2 Section of said Chapter 64H of the General Laws, as so appearing, is
3 hereby further amended by inserting after the word “which” the
4 second time it appears the following words:—in the case of mobile
5 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 defi-
3 nition of “Place of primary use” the following 2 definitions:—“Post-
4 paid calling service”, a telecommunication service obtained by
5 making payment on a call-by-call basis either through the use of a
6 credit or payment mechanism such as a bank card, travel card, credit
7 card, or debit card, or by charge made to a telephone number which
8 is not associated with the origination or termination of the telecom-
9 munications service. A post-paid calling service includes a telecom-
10 munications service that would be a prepaid calling service except it

11 is not exclusively a telecommunications service. “Private communi-
12 cation service”, a telecommunications service that entitles the cus-
13 tomer to exclusive or priority use of a communications channel or
14 group of channels between or among termination points, regardless
15 of the manner in which such channel or channels are connected, and
16 includes switching capacity, extension lines, stations, and any other
17 associated services that are provided in connection with the use of
18 such channel or channels.

1 SECTION 4. The definition of “Sale at retail” in said Section 1 of
2 said Chapter 64H of the General Laws, as so appearing, is hereby
3 further amended by striking out the fifth sentence and by inserting in
4 place thereof the following sentence:—

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

1 SECTION 5. The definition of “Sale at retail” in said Section 1 of
2 said Chapter 64H, as so appearing, is hereby further amended by
3 inserting after the sixth sentence the following two sentences:—

4 In the case of a post-paid calling service, the sale of such service
5 shall be deemed a sale within the Commonwealth if the origination
6 point of the telecommunications signal as first identified by either (i)
7 the seller’s telecommunications system, or (ii) information received
8 by the seller from its service provider, where the system used to
9 transport such signals is not that of the seller, is in this Common-
10 wealth. In the case of a private communication service, the sale of
11 such service shall be deemed a sale within the Commonwealth if the
12 service is apportioned to this Commonwealth in accordance with
13 Section X of this Chapter.

1 SECTION 6. Said Section 1 of said Chapter 64H of the General
2 Laws, as so appearing, is hereby amended by inserting after the defi-
3 nition of “Services” the following definition:—

4 “Service address”, (1) the location of the telecommunications
5 equipment to which a customer’s call is charged and from which the
6 call originates or terminates, regardless of where the call is billed or
7 paid.

8 (2) If the location in (1) is not known, service address means the
9 origination point of the signal of the telecommunications service
10 first identified by either the seller’s telecommunications system or in
11 information received by the seller from its service provider, where
12 the system used to transport such signals is not that of the seller.

13 (3) If the location in (1) and (2) is not known, service address
14 means the location of the customer’s place of primary use.

1 SECTION 7. Chapter 64H of the General Laws, as appearing in
2 the 2004 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:—

6 (i.) Service for a separate charge related to a customer channel
7 termination point is apportioned to this Commonwealth if such cus-
8 tomer channel termination point is located within this Common-
9 wealth.

10 (ii.) Service where all customer channel termination points are
11 located entirely within this Commonwealth is apportioned to this
12 Commonwealth.

13 (iii.) Service for segments of a channel between two customer
14 channel termination points one of which is located in this Common-
15 wealth and the other is located within another state and which seg-
16 ments of channel are separately charged is apportioned 50% to this
17 Commonwealth. iv. Service for segments of a channel located in this
18 Commonwealth and in other states and which segments are not sepa-
19 rately billed is apportioned to this Commonwealth based on the per-
20 centage determined by dividing the number of customer channel
21 termination points in this Commonwealth by the total number of
22 customer 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 ease 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 kept
8 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 on
5 or after January 1, 2008.