

IC 6-2.5-12

Chapter 12. Taxing Situs of Nonmobile Telecommunications Service

IC 6-2.5-12-1

"Air to ground radiotelephone service"

Sec. 1. As used in this chapter, "air to ground radiotelephone service" means a radiotelephone service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

As added by P.L.257-2003, SEC.31. Amended by P.L.7-2015, SEC.6.

IC 6-2.5-12-2

"Call by call basis"

Sec. 2. As used in this chapter, "call by call basis" means any method of charging for telecommunications services by which the price is measured by individual calls.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-3

"Communications channel"

Sec. 3. As used in this chapter, "communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-4

"Customer"

Sec. 4. As used in this chapter, "customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under this chapter. The term does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-5

"Customer channel termination point"

Sec. 5. As used in this chapter, "customer channel termination point" means the location where the customer either inputs or receives the communications.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-6**"End user"**

Sec. 6. As used in this chapter, "end user" means the person who uses the telecommunications service. In the case of an entity, "end user" means the individual who uses the service on behalf of the entity.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-7**"Home service provider"**

Sec. 7. As used in this chapter, "home service provider" means the facilities based carrier or reseller with which the customer contracts for the provision of mobile telecommunications service.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-8**"Mobile telecommunications service"**

Sec. 8. As used in this chapter, "mobile telecommunications service" means commercial mobile radio service, as defined in 47 CFR 20.3 as in effect on June 1, 1999.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-9**"Place of primary use"**

Sec. 9. As used in this chapter, "place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-10**"Post paid calling service"**

Sec. 10. As used in this chapter, "post paid calling service" means the telecommunications service obtained by making a payment on a call by call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

As added by P.L.257-2003, SEC.31. Amended by P.L.145-2007, SEC.12.

IC 6-2.5-12-11

"Prepaid calling service"

Sec. 11. As used in this chapter, "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.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-11.5

"Prepaid wireless calling service"

Sec. 11.5. As used in this chapter, "prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services, including the download of content, digital products delivered electronically, and ancillary services, which:

- (1) must be paid for in advance; and
- (2) are sold in predetermined units or dollars, the balance of which declines with use in a known amount.

As added by P.L.145-2007, SEC.13.

IC 6-2.5-12-12

"Private communications service"

Sec. 12. As used in this chapter, "private communication 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.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-13

"Service address"

Sec. 13. As used in this chapter, "service address" means the following:

- (1) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
- (2) If the location described in subdivision (1) is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- (3) If neither of the locations described in subdivision (1) or (2) is known, the location of the customer's place of primary use.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-14

Sourcing of telecommunications service sold call by call

Sec. 14. Except for the telecommunications services listed in section 16 of this chapter, the sale of telecommunications service sold on a call by call basis shall be sourced to:

- (1) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or
- (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-15

Sourcing of telecommunications service sold on other basis; sourcing of Internet access service or ancillary services

Sec. 15. Except for the telecommunications services listed in section 16 of this chapter, a sale of:

- (1) telecommunications services sold on a basis other than a call by call basis;
- (2) Internet access service; or
- (3) an ancillary service;

is sourced to the customer's place of primary use.

As added by P.L.257-2003, SEC.31. Amended by P.L.182-2009(ss), SEC.184.

IC 6-2.5-12-16

Sourcing of particular types of telecommunications services

Sec. 16. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

- (1) A sale of mobile telecommunications services, other than air to ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act and IC 6-8.1-15.
- (2) A sale of post paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:
 - (A) the seller's telecommunications system; or
 - (B) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- (3) A sale of prepaid calling service or a sale of prepaid wireless calling service is sourced in the following manner:
 - (A) When the service is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
 - (B) When the service is not received by the purchaser at a business location of the seller, the sale is sourced to the

location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(C) When clauses (A) and (B) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(D) When clauses (A) through (C) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(E) When clauses (A) through (D) do not apply, including the circumstance in which the seller is without sufficient information to apply the previous clauses, the location will be determined by either:

- (i) the address from which tangible personal property was shipped, from which any digital good or computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold); or
- (ii) in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location associated with the mobile telephone number.

(4) A sale of a private communications service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one (1) jurisdiction or level of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one (1) jurisdiction or level of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing

the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

As added by P.L.257-2003, SEC.31. Amended by P.L.145-2007, SEC.14.