Corporation Tax Bulletin 2018-04

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Telecommunications Gross Receipts Tax – Taxable Receipts

The Pennsylvania telecommunications gross receipts tax (GRT) is imposed upon receipts from sales of telecommunications. This notice is being issued to provide guidance concerning the receipts from telecommunications businesses that are subject to GRT under Article XI of the TRC as amended through Act 52 of 2018.

The Tax Reform Code (TRC) provides that GRT is imposed on gross receipts from:

1. Telegraph or telephone messages transmitted wholly within this state or transmitted in interstate commerce where the message originates or terminates in this state and the charges are billed to a service address in this state.

2. Mobile telecommunications services messages sourced to this state based on the place of primary use standard set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. § 117).

72 P.S. § 8101(a)(2) and (3).

The only deductions from taxable gross receipts authorized by the TRC are receipts from:

1. Sales of access to the internet made to the ultimate consumer.

2. Sales for resale to persons subject to tax on the resale of the telecommunications services.

3. Sales of telephones, telephone handsets, modems, tablets and related accessories, including cases, chargers, holsters, clips, hands-free devices, screen protectors and batteries.

72 P.S. § 8101(a)(2)(i), (ii) and (iii); 72 P.S. § 8101(a)(3)(i), (ii) and (iii).

End user charges, including costs, fees, and surcharges itemized on a customer's bill to recover the costs of providing service are subject to GRT. For example, universal service fund (USF) surcharges itemized on a customer's bill representing the telecommunications service provider's contributions to the USF are subject to GRT. However, the Department of Revenue by policy allows a deduction for distributions approved by the Universal Service Administrative Company (USAC) from the USF to a telecommunications service provider.

GRT surcharges and other tax surcharges representing the recovery of the costs of taxes imposed on the telecommunications provider are subject to GRT.

Moneys collected from a customer in trust for the Commonwealth for sales tax owed by the customer on telecommunications purchases are not a receipt of the telecommunications service provider for purposes of the GRT.

In *Verizon Pennsylvania, Inc. v. Commonwealth*, 127 A.3d 745 (Pa. 2015), the Pennsylvania Supreme Court clarified the receipts subject to GRT. Under the Court's decision in *Verizon*, the term "telephone messages transmitted" includes any item of equipment or service which renders the transmission of telephone messages more effective or makes telephone communication more satisfactory. The Court relied upon and reinforced its 1943 decision in *Commonwealth v. Bell Telephone Company*, 34 A.2d 531 (Pa. 1943) (Bell III) to reach this conclusion. In *Bell III*, the services and items of equipment held to be subject to GRT included auxiliary lines, enhanced signaling equipment, amplifiers, receivers, transmitter sets, iron boxes for outdoor telephones, telephone receivers and extension stations.

Verizon also held that receipts from sales and leasing of private lines is subject to gross receipts tax. A private line is "[A] dedicated, uninterrupted telecommunications channel . . . that interconnects two locations and provides the customer with exclusive use of that telecommunications channel that is used for the transmission of communications of any type (i.e. voice, data, and/or video) between the two endpoints of the private line." *Verizon*, 127 A.3d at 760, footnote 18. A private line may be interconnected with other private lines to form a private network. For example, a bank may use a private line to connect its headquarters with a branch office or a private line may be used to provide a dedicated telecommunications channel between individual Automated Teller Machines. *See Verizon Stipulation of Facts 1*, 70 MAP 2013.

The following provides a non-comprehensive sample of sales of services and equipment that generate taxable receipts:

1. End user charges, including costs, fees, and surcharges itemized on a customer's bill (e.g. subscriber line charges and gross receipts tax surcharges).

2. Directory Assistance.

3. Late payment fees.

4. Non-recurring charges, including termination, installation, repairs, moves and changes to service. Non-recurring charges include any charges for wires, switches, connectors, or similar property provided as part of the termination, installation, repairs, moves and changes to service.

5. Enhanced telecommunications receipts, including voicemail, call forwarding, call waiting and custom ringtones.

6. Receipts from sales of service using voice over internet protocol (VOIP).

7. Receipts from paging services.

8. Receipts from sales and leasing of private lines and private networks, including dark fiber.

9. Except as provided below, receipts from sales and leasing of equipment and

property. The following provides a comprehensive list of authorized GRT deductions:

1. Receipts from sales of internet service to the ultimate consumer and sales of service exempt under the Internet Tax Freedom Act (ITFA) 47 U.S.C. §151 et seq.

2. Resale receipts from persons subject to GRT on the resale of the telecommunications.

3. Sales tax collected by the taxpayer.

4. Distributions to a telecommunications provider from the USF authorized by USAC.

5. The 911 surcharge authorized by and exempt from tax under 35 Pa.C.S. §5306.2 relating to uniform 911 surcharge.

6. Bad debt, provided the taxpayer satisfies the conditions established in CT Bulletin 2011-02.

7. Receipts from sales and leasing of telephones, telephone handsets, modems, tablets and related accessories, including cases, chargers, holsters, clips, hands-free devices, screen protectors and batteries.

For additional information please visit the Department's website www.revenue.pa.gov.