

**REPORT OF THE VIRGINIA
DEPARTMENT OF TAXATION**

**Report of the 2015
Communications Sales and
Use Tax Study (HJR 635, 2015)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 19

**COMMONWEALTH OF VIRGINIA
RICHMOND
2015**



COMMONWEALTH of VIRGINIA

Department of Taxation

December 14, 2015

The Honorable Terence R. McAuliffe
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219

Virginia General Assembly
Member of the Virginia General Assembly
General Assembly Building
Richmond, Virginia 23219

Dear Governor McAuliffe and Members of the General Assembly:

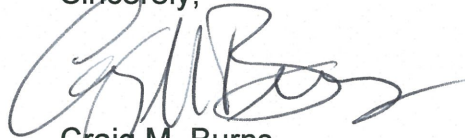
House Joint Resolution 635, passed by the 2015 Session of the General Assembly, requires the Department to study the Communications Sales and Use Tax with the assistance of an advisory panel comprising of representatives of local governments and affected segments of the communications industry. The Department was asked to complete its meetings by November 30, 2015, and submit its findings and recommendations by the first day of the 2016 General Assembly Session.

While the advisory panel recognized that there may be concerns regarding the allocation of tax revenues to localities, there was consensus that those concerns were outside the scope of this report. Additionally, there was consensus that there was little support for a tax rate increase. The Report recommended that if the General Assembly would like to enact legislation to increase Communications Sales and Use Tax revenues and level the playing field, then this can be accomplished by eliminating the current exemptions for audio and video streaming services and prepaid calling services.

The Honorable Terence R. McAuliffe
December 14, 2015
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I hope that you find the information contained within this report useful in your deliberations of this issue. If you have any questions or require additional information about this report, please contact me at (804) 786-333.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig M. Burns', written in a cursive style.

Craig M. Burns
Tax Commissioner

CMB/amm
Enclosures

cc: The Honorable Richard D. Brown, Secretary of Finance



Report of the 2015 Communications Sales and Use Tax Study

**Department of Taxation
December 11, 2015**

Preface

Authority

House Joint Resolution 635, enacted in the 2015 General Assembly Session, requires the Department of Taxation (“Department”) to study the Communications Sales and Use Tax with the assistance of an advisory panel comprised of representatives of local governments and affected segments of the communications industry (Appendix I). The study shall i) evaluate the overall performance of the Communications Sales and Use Tax , ii) determine whether competing communications services are being taxed on an equal basis, iii) identify any communications services that are receiving a competitive advantage by not being taxed, and iv) determine whether the tax is structured such that it will apply to new methods of communications. The Department was asked to complete its meetings by November 30, 2015, and submit its findings and recommendations by the first day of the 2016 General Assembly Session.

Staff Assigned to Report

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Report of the 2015 Communications Sales and Use Tax Study

EXECUTIVE SUMMARY

House Joint Resolution 635 requires the Department of Taxation (“Department”) to study the Communications Sales and Use Tax (“CSUT”) with the assistance of an advisory panel comprised of representatives of local governments and affected segments of the communications industry. The Department is required to i) evaluate the overall performance of the CSUT, ii) determine whether competing communications services are being taxed on an equal basis, iii) identify any communications services that are receiving a competitive advantage by not being taxed, and iv) determine whether the tax is structured such that it will apply to new methods of communications.

The advisory panel met on June 9, 2015, to determine the scope of the study and identify issues regarding the CSUT that have been encountered by the advisory panel members. The consensus of the advisory panel was to focus on a revenue analysis of the CSUT, the administrative expenses taken out of the Fund for the administration of the Communications Taxes by the Department and the operation of the telecommunications relay service, and the current exemptions from the tax. Additionally, while the advisory panel recognized that there may be concerns regarding the allocation of revenues to localities, it determined that those concerns were outside the scope of this report. Summaries of the issues and recommendations are below.

Revenue Analysis

Since the tax became effective on January 1, 2007, the revenue deposited into the Communications Sales and Tax Trust Fund (“Fund”) has generally decreased each year (Fiscal Year 2013 being the exception). However, deposits into the Fund do not reflect a complete picture of transactions subject to the tax because of refunds paid out of the fund in later fiscal years. Also, the erroneous reporting by taxpayers of CSUT revenues as Retail Sales and Use Tax revenues resulted in CSUT revenue being recognized in later fiscal years. For purposes of this report, revenue has been adjusted to reflect refunds and transfers in the fiscal year in which the transactions occurred.

CSUT Fund Revenues

Fiscal Year	CSUT Fund Revenues	Adjusted for Refunds and Transfers
2008	\$489,275,599	\$472,023,892
2009	\$458,281,570	\$451,455,426
2010	\$456,064,854	\$467,940,012
2011	\$445,499,490	\$446,533,444
2012	\$436,173,519	\$447,429,825
2013	\$439,052,465	\$436,819,517
2014	\$431,513,881	\$436,584,524
2015	\$427,649,556	\$396,450,327

The advisory panel discussed whether the decrease in communications tax revenue is due to new technology and changes in consumer behavior. Between 2007 and 2014, the number of telephone landlines has decreased by an estimated 21.1 percent. Another change in the telecommunications industry affecting CSUT revenue is the sharp decline in revenue from satellite radio services. Between 2007 and 2014, gross receipts from satellite radio services decreased by 91.1 percent. Also, streaming audio and video services and prepaid calling services, which are not currently subject to the tax, have become more popular.

The Department also estimated the impact on CSUT revenue of increasing the tax rate from 5 percent to 5.3 or 6 percent. If the tax had been imposed at the rate of 5.3 percent in Fiscal Year 2014, an additional \$24.1 million in revenues would have been available for distribution. Imposing the tax at the rate of 6 percent would have resulted in an additional \$80.3 million available for distribution. However, the consensus of the advisory panel was that there was little support for a rate increase.

Administrative Expenses

The advisory panel also discussed the Department's administrative expenses, which are transferred from the Fund prior to distribution to localities. The Department is authorized to transfer from the Fund its direct costs of administration of the tax, which include three full time auditors, time spent by several other employees who assist with the administration of the tax, and return processing charges. The Department's administrative fee for Fiscal Year 2014 was \$430,094.

Telecommunications Relay Service

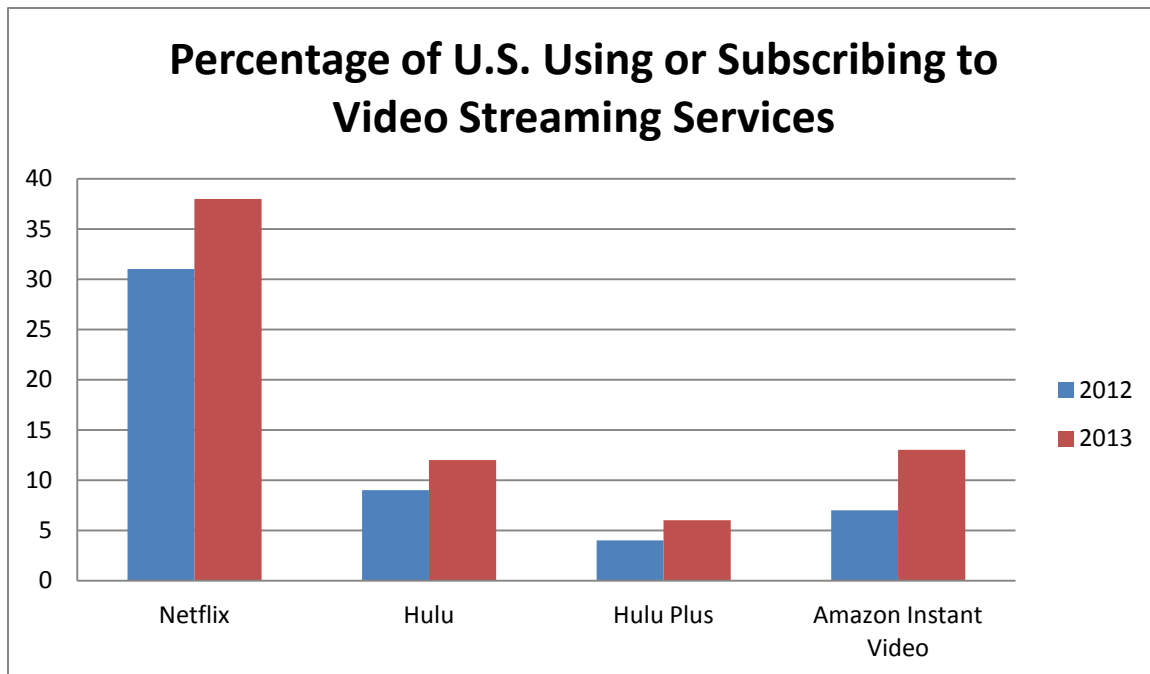
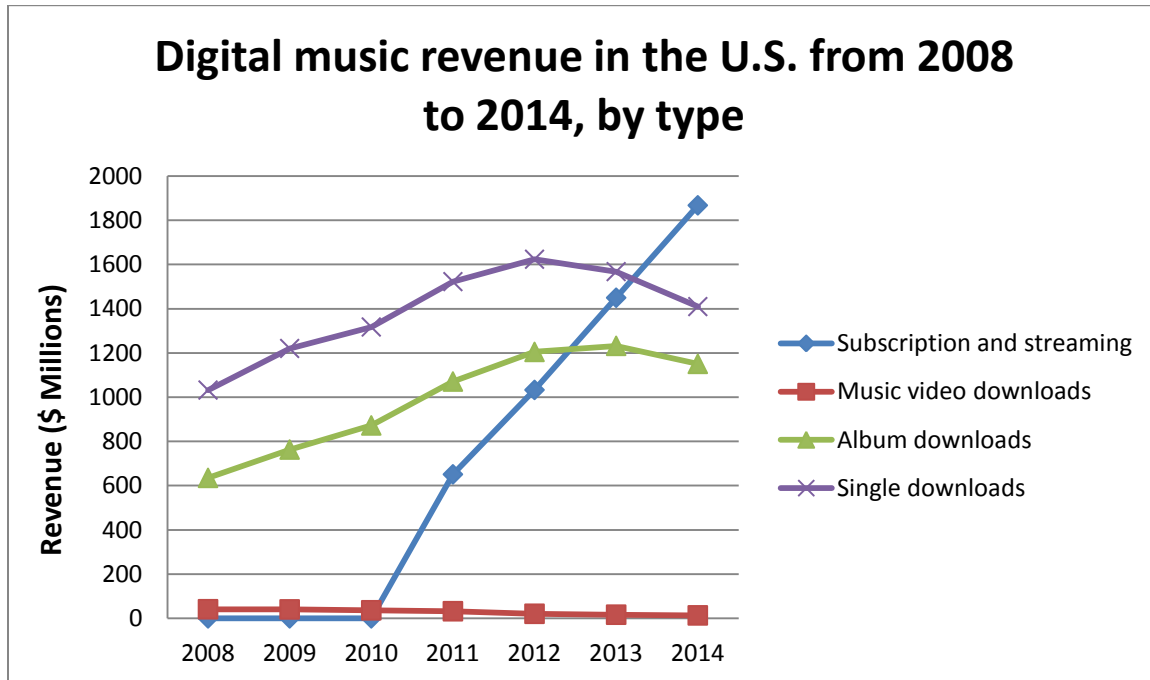
Moneys from the Fund also are distributed to the Virginia Department of Deaf and Hard-of-Hearing ("VDDHH") to pay for the operation of the telecommunications relay service. VDDHH awarded a new contract for the telecommunications relay service effective August 1, 2015, that is anticipated to result in savings of approximately \$5 million a year to the Fund. These savings will increase the amounts in the Fund available for distribution to localities.

Exemptions

The advisory panel reviewed the current exemptions from the CSUT, specifically the exemption for streaming audio and video and the exemption for prepaid calling services.

The Department currently allows an exemption for audio and video streaming services based on the statutory exemption provided under *Va. Code* § 58.1-648, for "digital products delivered electronically." If the exemption for digital products delivered electronically was clarified so as to not cover audio and video streaming services, such services would be subject to taxation. The current exemption for streaming audio and

video services places similar services provided by cable television providers at a competitive disadvantage.



¹ Source: www.statista.com (citing RIAA); *Digital Music Revenue in the United States from 2008 to 2014, by type (in million U.S. dollars)*; Web; accessed 22 Sept. 2015; <<http://www.statista.com/statistics/186710/digital-music-revenue-in-the-us-since-2008/>>.

Also, under *Va. Code* § 58.1-648, charges for the sale or recharge of prepaid calling services are not included in the sales price for purposes of the tax. The current exemption for prepaid calling services puts similar services sold on a post-paid basis at a competitive disadvantage. Between 2012 and 2014, the amount of Prepaid Wireless E-911 Fee revenues is estimated to have grown by 18.4 percent. However, between 2011 and 2014, the amount of Postpaid Wireless E-911 Surcharge revenues is estimated to have grown by only 1.7 percent.

Recommendations

While the advisory panel recognized that there may be concerns regarding the allocation of tax revenues to localities, there was consensus that those concerns were outside the scope of this report. Additionally, there was consensus that there was little support for a tax rate increase.

If the General Assembly would like to enact legislation to increase CSUT revenues and level the playing field, this can be accomplished by broadening the tax base by eliminating the current exemptions for audio and video streaming services and prepaid calling services.

² Source: www.statista.com (citing Nielsen); *Video Streaming Gains Popularity: % of People in the U.S. who use or subscribe to video streaming services*; Web; accessed 23 Sept. 2015; <<http://www.statista.com/chart/1477/adoption-of-video-streaming-services/>>.

Report of the 2015 Communications Sales and Use Tax Study

SECTION I OVERVIEW OF THE ISSUE

House Joint Resolution 635

House Joint Resolution 635, enacted in the 2015 Session of the General Assembly, required the Department of Taxation (the “Department”) to convene an advisory panel comprised of representatives of local governments and affected segments of the communications industry. A copy of the resolution is attached as Appendix I.

The Department was required to i) evaluate the overall performance of the Communications Sales and Use Tax, ii) determine whether competing communications services are being taxed on an equal basis, iii) identify any communications services that receive a competitive advantage by not being taxed, and iv) determine whether the tax is structured such that it will apply to new methods of communications. The Department was asked to complete its meetings by November 30, 2015, and submit its findings and recommendations by the first day of the 2016 General Assembly Session.

Communications Sales and Use Tax

Background

2006 House Bill 568 (*Acts of Assembly 2006, Chapter 780*) replaced many of the state and local communications taxes and fees with a centrally administered Communications Sales and Use Tax (CSUT) and a uniform statewide E-911 Tax on landline telephone service beginning January 1, 2007. Additionally, House Bill 568 imposed a public rights-of-way use fee on cable television providers beginning January 1, 2007.

Under House Bill 568, revenue from the CSUT, the Landline E-911 Tax and the Cable Television Rights-of-Way Fee (the “Communications Taxes”) is collected and remitted monthly by communications services providers to the Department and deposited into a non-reverting fund known as the Communications Sales and Use Tax Trust Fund (the “Fund”). After transferring moneys from the Fund to the Department to pay for the direct costs of administering the Communications Taxes, the moneys in the Fund are allocated and distributed to localities after payment (1) to the Department of Deaf and Hard-of-Hearing to fund the telephone relay service center and (2) any franchise fee amount due to localities in accordance with any cable television franchise agreements in effect as of January 1, 2007. Each locality’s share of the net revenue is distributed as soon as practicable after the end of the next month based on the locality’s

share of total revenues received from the following taxes and fees in Fiscal Year 2006 from local tax rates adopted on or before January 1, 2006:

- Local consumer utility tax on landline and wireless telephone service;
- Local E-911 tax on landline telephone service;
- The portion of the local BPOL tax on public service companies exceeding .5% currently billed to customers in some grandfathered localities;
- Cable television franchise fees;
- Video programming excise tax on cable television services; and
- Consumer utility tax on cable television.

These local taxes were subject to various caps and limitations. Prior to the enactment of House Bill 568, any locality could impose the consumer utility tax on the purchase by a consumer of local landline telecommunication service at a rate not to exceed 20 percent of the monthly charge; however, the tax was not applicable to any amount charged in excess of \$15 per month for residential customers. Thus, the consumer utility tax on residential customers was effectively capped at \$3 a month. There was no ceiling on the local consumer utility tax for commercial and industrial customers. Any locality that had a higher rate of taxation in effect before July 1, 1972, was allowed to continue imposing the local consumer utility tax at that rate. However, the consumer utility tax on local wireless telephone service could be imposed only at a rate equal to 10 percent of the monthly gross charge to a consumer and was not applicable to any amount charged in excess of \$30 per month for each service number. Additionally, no tax was imposed on satellite video programming.

House Bill 568 required the Auditor of Public Accounts (“APA”) to determine the amount of revenues received by every locality for Fiscal Year 2006, at rates adopted on or before January 1, 2006, for each of these taxes and fees. Local governments and service providers were required to cooperate with the APA and provide requested information.

Effective July 1, 2010, House Bill 765 (Chapter 365), House Bill 1090 (Chapter 285) and Senate Bill 381 (Chapter 385) allowed a locality to request a ruling from the Department adjusting its distribution from the Fund so long as the aggregate redistribution from all other localities does not exceed \$100,000. A locality is required to present evidence to the Department that it collected telecommunications or television cable funds in Fiscal Year 2006 from repealed local communications taxes and fees before obtaining a ruling from the Department. A locality seeking an increase in its distribution that exceeds \$100,000 must obtain a law change.

Other States

Currently, seven states do not tax communications services (Alaska, California, Delaware, Idaho, Nevada, Oregon, and West Virginia). Three states (Alabama, Illinois, and Montana) impose an excise tax on communications services instead of a retail tax and one state (New Mexico) imposes a retail tax on intrastate communications services and an excise tax on interstate communications services. Of the 43 states, not including Virginia, that impose a tax on communications services, 41 impose the tax on intrastate communications services and two states (Hawaii and Maryland) exempt such services. Twenty-nine states impose a tax on interstate communications services and 14 exempt interstate communications services. Additionally, 25 states tax “900” type phone services, 2 states (New Hampshire and New Mexico) tax certain kinds of “900” type phone services, and 16 states exempt such services. Virginia imposes the Communications Sales and Use Tax on intrastate communications services and interstate communications services, and exempts “900” type phone services.

Several states impose a sales tax or similar tax on digital goods, such as streaming media transferred electronically, either through legislation or administratively extending existing laws. In general, the Virginia Retail Sales and Use Tax is only imposed on the sale or lease of tangible personal property or services in connection with the sale or lease of tangible personal property.

Streaming subscriptions have seen rapid growth according to an August 20, 2015, article in the Wall Street Journal, which noted that a leading provider “drew in \$2.01 billion in sales in this year’s first half from its U.S. streaming video business. The company says its offerings are currently taxable in roughly half of U.S. states and certain municipalities.”³

The Department has provided a matrix of the taxes on communications services in other states in Appendix IV.

Chicago Amusement Tax Extension

Effective July 1, 2015, Chicago, Illinois expanded its amusement tax to apply to “electronically-delivered amusements” at the rate of 9 percent in Amusement Tax Ruling #5 (June 9, 2015). To allow time for affected businesses to make the necessary systems changes, the tax applies to periods on and after September 1, 2015. The city is imposing the tax on the patron and only on activity that takes place within Chicago. In general, the tax applies to customers whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code, or other reliable information. The amusement tax applies to charges paid for the privilege of i) watching electronically delivered television shows, movies, or videos;

³ Peters, Mark and Bensinger, Greg. “States Eye Taxes on Streaming Video and Cloud Computing: Decline in DVD and CD sales has taken a bite out of revenue in recent years.” *Wall Street Journal* 20 Aug. 2015. Web.

ii) listening to electronically delivered music; and iii) participating in games, on-line or otherwise. The extension of the tax is estimated to raise \$12 million annually for Chicago.

The expansion of the tax has been controversial. On September 9, 2015, the non-profit Liberty Justice Center with a group of Chicago residents have filed suit against the city claiming that the City of Chicago's Finance Department exceeded its authority in administrative extending the amusement tax to streaming services by issuing a rule that imposes a new tax that the City Council did not authorize. Additionally, the suit alleges that extending the amusement tax to Internet-based streaming services violates the Internet Tax Freedom Act. The Internet Tax Freedom Act prohibits any state or political subdivision of a state from imposing multiple or discriminatory taxes on electronic commerce.

SECTION II PERFORMANCE OF THE COMMUNICATIONS SALES AND USE TAX

Advisory Panel

As directed by House Joint Resolution 635, enacted in the 2015 Session of the General Assembly, the Department of Taxation convened an advisory panel comprised of representatives of local governments and affected segments of the communications industry to examine the CSUT.

The advisory panel met on June 9, 2015, to discuss the scope of the study and issues encountered by the advisory panel members. At the meeting a broad outline of topics were discussed as potential issues for review. The consensus of the advisory panel was to focus on a revenue analysis of the CSUT, the administrative expenses taken out of the Fund for the administration of the Communications Taxes by the Department and the operation of the telecommunications relay service, and the current exemptions from the tax. Additionally, while the advisory panel recognized that there may be concerns regarding the allocation of revenues to localities, it determined that those concerns were outside the scope of this report.

Summaries of the issues discussed by the advisory panel are below. The Department provided a draft of the report to the advisory panel on November 13, 2015, along with the opportunity to provide comments or a formal response. The Department did not receive any comments or responses.

Revenue Analysis

In impacting House Bill 568, the Department was unable to determine the revenue that would be generated by the CSUT and explained that future CSUT revenues would be difficult to predict due to rapidly changing technology and increased price competition.

Since the tax became effective on January 1, 2007, the revenue deposited into the Communications Sales and Tax Trust Fund ("Fund") has generally decreased each year (Fiscal Year 2013 being the exception). However, deposits into the Fund do not reflect a complete picture of taxable transactions because the Fund is decreased for refunds in the fiscal year in which they are paid and not the fiscal year in which the transaction occurred.

CSUT Fund Revenues

Fiscal Year	CSUT Fund Revenues
2008	\$489,275,599
2009	\$458,281,570
2010	\$456,064,854
2011	\$445,499,490
2012	\$436,173,519
2013	\$439,052,465
2014	\$431,513,881
2015	\$427,649,556

Refunds have generally been issued because of the CSUT being imposed on exempt customers or internet access in error. Refunds also have been issued for the imposition of the CSUT on charges subsequently determined to be non-taxable, such as certain digital downloads and audio and video streaming over the Internet (See “Audio and Video Streaming Services” below). The following table shows the CSUT refunds by the fiscal year the refunds were issued and the fiscal year in which erroneous transaction occurred.

CSUT Refunds

Fiscal Year	Taxable Period	Payment Date
*2007	\$5,436,997	-
2008	\$16,142,953	-
2009	\$5,929,102	-
2010	\$7,375,839	\$19,240,184
2011	\$1,309,283	\$1,411,040
2012	\$1,231,674	\$12,627,520
2013	\$2,209,804	\$320,276
2014	\$297,856	\$5,368,499
2015	-	\$965,989
Total	\$39,933,508	\$39,933,508

* New tax structure began January 1, 2007

Additionally, the erroneous reporting of CSUT revenues as Retail Sales and Use Tax revenues in earlier years needed to be corrected by transferring Retail Sales and Use Tax revenues to CSUT revenues in later fiscal years. The following table shows the transfers of Retail Sales and Use Tax revenues to CSUT revenues by the fiscal year the revenues were transferred and the fiscal year in which the erroneous transaction occurred.

CSUT Revenues Erroneously Reported as Retail Sales and Use Tax Revenues

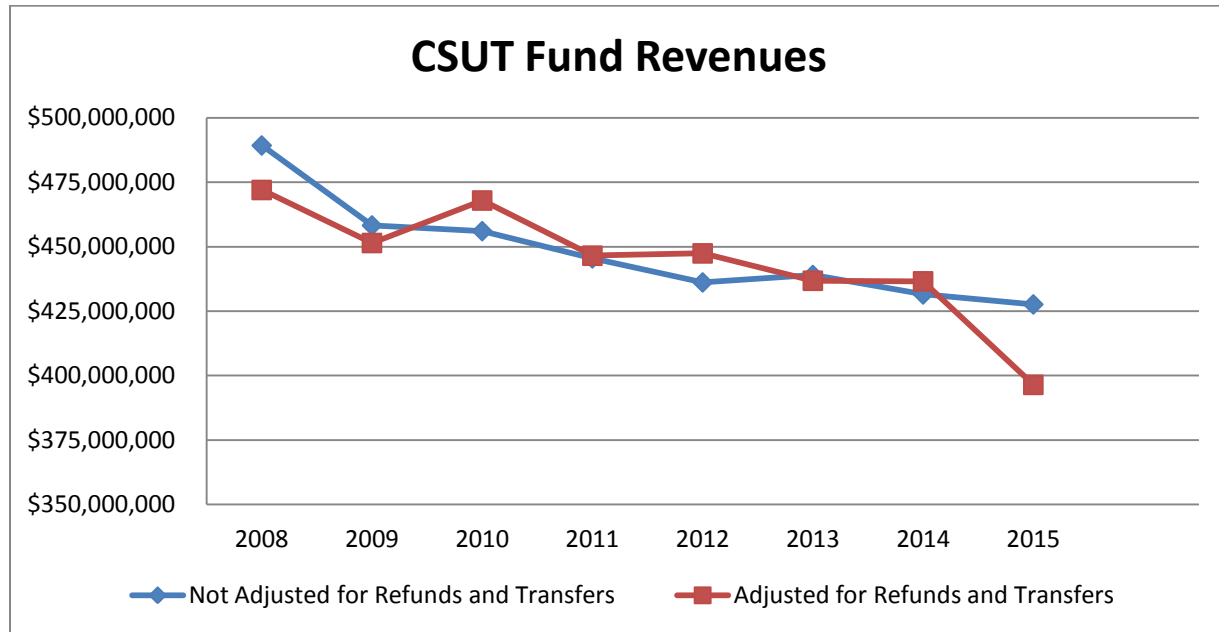
Fiscal Year	Taxable Period	Reverse Transfer
*2007	\$463,056	-
2008	\$1,108,755	-
2009	\$941,802	\$44,760
2010	\$551,334	\$562,146
2011	\$256,497	\$1,188,695
2012	\$467,604	\$328,065
2013	\$369,235	\$25,815
2014	-	-
2015	-	\$2,008,802
Total	\$4,158,283	\$4,158,283

* New tax structure began January 1, 2007

Adjusting the revenues so that both the refunds and the transfers are accounted for in the fiscal year to which they relate lessens the impact on the rate of decrease in revenues deposited in the Fund. The table and chart below show the revenues deposited into the Fund in each fiscal year as well as the revenues adjusted for the refunds and transfers beginning with the first full fiscal year that the new tax structure was in effect.

CSUT Fund Revenues

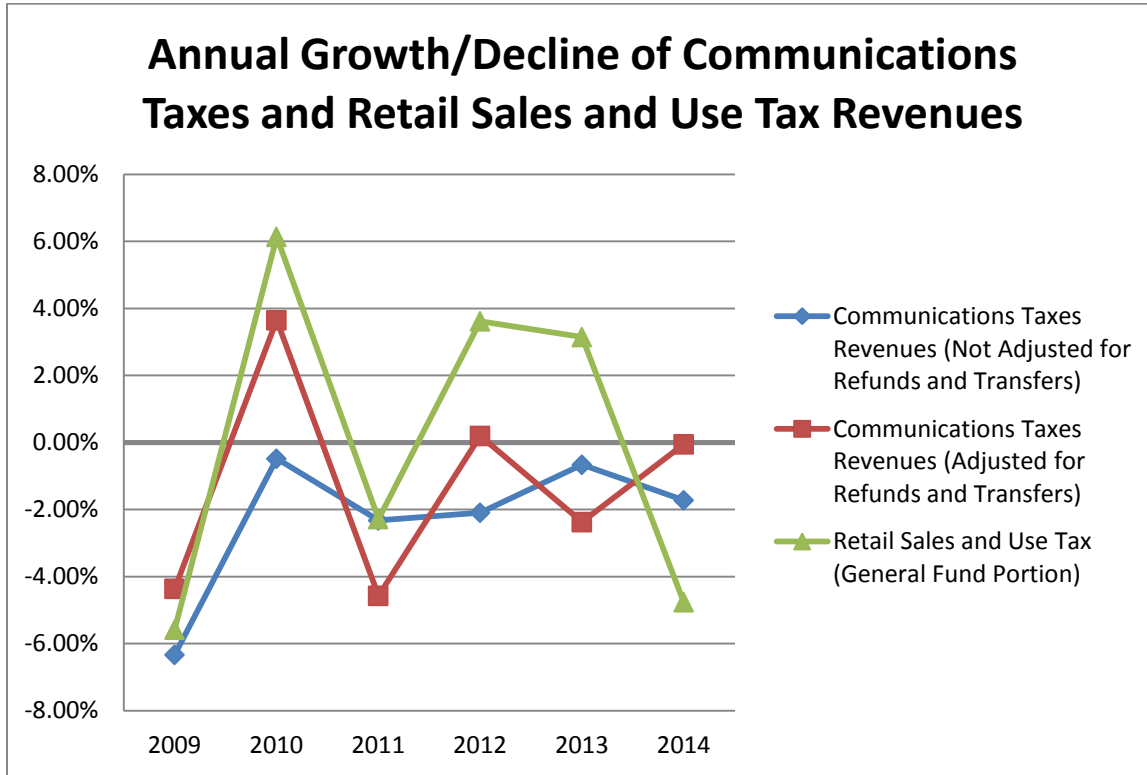
Fiscal Year	CSUT Fund Revenues	Adjusted for Refunds and Transfers
2008	\$489,275,599	\$472,023,892
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2013	\$439,052,465	\$436,819,517
2014	\$431,513,881	\$436,584,524
2015	\$427,649,556	\$396,450,327



For comparison purposes, the following chart and table show the annual percent change over the prior year of the Communications Taxes Revenues, not adjusted for refunds and transfers and adjusted for refunds and transfers, and the General Fund portion of the Retail Sales and use Tax revenues. While the Communications Taxes revenues show less growth than the General Fund portion of the Retail Sales and Use Tax revenues, there are similar increases and decreases in percent change for the adjusted Communications Taxes revenues and the General Fund portion of the Retail Sales and Use Tax revenues.

Annual Growth/Decline of Communications Taxes and Retail Sales and Use Tax Revenues

Fiscal Years	Communications Taxes Revenues (Without Adjusting for Refunds and Transfers)	Communications Taxes Revenues (Adjusted for Refunds and Transfers)	Retail Sales and Use Tax Revenues (General Fund Portion)
2009/2008	-6.33%	-4.36%	-5.58%
2010/2009	-0.48%	3.65%	6.14%
2011/2010	-2.32%	-4.57%	-2.28%
2012/2011	-2.09%	0.20%	3.62%
2013/2012	-0.66%	-2.37%	3.15%
2014/2013	-1.72%	-0.05%	-4.76%



Rate Increase

While the advisory panel reached the consensus that there was little support for increasing the CSUT rate from 5 percent, the Department estimated the impact of increasing the rate to 5.3 or 6 percent. For purposes of comparison, the following tables show the Calendar Year 2014 revenues from each category of telecommunications services at the current rate of 5 percent, 5.3 percent, and 6 percent.

Calendar Year 2014 Communications Sales and Use Tax Revenue at 5%, 5.3%, and 6% Tax Rates

Tax Rate	Landline Telephone	Wireless Telephone	Cable Television	Satellite Television	Satellite Radio	Other	Total Revenue
5% Current Rate	\$135,759,235	\$145,037,023	\$70,966,172	\$40,193,782	\$216,597	\$9,224,345	\$401,397,155
5.3% Tax Rate	\$143,904,789	\$153,739,245	\$75,224,143	\$42,605,409	\$229,593	\$9,777,805	\$425,480,984
Additional Revenue	\$8,145,554	\$8,702,221	\$4,257,970	\$2,411,627	\$12,996	\$553,461	\$24,083,829
6.0% Tax Rate	\$162,911,082	\$174,044,428	\$85,159,407	\$48,232,538	\$259,916	\$11,069,214	\$481,676,586
Additional Revenue	\$27,151,847	\$29,007,405	\$14,193,234	\$8,038,756	\$43,319	\$1,844,869	\$80,279,431

Future Trends

The advisory panel discussed whether the decrease in tax revenues may be due to changes in business models and new technology occurring in the telecommunications industry, specifically the decline in landline use. This is confirmed by data collected by the Department using CSUT returns and information from the E-911 taxes on landlines, postpaid wireless devices, and prepaid wireless transactions over the past several years. The following table shows the estimated number of landlines and postpaid wireless lines for Calendar Years 2007 through 2014 (the Department only has data on the number of postpaid wireless lines beginning with Calendar Year 2011.)

Estimated Number of Landlines and Postpaid Wireless Lines

Calendar Year:	Landlines	Postpaid Wireless Lines
2007	3,866,736	-
2008	3,748,101	-
2009	3,546,229	-
2010	3,364,706	-
2011	3,215,297	5,587,136
2012	3,196,739	5,628,831
2013	3,118,966	5,622,842
2014	3,052,358	5,682,130

Virginia is estimated to have lost 162,939 landlines between 2011 and 2014 and gained 94,994 postpaid wireless lines. Between 2007 and 2014, the number of landlines is estimated to have decreased by 21.1 percent. The gross receipts from the CSUT show similar trends, with the gross receipts for landline services decreasing by 18.1 percent between 2007 and 2014. Between 2007 and 2014, landline services went from 39.1 percent of the total gross receipts for the tax to 33.8 percent. The following tables show the CSUT revenues by category for Calendar Years 2007 through 2014, the percentage of total tax revenues for each category, and the percentage of total tax revenue for phone services and television services.

Communications Sales and Use Tax Gross Receipts by Category

Calendar Year	Landline Telephone	Wireless Telephone	Cable Television	Satellite Television	Satellite Radio	Other	Total Revenue
2007	\$3,316,985,525	\$3,178,639,814	\$1,184,033,225	\$670,934,211	\$48,119,253	\$87,415,930	\$8,486,127,958
2008	\$3,009,736,121	\$3,267,338,819	\$1,249,098,337	\$792,496,977	\$44,993,606	\$239,724,730	\$8,603,388,590
2009	\$2,824,087,531	\$3,335,960,840	\$1,333,875,487	\$758,460,666	\$49,422,989	\$133,986,470	\$8,435,793,983
2010	\$2,660,062,178	\$3,401,402,913	\$1,454,080,864	\$759,472,631	\$41,636,930	\$120,963,081	\$8,437,618,597
2011	\$2,571,101,460	\$3,302,279,469	\$1,545,102,249	\$732,146,593	\$884,675	\$194,977,361	\$8,346,491,807
2012	\$2,978,890,872	\$2,759,888,707	\$1,656,666,654	\$733,046,488	\$1,536,323	\$215,710,734	\$8,345,739,776
2013	\$3,072,464,123	\$2,406,105,536	\$1,598,647,768	\$763,267,912	\$6,276,862	\$231,032,422	\$8,077,794,623
2014	\$2,715,184,707	\$2,900,740,466	\$1,419,323,450	\$803,875,641	\$4,331,938	\$184,486,892	\$8,027,943,094
Change	-18.1%	-8.7%	19.9%	19.8%	-91.0%	111.0%	-5.4%
Average	\$2,893,564,065	\$3,069,044,570	\$1,430,103,504	\$751,712,640	\$24,650,322	\$176,037,202	\$8,345,112,303

Percentage of Communications Sales and Use Tax Gross Receipts by Category

Calendar Year	Landline Telephone	Wireless Telephone	Cable Television	Satellite Television	Satellite Radio	Other
2007	39.1%	37.5%	14.0%	7.9%	0.6%	1.0%
2008	35.0%	38.0%	14.5%	9.2%	0.5%	2.8%
2009	33.5%	39.5%	15.8%	9.0%	0.6%	1.6%
2010	31.5%	40.3%	17.2%	9.0%	0.5%	1.4%
2011	30.8%	39.6%	18.5%	8.8%	0.0%	2.3%
2012	35.7%	33.1%	19.9%	8.8%	0.0%	2.6%
2013	38.0%	29.8%	19.8%	9.4%	0.1%	2.9%
2014	33.8%	36.1%	17.7%	10.0%	0.1%	2.3%

Percentage of Communications Sales and Use Tax Gross Receipts (Phone, Television, or Other)

Calendar Year:	Phone	Television	Other
2007	76.5%	21.9%	1.6%
2008	73.0%	23.7%	3.3%
2009	73.0%	24.8%	2.2%
2010	71.8%	26.2%	1.9%
2011	70.4%	27.3%	2.3%
2012	68.8%	28.6%	2.6%
2013	67.8%	29.2%	2.9%
2014	70.0%	27.7%	2.4%

Another change in the telecommunications industry affecting tax revenues is the sharp decline in revenues from satellite radio services. Between 2007 and 2014, gross receipts from satellite radio services decreased by 91.1 percent.

Given the decline in landline phone use, and the structure of the repealed local telecommunications taxes, particularly the cap on the rate for local consumer utility taxes on landline and wireless telephone service, it is likely that localities would have experienced a much steeper decline in revenues under the old tax structure than the current decline in the CSUT revenues. In an April 25, 2011 article for *State Tax Notes*, Scott Mackey used the number of landline connections provided by the Virginia State Corporation Commission and estimated the revenues that localities would have received under the old tax structure as \$259.7 million in Fiscal Year 2008 and \$247.1 million in Fiscal Year 2009.⁴

While the Department can't predict the long-term future of the telecommunications industry, there are trends in the data that may provide an indication of areas of decline, such as the drop in satellite radio revenues and number of landlines. Additionally, data collected by the Department shows growth in prepaid calling service transactions (See "Prepaid Calling Services" below). Anecdotally, audio and video streaming services are also areas of high growth.

Administrative Expenses

Another issue discussed by the advisory panel concerned the administrative expenses required to be transferred from the Fund prior to distribution to localities. Under current law, the Department is authorized to transfer moneys from the Fund to pay for the direct costs of administering the Communications Taxes. Additionally, the moneys in the Fund are allocated and distributed to localities only after payment to the Virginia Department of Deaf and Hard-of-Hearing ("VDDHH") to fund the operation of the telecommunications relay service.

Department of Taxation

As the Department incurred substantial costs in Fiscal Year 2007 to implement the Communications Taxes and make necessary systems, forms, and processing changes prior to any revenues from the new tax being deposited into the Fund, the Department was authorized to obtain a treasury loan to meet these expenses. The treasury loan was repaid in Fiscal Year 2008, when there were sufficient revenues in the Fund. The Department continues to transfer its direct costs of administration of the tax from the Fund. These ongoing costs include full time auditors as well as expenses for time spent by several employees who assist with the administration of the tax and

⁴ Mackey, Scott. "A Revenue Analysis of Virginia's Communications Tax Reform." *State Tax Notes* 25 Apr. 2011: 249-252. Web.

processing charges. The following table shows the Department's administrative expenses for Fiscal Years 2008-2014.

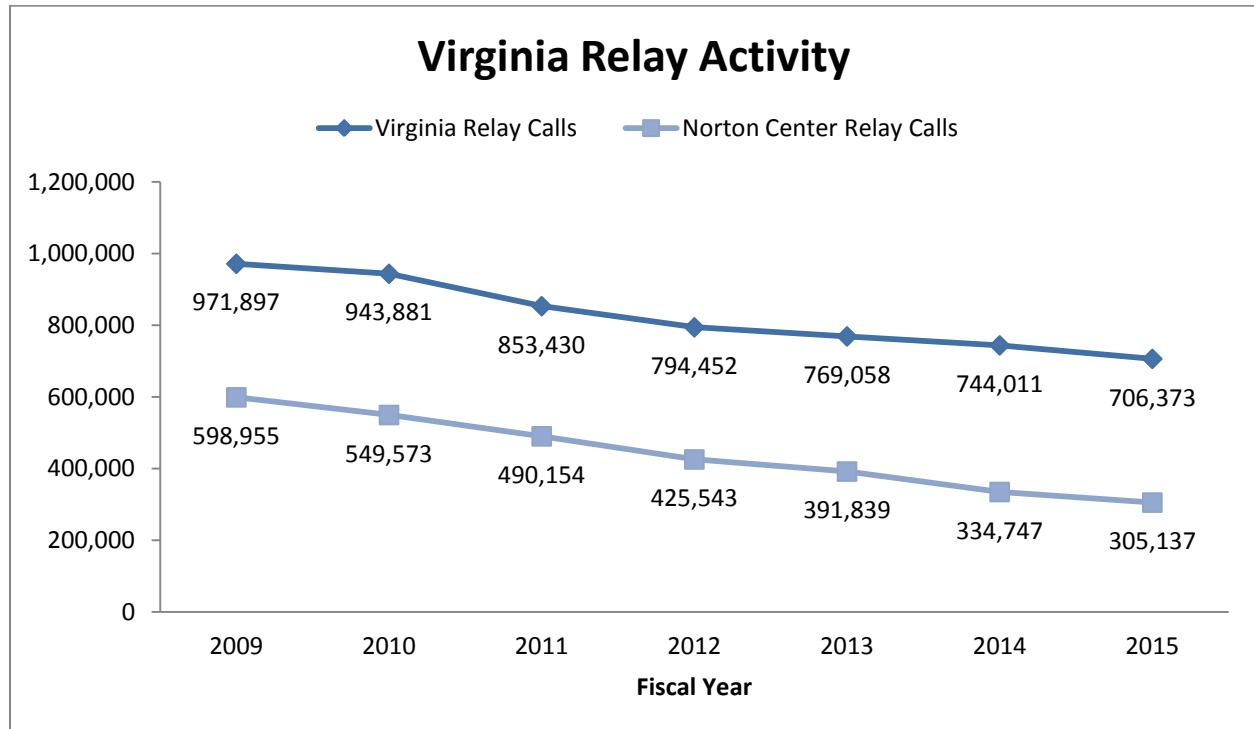
Department of Taxation's Administrative Fee

Fiscal Year:	Department Administrative Fee
2008	\$929,292
2009	\$294,227
2010	\$312,087
2011	\$374,905
2012	\$349,068
2013	\$387,423
2014	\$430,094

Telecommunications Relay Service

A telecommunications relay service is a facility where a person who has a hearing or speech disability using a text telephone and a person using a conventional telephone device can communicate with each other via telephone. Pursuant to Va. Code §§ 51.5-115 and 58.1-662, all costs associated with the establishment and operation of the telecommunications relay service, including but not limited to personnel costs incurred by the VDDHH for administering the service, is funded by payments from the Fund prior to the distribution of the revenues to the localities. This includes costs for functions reasonably and directly necessary for the provision of telecommunications relay service, including contract procurement and administration and public education and information regarding telecommunications relay service. Prior to August 1, 2015, a Virginia Relay Center was operated out of Norton, Virginia.

According to VDDHH, the total number of Virginia relay calls in Fiscal Year 2015 was 706,373, with 305,137 calls handled by the Virginia Relay Center in Norton, Virginia. The other calls were captioned telephone calls and handled outside of Virginia. The following chart shows the total number of Virginia relay calls and the number of calls handled by the Virginia Relay Center in Norton for Fiscal Years 2009 – 2015.



VDDHH awarded a new contract for the telecommunications relay service effective August 1, 2015. The elimination of the former location and staffing requirements of the Virginia Relay Center is anticipated to result in approximately \$5 million a year of savings in administrative expenses to the Fund. This reduction in costs will increase amounts available for distribution to localities from the Fund. The following table shows the VDDHH’s administrative expenses for Fiscal Years 2008-2014.

VDDHH’s Expenses

Fiscal Year:	VDDHH’s Expenses
2008	\$8,899,222
2009	\$11,067,727
2010	\$10,337,620
2011	\$8,600,765
2012	\$9,413,035
2013	\$9,806,590
2014	\$10,027,399

Exemptions

The charges for the following services are not subject to the Communications Sales and Use Tax:

- Information services (including electronic publishing services, web hosting services, 900 number services, alarm monitoring services, check guaranty services, credit card guaranty services and database search services);
- Live operator answering services;
- Installation or maintenance of wiring or equipment on a customer's premises and wire maintenance fees;
- The sale or rental of tangible personal property and any sales tax resulting from the sale or rental of tangible personal property;
- The sale of advertising, including but not limited to, directory advertising;
- Security deposits.
- Bad check and late payment charges;
- Billing and collection services;
- Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging (however, charges for connection, reconnection, termination, movement, or change of such services are subject to the tax);
- Digital products delivered electronically, such as software, downloaded music, ring tones and reading materials;
- Over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission; and
- Communications services purchased by and billed to transients by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration. This does not relieve the obligation of the facility to pay communications sales tax to its provider (or to remit communications use tax if services are purchased from a provider who lacks nexus and is not registered for the collection of the tax) on its purchases of communications services.

- Communications services purchased by and billed to tenants by their landlord. This does not relieve the obligation of the landlord to pay communications sales tax to its provider (or to remit communications use tax if services are purchased from a provider who lacks nexus and is not registered for the collection of the tax) on its purchases of communications services.

Additionally, for purposes of the Communications Sales and Use Tax, the sales price does not include the following amounts:

- Excise, sales or similar taxes levied by the United States or any state or local government on the purchase, sale, use or consumption of any communications services that are permitted or required to be added to the sales price of such service, if the tax is stated separately (including the federal excise tax on telephone service);
- A fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated (including E-911 fees and public rights-of-way fees);
- Coin-operated communications services;
- Sale or recharge of a prepaid calling service (including prepaid wireless telephone service);
- Provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. § 22.99;
- A provider's internal use of communications services in connection with its business of providing communications services;
- Charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services;
- Sales for resale; and
- Charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government.

Although there are a number of exemptions for the Communications Sales and Use Tax, the advisory panel agreed that discussion should focus on two of the

exemptions: the exemptions for audio and video streaming services and for prepaid calling service.

Audio and Video Streaming Services

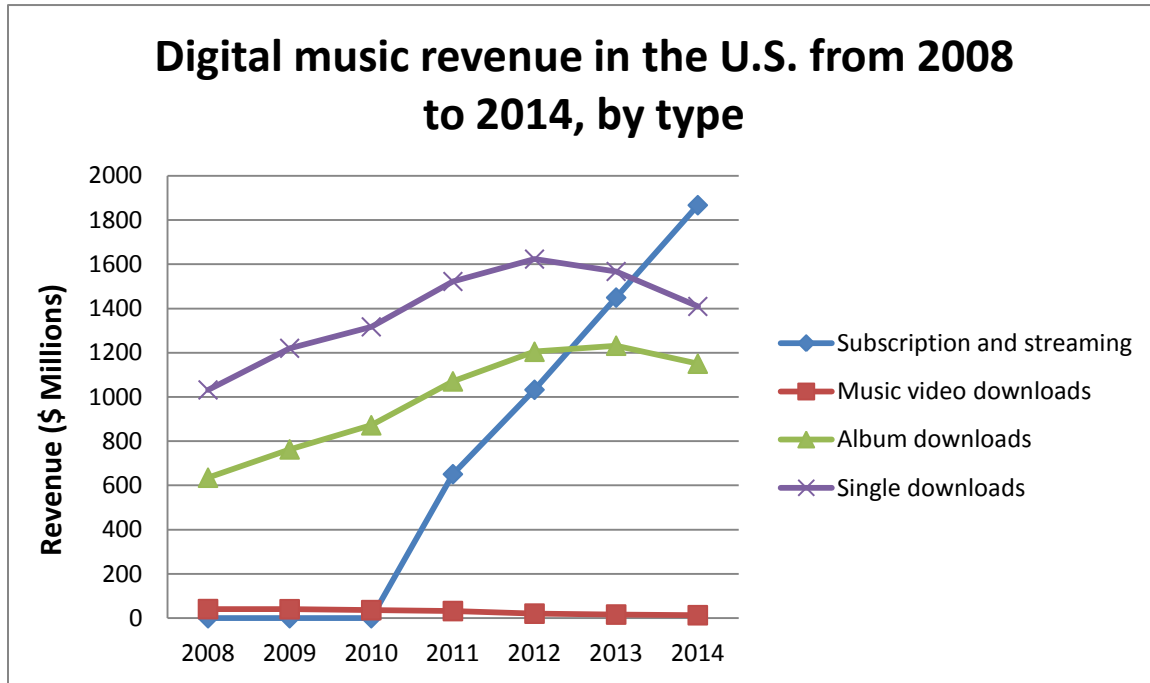
Under *Va. Code* § 58.1-648, digital products delivered electronically are exempt from the CSUT. In 2008, the Tax Commissioner issued Public Document (P.D.) 08-164 (May 19, 2008) regarding the application of the tax to sales of audio-visual content ("content services") transferred to its customers via cellular telephones. The Tax Commissioner ruled that digital products delivered electronically do not include any products that require continued payments from the purchaser or products that are without the right of permanent use granted by the seller. It was further ruled that content services downloaded by a consumer for future use and reuse constitute digital property delivered electronically and would not be subject to the CSUT.

In 2013, the Tax Commissioner revisited the topic in P.D. 13-13 (February 5, 2013) and overturned the portion of P.D. 08-64 that makes a distinction between digital products that are downloaded electronically and charged to customers on a monthly recurring basis and those digital products that are downloaded electronically and customers are charged a one-time fee. The Tax Commissioner held that the payment method used by the customers should not affect the application of the tax to the purchases of the applications. Under P.D. 13-13, all digital products delivered electronically are exempt from the tax. A copy of P.D. 13-13 is attached as Appendix III.

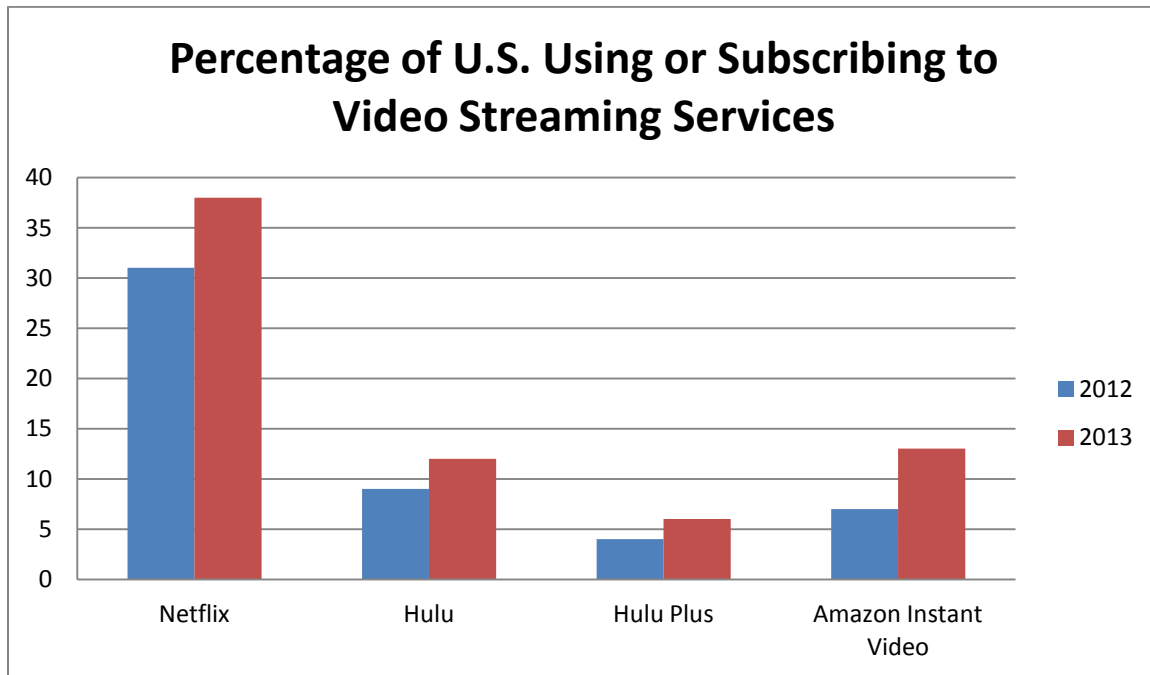
The Guidelines and Rules for the Virginia Communications Taxes list "Cable television (including but not limited to basic, extended, premium, pay-per-view, video on demand, digital, high definition, video recorder, music services and fees for additional outlets)" as taxable communications services. However, in P.D. 13-59, the Tax Commissioner ruled that video content streamed over the Internet is a digital product downloaded electronically and is not subject to the tax. As content streamed over the Internet by audio and video streaming providers is very similar to the content provided by cable television providers, audio and video streaming providers have a competitive advantage as their content is specifically exempt. A copy of the Guidelines and Rules for the Virginia Communications Taxes is attached as Appendix II.

The amount of additional revenue that would result from imposing the CSUT on audio and video streaming is unknown. However, for illustrative purposes, using the estimated 2014 revenue for audio streaming providers and the three largest pay video streaming providers, the Department estimated that if the tax had been imposed on audio and video streaming services in 2014, potentially \$10 million to \$20 million in additional tax revenue would have been available for distribution to Virginia localities. Audio and video streaming have experienced rapid growth in the past few years. If this trend continues, the revenue from imposing the tax on audio and video streaming may be even greater in future years. The following charts show the digital music revenue in

the United States from 2008 to 2014 and the percentage of people in the United States who used or subscribed to video streaming services in 2012 and 2013.



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⁵ Source: www.statista.com (citing RIAA); *Digital Music Revenue in the United States from 2008 to 2014, by type (in million U.S. dollars)*; Web; accessed 22 Sept. 2015; <<http://www.statista.com/statistics/186710/digital-music-revenue-in-the-us-since-2008/>>.

Some audio and video streaming providers, such as Amazon, also provide other services besides streaming content for the same fee. If the CSUT is extended to audio and video streaming and the fee includes both taxable and nontaxable amounts, the transaction would be considered a bundled transaction and the current rules set forth in the Guidelines and Rules for the Virginia Communications Taxes for such transactions would apply. The portion of the charge attributable to the nontaxable services would be subject to tax unless the provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business and not created and maintained for tax purposes.

The advisory panel discussed extending the CSUT to audio and video streaming services. There were no objections to the concept by the advisory panel, other than that it may be perceived as a tax increase.

Prepaid Calling Service

Under *Va. Code* § 58.1-648, charges for the sale or recharge of prepaid calling service are not included in the sales price for purposes of the CSUT. *Virginia Code* § 58.1-647 defines “prepaid calling service” as “the right to access exclusively communications 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 that decrease in number with use.”

Effective January 1, 2011, the Prepaid Wireless E-911 Fee is collected by retail dealers at the rate of \$0.50 on each retail purchase of prepaid wireless calling service and remitted with the Retail Sales and Use Tax return. As a similar definition is used for purposes of the Prepaid Wireless E-911 Fee, the Department analyzed Retail Sales and Use Tax returns to estimate the number of prepaid calling service transactions taking place in the Commonwealth. The following table shows the estimated number of retail transactions of prepaid calling services reported by retail dealers in Calendar Years 2011-2014.

Estimated Prepaid Wireless Transactions

Calendar Year:	Prepaid Transactions
2012	11,349,793
2013	12,913,348
2014	13,439,306

Effective July 1, 2011, the Department began administering the Postpaid Wireless E-911 Surcharge, which is imposed at the rate of \$0.75 per month on each

⁶ Source: www.statista.com (citing Nielsen); *Video Streaming Gains Popularity: % of People in the U.S. who use or subscribe to video streaming services*; Web; accessed 23 Sept. 2015; <<http://www.statista.com/chart/1477/adoption-of-video-streaming-services/>>.

wireless device and remitted with the Communications Sales and Use Tax return. As the Department did not begin administering the Postpaid Wireless E-911 Surcharge until July 1, 2011, the number of estimated transactions for 2011 is for 6 months.

Prepaid and Postpaid Wireless E-911 Revenues

Calendar Year:	Prepaid Wireless E-911 Revenues	Postpaid Wireless E-911 Revenues
2011	-	\$25,142,113
2012	\$5,394,388	\$50,659,479
2013	\$6,137,192	\$50,605,575
2014	\$6,389,252	\$51,139,173

Between 2012 and 2014, the amount of Prepaid Wireless E-911 Fee revenues is estimated to have grown by 18.4 percent. However, between 2011 and 2014, the amount of Postpaid Wireless E-911 Surcharge revenues is estimated to have grown by only 1.7 percent. Though revenues from the Postpaid Wireless E-911 Surcharge are substantially higher than the revenues from the Prepaid Wireless E-911 Fee, the Prepaid Wireless E-911 Fee is growing at a much faster rate. It is likely that a similar growth rate exists for prepaid calling services that are exempt from the CSUT. If this trend continues in the future, the exemption on prepaid calling services may result in a significant decline in tax revenues. Additionally, this exemption provides a competitive advantage to communications services based on the payment structure as the same services are taxable if paid under a postpaid monthly subscription plan. This results in an uneven playing field between those communications services providers that offer postpaid calling services and those offering prepaid calling services.

SECTION III Conclusion and Recommendations

The advisory panel has reviewed and discussed the overall performance of the Communications Sales and Use Tax. While the advisory panel recognized that there may be concerns regarding the allocation of tax revenues to localities, there was consensus that those concerns were outside the scope of this report.

If the Communications Sales and Use Tax had been imposed at the rate of 5.3 percent in Fiscal Year 2014, there would have been an additional \$24.1 million in revenues available for distribution. Imposing the tax at the rate of 6 percent would have resulted in an additional \$80.3 million available for distribution. However, the consensus of the advisory panel was that there was little support for a tax rate increase.

Beginning August 1, 2015, the Virginia Department for the Deaf and Hard-of-Hearing has a new contract for the administration of the telecommunications relay service that is anticipated to result in savings of approximately \$5 million a year. These savings will increase distributions to localities from the Communications Sales and Use Tax Trust Fund.

If the General Assembly would like to enact legislation to increase CSUT revenues and level the playing field, this can be accomplished by broadening the tax base by eliminating the current exemptions for audio and video streaming services and prepaid calling services.

Appendix I
House Joint Resolution 635 Text

2015 SESSION

ENROLLED

HOUSE JOINT RESOLUTION NO. 635

Requesting the Department of Taxation to study the performance of the communications sales and use tax. Report.

Agreed to by the House of Delegates, February 9, 2015
Agreed to by the Senate, February 24, 2015

WHEREAS, in 2006 the General Assembly enacted legislation to impose a communications sales and use tax on consumers beginning January 1, 2007, which restructured the local taxation of communications services; and

WHEREAS, the communications sales and use tax changed the local taxation of communications services by replacing several local taxes and fees that were imposed at widely varying rates with a uniform five percent state sales and use tax on such services and a monthly fee of \$0.75 on both landline and mobile telephone service; and

WHEREAS, in addition to achieving statewide uniformity, a major objective of this tax restructuring was to ensure that competing forms of communications services were taxed equally to avoid having public policy inadvertently create competitive advantages and disadvantages; and

WHEREAS, in order that the tax restructuring was initially revenue-neutral to localities, the revenues from the communications sales and use tax have always been distributed proportionally on the basis of the amount that each locality collected in fiscal year 2006 from the local communications services taxes and fees that were eliminated with the adoption of the state communications sales and use tax; and

WHEREAS, it was anticipated that the total taxes collected from the communications sales and use tax would grow over time, but after eight years that growth has not been significant; and

WHEREAS, communications technology, consumer habits, industry billing practices, and the populations of some Virginia localities have all changed rapidly during the eight years that the tax has been imposed; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Taxation be requested to study the performance of the communications sales and use tax.

In conducting its study, the Department of Taxation shall assemble an advisory panel comprising representatives of local governments and affected segments of the communications industry. With the assistance of the advisory panel, the Department shall (i) evaluate the overall performance of the communications sales and use tax, (ii) determine whether competing communications services are being taxed on an equal basis, (iii) identify any communications services that are receiving a competitive advantage by not being taxed, and (iv) determine whether the tax is structured such that it will apply to new methods of communications.

All agencies of the Commonwealth shall provide assistance to the Department of Taxation for this study, upon request.

The Department of Taxation shall complete its meetings by November 30, 2015, and shall submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2016 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

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Appendix II
Guidelines and Rules for the Virginia Communications Taxes

CT-2 Guidelines and Rules for the Virginia Communications Taxes

November 1, 2006

2006 House Bill 568 (Acts of Assembly 2006, Chapter 780) replaces many of the current state and local communications taxes and fees with a centrally administered communications sales and use tax and a uniform statewide E-911 tax on landline telephone service beginning January 1, 2007. Additionally, House Bill 568 imposes a public rights-of-way use fee on cable television providers beginning January 1, 2007. These guidelines and rules are published by the Department of Taxation ("TAX") to provide guidance to taxpayers and local governments regarding the new law. TAX has worked with affected taxpayers and local governments to develop these guidelines and rules. As necessary, additional guidelines and rules will be published and posted on TAX's website, www.tax.virginia.gov

Background

Prior to January 1, 2007, specific communications services are subject to one or more of the following state and local taxes and fees in Virginia:

- Local consumer utility tax on landline and wireless telephone service authorized by *Code of Va.* § 58.1-3812.
- Local E-911 tax on landline telephone service authorized by *Code of Va.* § 58.1-3813.1.
- State E-911 surcharge on wireless telephone service imposed pursuant to *Code of Va.* § 56-484.17.
- Virginia Relay Center surcharge on landline telephone service for the costs of a telephone relay service for the hearing impaired imposed pursuant to *Code of Va.* § 56-484.6.
- The local business, professional, and occupational license (BPOL) tax on telephone and telegraph companies authorized by *Code of Va.* § 58.1-3731 and Acts of Assembly 1972, Chapter 858, Enactment Clause 3.
- Local cable television franchise fees authorized by *Code of Va.* § 15.2-2108.
- Local video programming excise tax authorized by *Code of Va.* § 58.1-3818.3.
- Local consumer utility tax on cable television authorized by local charter.
- State and local public rights-of-way use fee on landline telephone service imposed pursuant to *Code of Va.* § 56-468.1.

Satellite television and satellite radio providers are generally not subject to these taxes. Cable television operators subject to a local cable franchise fee are exempted from the state and local public rights-of-way use fees.

Repeal of Current Taxes on Communications Services

Effective January 1, 2007, the new law repeals the following state and local taxes and fees:

- Local consumer utility tax on landline and wireless telephone service;
- Local E-911 tax on landline telephone service;
- Virginia Relay Center surcharge;
- The portion of the local BPOL tax on the gross receipts of telephone and telegraph companies exceeding .5% currently billed to customers in some grandfathered localities pursuant to Acts of Assembly 1972, Chapter 858, Enactment Clause 3;
- Local video programming excise tax; and
- Local consumer utility tax on cable television.

(Source: Acts of Assembly 2006, Chapter 780, Enactment Clauses 2, 3 and 6).

Bills issued by providers prior to January 1, 2007 should reflect the taxes and fees in effect until January 1, 2007 and providers should remit all local consumer utility taxes, E-911 taxes on landline telephone service, BPOL taxes, and video programming excise taxes appearing on these bills to the appropriate locality, even if the taxes are not collected from customers until after January 1, 2007. The Virginia Relay Center surcharge reflected on such bills should be remitted to the State Corporation Commission ("SCC") (see "Transition to New Taxes").

Any repealed taxes and fees that remain unpaid as of January 1, 2007 will be subject to payment and collection in accordance with any administrative or judicial remedies existing prior or subsequent to January 1, 2007. Any bad debt associated with such taxes and fees that occurs after January 1, 2007 will be offset against revenues collected from the new communications sales and use tax. (Source: Acts of Assembly 2006, Chapter 780, Enactment Clause 4).

Appendix II Guidelines and Rules for the Virginia Communications Taxes

New Communications Tax Structure

Effective January 1, 2007, the repealed taxes and fees will be replaced with a new state communications sales and use tax ("communications sales tax") and a new state E-911 tax ("landline E-911 tax") on landline telephone service. Additionally, a public rights-of-way use fee ("cable rights-of-way use fee") will be imposed on cable television providers, effective January 1, 2007. Revenues from the communications sales tax, the landline E-911 tax and the cable rights-of-way use fee ("communications taxes") will be collected and remitted monthly by communications services providers ("providers") to TAX and deposited into the Communications Sales and Use Tax Trust Fund ("the Fund"). Moneys in the Fund will be distributed to localities on a monthly basis after payment

- (1) to TAX for the direct costs of administering the communications taxes;
- (2) to the Virginia Department for the Deaf and Hard-of-Hearing (VDDHH) for the costs of the Virginia Relay Center for the hearing impaired; and
- (3) to localities for any cable television franchise fees due.

The state E-911 surcharge on wireless telephone service, the state and local public right-of-way use fee on landline telephone service and the local BPOL tax on telephone and telegraph companies not exceeding .5% will remain in effect.

Cable franchise agreements entered into or renegotiated after January 1, 2007 will not include a franchise fee. Cable franchise agreements in effect as of January 1, 2007 will remain in effect until their expiration. Cable providers will not bill or otherwise collect from customers any cable franchise fees accruing on or after January 1, 2007. Instead of paying franchise fees to localities, cable providers will include with their monthly communications sales tax return a report listing by locality the franchise fees that accrued that month. On a monthly basis, TAX will pay the accrued franchise fees to localities from the communications sales tax, landline E-911 tax and cable rights-of-way use fee revenues deposited in the Fund (see "Cable Franchise Fee").

Transition to New Taxes

For purposes of the transition to the new communications tax structure, bills issued by providers prior to January 1, 2007 must reflect the taxes and fees in effect on December 31, 2006, even if the bills include charges for communications services to be provided after December 31, 2006. Bills issued by providers on and after January 1, 2007 must reflect the new communications taxes, even if the communications services were provided prior to January 1, 2007.

Standard Language and Terminology

TAX has worked with providers to develop standard terminology for the new taxes. When referring to each of the new taxes, providers shall use the following terminology or similar variations thereof to avoid customer confusion:

- The communications sales and use tax shall be referred to as either the "communications sales and use tax" or the "communications sales tax;"
- The E-911 tax on landline telephone service shall be referred to as the "landline E-911 tax" or the "E-911 tax;"
- The public rights-of-way use fee imposed on cable television providers shall be referred to as the "cable rights-of-way use fee" or the "rights-of-way use fee."

Together, the new taxes shall be referred to as the "communications taxes." TAX will post general information regarding the new communications tax structure on its web site, www.tax.virginia.gov. Customer inquiries regarding the new taxes or the transition should be answered by providers.

New Communications Sales And Use Tax

Effective January 1, 2007, the communications sales tax will be a state tax administered by TAX. The communications sales tax will be imposed on customers of communications services at the rate of 5% of the sales price of the services. The new tax will appear as a line item on customers' bills and will be collected and remitted to TAX by providers.

Definitions

Terms used in the communications sales tax have the same meaning as those used in the retail sales and use tax, unless defined otherwise, as follows:

"**Bundled transaction**" means a transaction that includes communications services subject to the communications sales tax and consists of distinct and identifiable properties, services, or both, sold for one nonitemized charge for which the tax treatment of the distinct properties and services is different.

Appendix II

Guidelines and Rules for the Virginia Communications Taxes

“Cable service” means the one-way transmission to subscribers of (1) video programming as defined in 47 U.S.C. § 522.20 or (2) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332d and any direct-to-home satellite service as defined in 47 U.S.C. § 303v. (Source: *Code of Va.* § 58.1-647)

“Call-by-call basis” means any method of charging for telecommunications services where the price is measured by individual calls. (Source: *Code of Va.* § 58.1-647)

“Coin-operated communications service” means a communications service paid for by means of inserting coins in a coin-operated telephone. (Source: *Code of Va.* § 58.1-647)

“Communications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, (1) the connection, movement, change, or termination of communications services; (2) detailed billing of communications services; (3) sale of directory listings in connection with a communications service; (4) central office and custom calling features; (5) voice mail and other messaging services; and (6) directory assistance. (Source: *Code of Va.* § 58.1-647)

“Communications services provider” means every person who provides communications services to customers in the Commonwealth and is or should be registered with TAX as a provider. (Source: *Code of Va.* § 58.1-647)

“Cost price” means the actual cost of the purchased communications service computed in the same manner as the sales price. (Source: *Code of Va.* § 58.1-647)

“Customer” means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. “Customer” does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider’s licensed service area. (Source: *Code of Va.* § 58.1-647)

“Customer channel termination point” means the location where the customer either inputs or receives the private communications service. (Source: *Code of Va.* § 58.1-647)

“Information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing. (Source: *Code of Va.* § 58.1-647)

“Internet access service” means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. “Internet access service” does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access. (Source: *Code of Va.* § 58.1-647)

“Place of primary use” means the street address representative of where the customer’s use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile communications services, the place of primary use shall be within the licensed service area of the home service provider. (Source: *Code of Va.* § 58.1-647)

“Postpaid calling service” means the communications 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, debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the communications service. (Source: *Code of Va.* § 58.1-647)

“Prepaid calling service” means the right to access exclusively communications 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 that decrease in number with use. (Source: *Code of Va.* § 58.1-647)

“Private communications service” means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among channel 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. (Source: *Code of Va.* § 58.1-647)

Appendix II

Guidelines and Rules for the Virginia Communications Taxes

“Retail sale” or a **“sale at retail”** means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business. (Source: *Code of Va.* § 58.1-647)

“Sales price” means the total amount charged in money or other consideration by a provider for the sale of the right or privilege of using communications services in the Commonwealth, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the provider, including but not limited to, sales taxes on goods or services purchased by the provider, property taxes, taxes measured by net income, and universal-service fund fees. (Source: *Code of Va.* § 58.1-647)

“Service address” means (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. If the location is not known in clause (1), “service address” means (2) the origination point of the signal of the 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. If the location is not known in clauses (1) and (2), the service address means (3) the location of the customer’s place of primary use. (Source: *Code of Va.* § 58.1-647)

Taxable Communications Services

Communications services are the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method, regardless of the protocol used for the transmission or conveyance. Communications services subject to the communications sales tax include, but are not limited to:

- Landline, wireless, and satellite telephone services (including, but not limited to local, intrastate, interstate and international service) including Voice Over Internet Protocol;
- Teleconferencing services;
- Private communications services;
- “Push to talk” services;
- Pager and beeper services;
- Automated or partially automated answering services;
- Facsimile services;

- 800 number services;
- Telegraph, telegram, telex and teletypewriter services;
- Cable television (including but not limited to basic, extended, premium, pay-per-view, video on demand, digital, high definition, video recorder, music services and fees for additional outlets); and
- Satellite television and satellite radio.

Taxable communications services also include, but are not limited to charges for:

- Connection, reconnection, termination, movement, or change of communications services, including Internet services;
- Detailed billing;
- Sale of directory listings in connection with a communications service;
- Central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification, distinct ringing, speed dialing, voice activated dialing, and three-way calling);
- Voice mail, text messaging, picture messaging and other messaging services;
- Directory assistance;
- Access (excluding Internet access service charges) and line charges;
- Early termination fees;
- Fees for changing long distance providers;
- Universal service charges;
- Regulatory, administrative and other cost recovery charges; and
- Local number portability charges.

(Source: *Code of Va.* § 58.1-647)

Non-Taxable Communications Services

The charges for the following services are not subject to the communications sales tax:

- Information services (including electronic publishing services, web hosting services, 900 number services, alarm monitoring services, check guaranty services, credit card guaranty services and database search services);
- Live operator answering services;
- Installation or maintenance of wiring or equipment on a customer’s premises and wire maintenance fees;
- The sale or rental of tangible personal property and any sales tax resulting from the sale or rental of tangible personal property;
- The sale of advertising, including but not limited to, directory advertising;

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- Security deposits;
- Bad check and late payment charges;
- Billing and collection services;
- Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging (however, charges for connection, reconnection, termination, movement, or change of such services are subject to the tax);
- Digital products delivered electronically, such as software, downloaded music, ring tones and reading materials;
- Over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission;
- Communications services purchased by and billed to transients by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration. This does not relieve the obligation of the facility to pay communications sales tax to its provider (or to remit communications use tax if services are purchased from a provider who lacks nexus and is not registered for the collection of the tax) on its purchases of communications services; and
- Communications services purchased by and billed to tenants by their landlord. This does not relieve the obligation of the landlord to pay communications sales tax to its provider (or to remit communications use tax if services are purchased from a provider who lacks nexus and is not registered for the collection of the tax) on its purchases of communications services.

(Source: *Code of Va.* § 58.1-648 C)

Nontaxable Amounts

For purposes of the communications sales tax, the sales price will not include the following amounts:

- Excise, sales or similar taxes levied by the United States or any state or local government on the purchase, sale, use or consumption of any communications services that are permitted or required to be added to the sales price of such service, if the tax is stated separately (including the federal excise tax on telephone service);
- A fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated (including E-911 fees and public rights-of-way fees);
- Coin-operated communications services;
- Sale or recharge of a prepaid calling service (including prepaid wireless telephone service);
- Provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. § 22.99;
- A provider's internal use of communications services in connection with its business of providing communications services;
- Charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services;
- Sales for resale; and
- Charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government.

(Source: *Code of Va.* § 58.1-648 B)

Bundled Transactions

A bundled transaction is a transaction that includes communications services subject to the communications sales tax and consists of distinct and identifiable properties, services, or both, sold for one nonitemized charge for which the tax treatment of the distinct properties and services is different. If the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services will be subject to tax unless the provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business and not created and maintained for tax purposes. Books and records will be considered to be maintained for tax purposes when such books and records identify taxable and nontaxable portions of the price while other books and records are maintained that identify different prices attributable to the distinct products included in same bundled transaction. For purposes of example only, books and records kept in the regular course of business that are acceptable include financial statements, general ledgers, invoicing and billing systems and reports and tariffs and other regulatory reports. (Source: *Code of Va.* § 58.1-650)

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Exemption Certificates

All sales of communications services are subject to the tax until the contrary is established. A provider is required to collect the communications sales tax unless the provider receives a properly executed exemption certificate from the purchaser stating that the service is exempt from the communications sales tax. The exemption certificate will relieve the provider who obtains it from any liability for the payment or collection of the tax, except upon notice from TAX that the certificate is no longer acceptable. In the event that a provider fails to collect the communications sales tax due on the sale of taxable communications services, the provider is liable for the payment of the tax. The exemption certificate must:

- Be signed, manually or electronically, by the purchaser;
- Bear the name and address of the purchaser;
- Indicate the number of the registration certificate, if any, issued to the purchaser;
- Indicate the general character of the communications services sold or to be sold under a blanket exemption certificate; and
- Be substantially in the form prescribed by TAX.

(Source: *Code of Va.* § 58.1-657)

If a purchaser who holds an exemption certificate makes any use of the service other than an exempt use while holding the communications service for resale in the regular course of business, such use will be deemed a taxable sale by the purchaser as of the time the service is first used by the purchaser, and the cost of the property to the purchaser will be deemed the sales price of such retail sale. (Source: *Code of Va.* § 58.1-657)

In the case of a provider of Internet access service that purchases a communications service to provide Internet access, the Internet access provider must give the communications service provider a certificate of use containing its name, address and signature, manually or electronically, of an officer of the Internet access service provider. The certificate of use must state that the purchase of communications service is being made in its capacity as a provider of Internet access in order to provide such access. Upon receipt of the certificate of use, the provider will be relieved of any liability for the communications sales tax related to the sale of communications service to the Internet access service provider named in the certificate. In the event the Internet access provider uses the communications service for any taxable purpose, the provider of Internet access will be liable for and pay the communications sales tax directly to the Commonwealth in accordance with § 58.1-658. (Source: *Code of Va.* § 58.1-657)

Exempt Entities

Any entity that was exempted from the local consumer utility taxes (LCUT) by any city, county or town in Virginia on January 1, 2006 will be exempt from the communications sales tax. (Source: *Code of Va.* § 58.1-648 C) On January 1, 2006, under state law, localities had the option of providing exemptions for:

- Public safety answering points. (Source: *Code of Va.* § 58.1-3812 E)
- Any subscriber to individual telephone service who resides in a nursing home or similar adult care facility. (Source: *Code of Va.* § 58.1-3813.1 C)
- Any utilities consumed on property designated or classified as exempt from property taxes pursuant to Article X, Section 6 a 2 of the Constitution of Virginia (real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers) or Article X, Section 6 a 6 of the Constitution of Virginia (property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body). This exemption did not apply to the local E-911 tax on landline telephone service. Any locality providing an exemption for the local consumer utility tax on consumers of landline telephone service was required to provide the telephone account numbers of all exempted organizations to all service providers required to collect the tax. (Source: *Code of Va.* § 58.1-3816.2)

Additionally, the City of Manassas was authorized to provide an exemption for any church or religious body entitled to an exemption pursuant to *Code of Va.* § 58.1-3650 et seq. The City of Manassas was required to provide the telephone account numbers of all exempted churches and religious bodies to all service providers required to collect the tax. (Source: *Code of Va.* § 58.1-3812 F)

A provider will not be liable for the payment or collection of the communications sales tax with respect to any entity that it allowed an LCUT exemption on January 1, 2006 if the provider documents that the entity was allowed an LCUT exemption on January 1, 2006 by maintaining a list of all such exempt entities or maintaining a notation in its records stating that the entity was allowed an LCUT exemption on January 1, 2006 along with the name of the provider that allowed the exemption and the entity's account number.

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A provider will not be liable for the payment or collection of the communications sales tax regarding any entity that any other communications services provider allowed an LCUT exemption on January 1, 2006 if the provider verifies and documents that the entity was allowed an LCUT exemption on January 1, 2006 in the following manner:

- The provider shall require the entity to submit a copy of a bill from a provider that reflects that the entity was allowed an LCUT exemption on January 1, 2006 or from the communications sales tax thereafter. The provider shall maintain a copy of the bill or maintain a notation in its records stating that it received such a bill along with the name of the provider that allowed the exemption and the entity's account number;
- The provider shall require the entity to submit a copy of a local ordinance or resolution or other written verification from the locality that granted the exemption that the entity was allowed an LCUT exemption on January 1, 2006. The provider shall maintain a copy of the written verification or maintain a notation in its records stating that it received such written verification; or
- The provider shall contact the local government that granted the LCUT exemption and obtain verification that the entity was allowed an LCUT exemption on January 1, 2006. The provider shall maintain a copy of the verification in its records.

In the event that TAX, the locality in which the entity was located on January 1, 2006, or the provider determines that the entity was not entitled to an LCUT exemption on January 1, 2006, the provider shall remove the entity from its list of exempt entities and the entity shall be subject to the communications sales tax on a prospective basis. Such provider shall be held harmless for the communications sales tax for prior periods unless it is determined that the provider failed to comply with the requirements set forth above.

Governmental Exemption

Charges for communications services provided to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government are not subject to the communications sales tax. As this governmental exemption is the same as the governmental exemption applicable to the repealed taxes, providers should allow a communications sales tax exemption for charges to any governmental customers that were exempt from the repealed local consumer utility taxes.

Sourcing Rules

For purposes of determining those services subject to the Virginia communications sales tax, communications services will be sourced as follows:

- In general, the sale of communications service sold on a call-by-call basis will be sourced to the Commonwealth when the call (1) originates and terminates in the Commonwealth or (2) either originates or terminates in the Commonwealth and the service address is also located in the Commonwealth. (Source: *Code of Va.* § 58.1-649 A)
- In general, a sale of communication services sold on a basis other than a call-by-call basis, will be sourced to the customer's place of primary use. (Source: *Code of Va.* § 58.1-649 B)
- Subject to the definitions and exclusions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116, a sale of mobile communication services will be sourced to the customer's place of primary use. (Source: *Code of Va.* § 58.1-649 C 1)
- A sale of postpaid calling service will be sourced to the origination point of the communications signal as first identified by either (1) the seller's communications system, or (2) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. (Source: *Code of Va.* § 58.1-649 C 2)
- A sale of a private communications service will be sourced as follows:
 - o Service for a separate charge related to a customer channel termination point will be sourced to the state in which such customer channel termination point is located.
 - o Service where all customer termination points are located entirely within one state will be sourced to such state in which the customer channel termination points are located.
 - o Service for segments of a channel between two customer channel termination points located in different states and which segments of a channel are separately charged will be sourced 50% to each state in which the customer channel termination points are located.
 - o Service for segments of a channel located in more than one state and which segments are not separately billed will be sourced in each state based on a percentage determined by dividing the number of customer channel termination points in each state by the total number of customer channel termination points.

(Source: *Code of Va.* § 58.1-649 C 3)

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Registration of Providers

The communications sales tax will be collected by all providers with sufficient contact, or nexus, with the Commonwealth to be subject to the tax using the same rules that apply to the retail sales and use tax. A provider shall be deemed to have sufficient activity within the Commonwealth to require registration if it does any of the following activities:

- Maintains or has within the Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature.
- Solicits business in the Commonwealth by employees, independent contractors, agents or other representatives.
- Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in the Commonwealth, or through materials distributed in the Commonwealth by means other than the United States mail.
- Makes regular deliveries of tangible personal property within the Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter the Commonwealth more than twelve times during a calendar year to deliver goods sold by him.
- Solicits business in the Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the Commonwealth or distributed from a location within the Commonwealth.
- Solicits business in the Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in the Commonwealth or benefits from the location in the Commonwealth of authorized installation, servicing, or repair facilities.
- Is owned or controlled by the same interests which own or control a business located within the Commonwealth.
- Has a franchisee or licensee operating under the same trade name in the Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under *Code of Va.* § 58.1-613.

- Owns tangible personal property that is rented or leased to a consumer in the Commonwealth, or offers tangible personal property, on approval, to consumers in the Commonwealth. (Source: *Code of Va.* § 58.1-651)

Each provider must apply to TAX for a certificate of registration for the communications sales tax using Form R-1, Business Registration Application. A provider must complete a Form R-1 even if it has already registered with TAX for other taxes. Each application must set forth the name under which the applicant intends to transact business, the location of its place of business, and such other information as TAX may require. Each cable provider will also be required to list all localities in which it is liable for a cable franchise fee (see "Cable Franchise Fees"). TAX will issue to each applicant a registration certificate that is not assignable and is valid only for the provider in whose name it is issued and for the transaction of the business designated therein. (Source: *Code of Va.* § 58.1-653)

Whenever a provider fails to comply with the provisions of the communications sales and use tax, these Guidelines and Rules, or any communications sales and use tax regulations promulgated by TAX, TAX, upon a hearing after giving the noncompliant provider 30 days' notice in writing, specifying the time and place of the hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend the registration certificate held by that provider. The notice may be personally served or served by registered mail directed to the last known address of the noncompliant provider. (Source: *Code of Va.* § 58.1-653)

Any provider who engages in business as a provider without obtaining a registration certificate, or after a registration certificate has been suspended or revoked, is guilty of a Class 2 misdemeanor as is each officer of a corporation that engages in business as an unregistered provider. Each day's continuance in business thereafter constitutes a separate offense. (Source: *Code of Va.* § 58.1-653)

If the holder of a registration certificate ceases to conduct his business, the certificate shall expire upon cessation of business, and the certificate holder shall inform TAX in writing within 30 days after he has ceased to conduct business. If the holder of a registration certificate desires to change his place of business, he must inform TAX in writing and his certificate will be revised accordingly. (Source: *Code of Va.* § 58.1-653)

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Collection of Tax

Every provider must separately state the amount of the tax and add that tax to the sales price of the service. Thereafter, the tax will be a debt from the customer to the provider until paid and recoverable at law in the same manner as other debts. All sums collected by a provider will be held in trust for the Commonwealth. (Source: *Code of Va.* § 58.1-651) The revenues collected must be remitted monthly by each provider to TAX when the provider files its Form CT-75, Virginia Communications Taxes Return (see "Communications Taxes Return").

In the event that a provider lacks nexus and is not registered for the collection of the tax, the purchaser is liable for the use tax (see "Use Tax" below). (Source: *Code of Va.* § 58.1-648)

In the event that a provider collects the communications sales tax on exempt or non-taxable transactions, the provider must remit the erroneously or illegally collected tax to TAX unless or until the provider can affirmatively show that the tax has been refunded to the customer or credited to his account. A provider who intentionally neglects, fails or refuses to collect the tax on a taxable sale of communications services is liable for and must pay the tax himself. Any provider who intentionally neglects, fails or refuses to pay or collect the tax is guilty of a Class 1 misdemeanor. (Source: *Code of Va.* § 58.1-659)

Use Tax

Generally, the communications sales tax is collected and remitted by providers even though the tax is imposed on the customer. However, when a customer purchases taxable communications services from an out-of-state provider who is not registered and is not required to remit the communications sales tax, the customer is required to remit the tax directly to TAX using Form CT-7, Virginia Communications Taxes Consumer Use Return. Form CT-7 and instructions are available on-line in the Download Forms section of TAX's web site, located at www.tax.virginia.gov. Form CT-7 should be used by both business and residential customers. No prior registration with TAX is required for taxpayers filing a Form CT-7.

Providers should report any taxable personal use of communications services when filing their Form CT-75, Virginia Communications Taxes Return. Providers should not use Form CT-7.

Direct Payment Permits

Persons who use taxable communications services within the Commonwealth may apply to TAX to pay the communications sales tax directly to TAX and waive collection of the tax by the provider. No such authority will be granted or exercised except upon application to TAX and issuance by TAX of a direct payment permit. If a direct payment permit is issued, then payment of the communications sales tax on taxable communications services must be made directly to TAX by the permit holder. On or before the twentieth day of each month every permit holder must file with TAX a return for the preceding month, in a form prescribed by TAX, showing:

- The total value of the taxable communications services used;
- The amount of tax due from the permit holder, which amount must be paid to TAX with the submitted return; and
- Any other information TAX deems necessary.

TAX, upon written request by the permit holder, may grant a reasonable extension of time for filing returns and paying the tax. Interest on the tax will be chargeable on every extended payment at the rate determined in accordance with *Code of Va.* § 58.1-15.

A direct payment permit will continue to be valid until surrendered by the holder or cancelled for cause by TAX. A person holding a direct payment permit that has not been cancelled will not be required to pay the tax to the provider. Such persons must notify each provider from whom purchases of taxable communications services are made of their direct payment permit number and that the tax is being paid directly to TAX. Upon receipt of notice, a provider will be absolved from responsibility for the collection and remittance of the tax with respect to sales of taxable communications services to the direct payment permit holder. Providers who make sales upon which the tax is not collected because the purchaser holds a direct payment permit must maintain records in a manner that the amount involved and identity of each purchaser may be ascertained.

Upon the cancellation or surrender of a direct payment permit, the communications sales tax will thereafter apply to the former direct payment permit holder, and that person must promptly notify in writing providers from whom purchases of taxable communications services are made of the cancellation or surrender of the direct payment permit. Upon receipt of such a notice, the provider must collect the communications sales tax with respect to all sales of taxable communications services thereafter made to the former direct payment permit holder. (Source: *Code of Va.* § 58.1-658)

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Bad Debts

Every provider will be allowed a credit against the tax shown to be due on the return for the amount of tax previously paid on accounts that are owed to the provider and that have been found to be worthless within the period covered by the return. The credit, however, cannot exceed the amount of the uncollected payment determined by treating prior payments on each debt as consisting of the same proportion of payment, communications sales tax, and other nontaxable charges as in the total debt originally owed to the provider. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the provider must be included in the first return filed after collection. (Source: *Code of Va.* § 58.1-655)

Dealer Discount

Every provider holding a certificate of registration will be allowed a dealer discount for accounting for and remitting the communications sales tax if the amount due was not delinquent at the time of payment. The discount will be allowed in the form of a deduction on each return. The discount will be allowed on the first three percent of the communications sales tax in the following percentages:

Monthly Taxable Sales	Percentage
\$0 to \$62,500	4%
\$62,501 to \$208,000	3%
\$208,000 and above	2%

The discount will be computed according to this schedule, regardless of the number of certificates of registration held by the provider. (Source: *Code of Va.* § 58.1-656)

The dealer discount on the communications sales tax will become effective on the first day of the month following 60 days after the Auditor of Public Accounts (“APA”) certifies that the revenues collected in the most recent fiscal year from the communications taxes are at least equal to the revenues from the taxes and fees that are amended or repealed by the new law for the fiscal year ending June 30, 2006 at the tax rates that were adopted on or before January 1, 2006 plus the annual cost to TAX of administering the communications sales tax. The APA certification will be completed within 60 days after the end of the fiscal year. (Source: Acts of Assembly 2006, Chapter 780, Enactment Clause 7). TAX will notify providers at such time as the dealer discount becomes effective.

Sale of Business

Any provider who sells or quits its business, shall make a final return and payment within 15 days after the date of selling or quitting the business. The Provider’s successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and unpaid until the former owner produces a receipt from TAX showing that all taxes, penalties, and interest have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser fails to withhold the purchase money as required, the purchaser will be personally liable for the payment of the taxes, penalties and interest due and unpaid that were incurred by the business operation of the former owner. In no event, however, may the tax, penalties and interest due by the purchaser be more than the purchase price paid for the business or stock of goods. (Source: *Code of Va.* § 58.1-660)

Customer Remedy Procedures for Billing Errors

If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer must notify the provider in writing. See “Sourcing Rules” to determine when communications services are subject to the Virginia communications sales tax. The customer must include in this notification the following:

- The street address for the customer’s place of primary use;
- The account name and number for which the customer seeks a correction;
- A description of the error asserted by the customer; and
- Any other information that the provider requires to process the request.

Within 15 days of receiving notice in its billing dispute office, the provider must review its records, within an additional 15 days, to determine the customer’s taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the provider must correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the provider must provide a written explanation to the customer.

These procedures are the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction or a refund of or other compensation for taxes erroneously collected by the provider. No cause of action based upon a dispute arising from such taxes will accrue until the customer has exercised these rights and procedures. (Source: *Code of Va.* § 58.1-652)

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Compliance Provisions

The retail sales and use tax compliance provisions set forth in *Code of Va.* §§ 58.1-630 through 58.1-637 and applicable Retail Sales and Use Tax Regulations will apply to the communications sales tax, except as specifically provided in the communications sales tax. Whenever the term “dealer” is used in these sections, the term “communications services provider” shall be substituted:

- *Code of Va.* § 58.1-630 Dealer Bonds;
- *Code of Va.* § 58.1-631 Jeopardy Assessments;
- *Code of Va.* § 58.1-632 Memoranda of Lien;
- *Code of Va.* § 58.1-633 Recordkeeping Requirements;
- *Code of Va.* § 58.1-634 Period of Limitations;
- *Code of Va.* § 58.1-635 Failure to File Return; Fraudulent Returns; Civil Penalties (and Interest);
- *Code of Va.* § 58.1-636 Penalty for Failure to File Return or Making False Return; and
- *Code of Va.* § 58.1-637 Bad Checks.

(Source: *Code of Va.* § 58.1-661)

Exceptions to Taxpayer Confidentiality

TAX is authorized to provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any provider registered for the collection of the communications sales tax, a list of the names, business addresses, and dates of registration of all providers registered for such tax. (Source: *Code of Va.* § 58.1-3 C)

E-911 Tax On Landline Telephone Service

Effective January 1, 2007, a new landline E-911 tax will be imposed on the end users of landline telephone service. The new landline E-911 tax will be state tax administered by TAX and will be imposed on the end user of each access line at the rate of \$0.75 per access line. The new tax will appear as a line item on customers' bills. Providers will be allowed a dealer discount of three percent of the amount of the landline E-911 tax revenues. (Source: *Code of Va.* § 58.1-1730) The revenues collected will be remitted monthly to TAX by each provider when it files its Form CT-75, Virginia Communications Taxes Return (see “Communications Taxes Return”).

When a customer purchases landline telephone services from an out-of-state provider that is not registered and is not required to remit the landline E-911 tax, the customer will be required to remit the tax directly to TAX using Form CT-7, Virginia Communications Taxes Consumer Use Return. Form CT-7 and instructions are available on-line in the Download Forms section of TAX's web site, located at www.tax.virginia.gov. Form CT-7 should be used by both business and residential customers. No prior registration with TAX is required for taxpayers filing a Form CT-7.

The tax will not be imposed on federal, state and local government agencies or on consumers of CMRS (mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124). Customer remedy procedures for billing errors for the E-911 tax are the same as those for the communications sales tax. (Source: *Code of Va.* § 58.1-1730)

The penalty for failure to file a return or pay the tax is 5 percent of the tax due, or if the failure to pay in full was fraudulent, a penalty of 100 percent of the tax due. For late payment of the tax, interest shall be assessed at the rate established in Internal Revenue Code § 6621, plus 2%. (Source: *Code of Va.* §§ 58.1-1812 and § 58.1-15)

Definitions

For purposes of the E-911 tax, the following definitions are applicable:

“**Access lines**” are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade-capable telecommunications services. Centrex, PBX or other multistation telecommunications services will incur an E-911 tax charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the

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public switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax charges for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the provider will be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

“Automatic location identification” or **“ALI”** means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

“Automatic number identification” or **“ANI”** means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

“Centrex” means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

“Communications services provider” has the same meaning as it does for the communications sales tax.

“Enhanced 9-1-1 service” or **“E-911”** means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by dialing the digits “9-1-1.” Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated, and provides the capability for ANI and ALI features.

“ISDN Primary Rate Interface” means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

“Network Access Register” means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

“PBX” means public branch exchange and is telephone switching equipment owned by the customer and located on the customer’s premises.

“PBX trunk” means a connection of the customer’s PBX switch to the central office.

“Public safety answering point” or **“PSAP”** means a communications facility equipped and staffed on a 24-hour basis to receive and process 911 calls.

Public Rights-of-Way Use Fee

Effective January 1, 2007, cable television providers that use the public rights-of-way will be required to collect a state public rights-of-way use fee similar to that currently imposed on providers of landline telephone service. On a monthly basis, each cable television provider will collect the fee from its subscribers and remit the fee to TAX when it files its Form CT-75, Virginia Communications Taxes Return (see “Communications Taxes Return”).

The amount of the fee will be the same as the public rights-of-way use fee imposed on providers of landline telephone service, which is calculated annually by the Department of Transportation (VDOT). By January 15 of each year, VDOT informs telephone providers of any change in the fee, which takes effect beginning each July 1.

An entity, or entities which are members of an affiliated group of entities, providing both local telecommunications service and cable service to the same ultimate end user may collect only one public rights-of-way use fee from that ultimate end user based on (1) the local telecommunications service if the locality in which the ultimate end user resides has imposed a public rights-of-way use fee on local telecommunications service or (2) cable service if the locality in which the subscriber resides has not imposed a public rights-of-way use fee on local telecommunications service. Information regarding the public rights-of-way use fee on local telecommunications service is available from the Virginia Department of Transportation at www.vdot.virginia.gov/business/row-usefee.asp.

The fee will, when billed, be stated as a distinct item separate and apart from the monthly charge for local telecommunications service and cable service. Until the ultimate end user pays the fee to the cable operator, the fee will be a debt of the consumer to TAX. If any ultimate end user or subscriber refuses to pay the fee, the cable operator will notify TAX. All fees collected will be deemed to be held in trust by the cable operator until remitted to TAX. (Source: *Code of Va.* § 56-468.1)

The penalty for failure to file a return or pay the tax is 5 percent of the tax due, or if the failure to pay in full was fraudulent, a penalty of 100 percent of the tax due. For late payment of the tax, interest shall be assessed at the rate established in *Internal Revenue Code* § 6621, plus 2%. (Source: *Code of Va.* § 58.1-1812 and § 58.1-15)

Appendix II

Guidelines and Rules for the Virginia Communications Taxes

Definitions

For purposes of the public rights-of-way use fee, the following definitions are applicable:

“**Affiliated group**” means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:
 - a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and
 - b. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term “stock” does not include nonvoting stock which is limited and preferred as to dividends; the phrase “corporation subject to inclusion” means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term “receipts” includes gross receipts and gross income.
2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:
 - a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and
 - b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term “stock” as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

3. Two or more entities if such entities satisfy the requirements in subdivision 1 or 2 of this definition as if they were corporations and the ownership interests therein were stock.

“**Cable operator**” means any person or group of persons that (1) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in a cable system or (2) otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system, whether or not the operator has entered into a franchise agreement with a locality. Cable operator does not include a provider of wireless or direct-to-home satellite transmission service. (Source: *Code of Va.* § 15.2-2108.1:1 A)

“**Cable system**” or “**cable television system**” means any facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, except that such definition shall not include:

- A system that serves fewer than 20 subscribers;
- A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- A facility that serves only subscribers without using any public right-of-way;
- A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- Any facilities of any electric utility used solely for operating its electric systems;
- Any portion of a system that serves fewer than 50 subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or
- An open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573. (Source: *Code of Va.* § 15.2-2108.1:1 A)

“**Subscriber**” means a person who receives video programming, as defined in 47 U.S.C. § 522 20, distributed by a cable operator, as defined in *Code of Va.* § 15.2-2108.1:1 A, and does not further distribute it. (Source: *Code of Va.* § 56-468.1)

Appendix II
Guidelines and Rules for the Virginia Communications Taxes

Cable Franchise Fees

Cable franchise agreements entered into or renegotiated after January 1, 2007 will not include a franchise fee. Cable franchise agreements in effect as of January 1, 2007 will remain in effect until their expiration. Cable providers will not bill or collect from customers any cable franchise fees accruing after January 1, 2007. Instead of paying franchise fee payments directly to localities, each franchisee will include with its monthly communications sales tax return a report listing by locality the franchise fees that accrued that month (see "Communications Taxes Return"). Although each franchise fee will be reported on an accrual basis, in all other respects the amount of the franchise fee will be determined in accordance with the franchise agreement. TAX will pay the accrued franchise fees to localities from the Fund on a monthly basis after deducting its administrative costs and the costs of the Virginia Relay Center but prior to making other calculations and distributions from the Fund. Localities will retain the right to audit cable franchisees and to otherwise enforce franchise agreements. (Source: *Code of Va.* § 15.2-2108.1:1 C)

Definitions

For purposes of cable franchise fees, the following definitions are applicable:

"Cable operator" has the same meaning as set forth above for the cable rights-of-way use fee. (Source: *Code of Va.* § 15.2-2108.1:1 A)

"Cable service" has the same meaning as set forth above for the communications sales tax. (Source: *Code of Va.* § 15.2-2108.1:1 A)

"Cable system" or **"cable television system"** has the same meaning as set forth above for the cable rights-of-way use fee (Source: *Code of Va.* § 15.2-2108.1:1 A)

"Franchise" means an initial authorization, or renewal thereof, issued by a franchising authority, including a locality or the Commonwealth Transportation Board, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system, a telecommunications system, or other facility in the public rights-of-way, including either a negotiated cable franchise or an ordinance cable franchise. (Source: *Code of Va.* § 15.2-2108.1:1 A)

Communications Taxes Return

Every provider will be required to file a monthly Form CT-75, Virginia Communications Taxes Return and remit the communications taxes due on or before the twentieth day of the month following the month in which the tax is billed. A return must be filed by each registered provider even though the provider is not liable to remit any tax for the period covered by the return. The communications taxes for each period become delinquent on the twenty-first day of the succeeding month if not paid. (Source: *Code of Va.* § 58.1-654)

Providers will be required to report the communications sales tax, landline E-911 tax and cable rights-of-way use fee due as separate line items on Form CT-75. Providers will also be required to report gross sales and personal use of taxable communications services by type of service. Form CT-75 will include separate lines for landline telephone, wireless telephone, cable television, satellite television, satellite radio and an additional line for all other communications services.

Additionally, cable providers will be required to report, by locality, cable franchise fees accruing from unexpired cable franchise agreements in effect on January 1, 2007 on Form CT-75B, Virginia Cable Franchise Fee Schedule. Cable providers may use the Form CT-75B provided by TAX or a reproduction approved by TAX. In the event that a cable provider needs to add or remove a locality from the list of localities in which it is subject to a cable franchise fee subsequent to registration with TAX, the cable provider will be required to file Form CT-1, Franchise Agreement Report with TAX. These forms and instructions are available on-line in the Download Forms section of TAX's web site, located at www.tax.virginia.gov.

Virginia Relay Center

TAX will disburse funding for the costs of the Virginia Relay Center for the hearing impaired. Any funds held by the State Corporation Commission (SCC) for the Virginia Relay Center as of January 1, 2007 will be transferred to the Fund. (Source: Acts of Assembly 2006, Chapter 780, Enactment Clause 5).

Appendix II Guidelines and Rules for the Virginia Communications Taxes

Auditor of Public Accounts Report

The APA is required to determine the amount of revenues received by every locality for Fiscal Year 2006, at rates adopted on or before January 1, 2006, for each of the following taxes and fees:

- Local consumer utility tax on landline and wireless telephone service;
- Local E-911 tax on landline telephone service;
- The portion of the local BPOL tax on public service companies exceeding .5% currently billed to customers in some grandfathered localities;
- Cable television franchise fees;
- Local consumer utility tax on cable television; and
- Video programming excise tax on cable television services.

(Source: Acts of Assembly 2006, Chapter 780, Enactment Clause 8)

Based on each locality's percentage of the total Fiscal Year 2006 receipts from these sources, the APA will calculate each locality's percentage share of future distributions from the Fund. Local governments and service providers must cooperate with the APA and provide requested information. Every town with a population of less than 3,500, and any other locality whose annual audited financial statement cannot be completed by October 1, 2006, must provide to the APA by that date a statement of its receipts during Fiscal Year 2006 from such sources, verified in writing by an independent certified public accountant. Any locality that fails to furnish the information required to make this calculation in a timely manner will not be entitled to participate in the distribution of the communications taxes, and its percentage share will be disregarded in calculating the distribution to other localities. The APA and his agents are prohibited from divulging any information acquired by him in the performances of his duties that may identify specific service providers. The APA will report his findings on a tax-by-tax basis to the chairmen of the House and Senate Finance Committees and TAX no later than December 1, 2006. (Source: Acts of Assembly 2006, Chapter 780, Enactment Clause 8)

Additionally, on an annual basis, the APA is required to collect from local governments and providers any data necessary to determine changes in (1) market area and number of customers served, (2) types of services available, (3) population, and (4) possible local reimbursement. The APA is required to make an annual report of his findings to the chairmen of the House and Senate Finance Committees no later than December 1 each year. (Source: Acts of Assembly 2006, Chapter 780, Enactment Clause 8)

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Communications Sales and Use Tax Trust Fund

The revenues from the communications sales tax, the landline E-911 tax and the cable rights-of-way use fee will be collected and remitted monthly by providers to TAX and deposited into the Communications Sales and Use Tax Trust Fund ("Fund"). After transferring moneys from the Fund to TAX to pay for the direct costs of administering the communications sales tax, the moneys in the Fund will be allocated and distributed to localities after payment (1) to VDDHII to fund the Virginia Relay Center and (2) any franchise fee amount due to localities in accordance with any cable television franchise agreements in effect as of January 1, 2007. Each locality's share of the net revenue will be distributed as soon as practicable after the end of the month based on the locality's share of total local revenues received from the following taxes and fees in Fiscal Year 2006 from local tax rates adopted on or before January 1, 2006:

- Local consumer utility tax on landline and wireless telephone service;
- Local E-911 tax on landline telephone service;
- The portion of the local BPOL tax on public service companies exceeding .5% currently billed to customers in some grandfathered localities;
- Cable television franchise fees;
- Video programming excise tax on cable television services; and
- Consumer utility tax on cable television.

An amount equal to the cable franchise fee paid to each locality with a cable franchise existing on January 1, 2007 at the rate in existence on January 1, 2007 will be subtracted from the amount owed to such locality prior to the distribution of moneys from the Fund.

Any errors made in any distribution, or adjustments that are otherwise necessary, will be made in the distribution for the next month or for subsequent months. Any funds remaining in the Fund at the end of a biennium will not revert to the general fund but will remain in the Fund. Interest earned on the funds will be credited to the Fund. (Source: *Code of Va.* § 56-662)

Appendix II
Guidelines and Rules for the Virginia Communications Taxes

Example 1:

Total state communications taxes collected for the month are \$40,000,000. TAX has administrative costs of \$100,000. VDDHH has costs of \$1,000,000. The APA has determined that Locality X's share of the net communications taxes revenue is 1 percent (.01). The cable provider for Locality X reports an accrued monthly cable television franchise fee of \$350,000. Locality X's distribution for the month would be determined as follows:

Total state communications taxes revenues:	\$40,000,000
Less: 1. TAX costs:	\$100,000
2. VDDHH costs:	\$1,000,000 <\$1,100,000>
Net revenues available for distribution to localities:	\$38,900,000

Locality X would be entitled to a cable franchise fee distribution of \$350,000. Additionally, Locality X would be entitled to a distribution based on its percentage share of the net communications taxes revenues: .01 x \$38,900,000 = \$389,000.

The distribution based on the percentage share must be reduced by the amount of the cable franchise fee distribution:

Percentage share of distribution:	\$389,000
Less cable franchise fee distribution:	<\$350,000>
	\$39,000

Locality X's total distribution for the month would be \$350,000 + 39,000 = \$389,000.

Example 2:

Same facts, except that the accrued cable franchise payment was \$400,000.

Total state communications taxes revenues:	\$40,000,000
Less (1) TAX costs:	\$100,000
(2) VDDHH costs:	\$1,000,000 <\$1,100,000>

Net revenues available for distribution to localities: \$38,900,000

Locality X would be entitled to a cable franchise fee distribution of \$400,000.

Locality X's percentage share of the net communications taxes revenues is: .01 x \$38,900,000 = \$389,000.

As Locality X's percentage share of the net revenues must be reduced by the amount of the cable franchise fee distribution it would not be entitled to a distribution based on its percentage share:

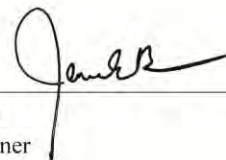
Percentage share of distribution:	\$389,000
Less cable franchise fee distribution:	<\$400,000>
	<\$11,000>

Locality X's total distribution for the month would be limited to the \$400,000 cable franchise fee distribution. As the cable franchise fee distribution to Locality X exceeded its percentage share of the Fund by \$11,000, the total revenues available for distribution to all localities based on their APA determined percentage would be reduced by \$11,000. Although the total amount paid from the Fund to Locality X and other localities which receive their entire distribution as a cable franchise fee distribution would not be affected, the amount distributed to localities entitled to a distribution based on their APA determined percentage would be proportionately reduced based on their APA determined percentage. This reduction will have no effect on distributions in subsequent months.

Additional Information

These guidelines and rules are available on-line in the Tax Policy Library section of TAX's web site, located at www.tax.virginia.gov. For additional information, please contact the Office of Customer Services at (804) 367-8037.

Approved:



Janie E. Bowen
 Tax Commissioner
 November 1, 2006

Appendix III
Ruling of the Tax Commissioner Public Document 13-13

Rulings of the Tax Commissioner

Document Number: 13-13
Tax Type: Communications Sales and Use Tax
Brief Description: Wireless telecommunications services; subscription charges; Penalties
Topics: Communications Sales and Use Tax Penalties and Interest
Date Issued: 02/05/2013

February 5, 2013

Re: § 58.1-1821 Application: Communications Sales and Use Tax

Dear *****:

This is in response to your letter submitted on behalf of ***** (the "Taxpayer") in which you seek correction of the communications sales and use tax assessment issued for the period January 2007 through March 2010.

FACTS

The Taxpayer is located outside of Virginia and provides wireless telecommunications services to customers located inside and outside Virginia. The Taxpayer contests the tax assessment and related penalties upon the ***** subscription charges. The Taxpayer also contests the assessment of compliance penalty and amnesty penalty imposed on the Billing Account Number (BANTAX) errors. Each issue is addressed separately below.

DETERMINATION

***** Subscription Charges

The Taxpayer sells ***** applications (the "applications") to its customers. The applications are for use on mobile devices and are made available to the customers via electronic download. The applications include items such as ring tones, games, wallpaper, GPS navigation tools and access to sport and weather information. The applications are offered at a variety of price points including: free of charge, monthly recurring (*i.e.*, subscription based), or one-time unlimited charge.

Pursuant to Public Document (P.D.) 08-64 (5/19/08), the Taxpayer was assessed tax on the subscription based charges in the audit. The Taxpayer contests the assessment and contends that the ruling in P.D. 08-64 is an erroneous interpretation of the statute because it creates a distinction between digital products that are downloaded electronically and charged to the customer on a monthly recurring basis and those digital products downloaded and charged a one-time fee. The Taxpayer maintains that the applications sold on a subscription basis are exempt digital products and/or exempt information services, in accordance with Va. Code §§ 58.1-647 and 58.1-648 C.

Virginia Code § 58.1-648 A imposes the 5 percent communications sales and use tax on the customers of communications services providers.

Virginia Code § 58.1-648 C provides, in pertinent part, that the communications services on which the communications tax is levied shall not include "digital products delivered electronically, such as software, downloaded music, ring tones and reading materials."

Virginia Code § 58.1-647 defines communications services, in pertinent part, as:

The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance.

Virginia Code 58.1-647 defines Information service as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than electronic transmission, conveyance, or routing."

In P.D. 08-64, the taxpayer requested a ruling regarding the application of the communications sales tax to sales of audio-visual content ("content services") transferred to its customers via cellular telephones. The content services included news, songs, ring tones, sports live video, sports scores, astrology, stock information, recipes, travelogue, short stories, exam results, reality shows and humorous content. The customer would be charged on a per minute basis for listening to or viewing the content services. There would also be an additional fixed fee charge to download the content services, for future use and reuse. The content services would be paid for on either a prepaid or post paid basis. It was ruled that digital products delivered electronically do not include any products that require continued payments

Appendix III
Ruling of the Tax Commissioner Public Document 13-13

The *Code of Virginia* sections and public document cited are available on-line at www.tax.virginia.gov in the Tax Policy Library section of the Department's web site. If you have any questions about this response, you may contact ***** in the Department's Office of Tax Policy, Appeals and Rulings, at *****.

Sincerely,

Craig M. Bums

Tax Commissioner

AR/1-4930707565.P

Last Updated 08/25/2014 16:46

Appendix IV
Matrix of Other States' Taxes on Communications Services

TAXES ON COMMUNICATIONS SERVICES –OTHER STATES**

**Source: RIA (as of March 31, 2015)

<u>State</u>	<u>Telecommunications Services</u> <u>2015 Tax Rate</u>	<u>Intrastate Communications Services</u>	<u>Interstate Communications Services</u>	<u>"900" Type Phone Services</u>
Virginia	5%	Taxable	Taxable	Exempt
Kentucky	6%	Taxable	Taxable	Taxable
Maryland	6%	Exempt	Exempt	Taxable
Tennessee	7%	Taxable	Taxable	Taxable
Washington, D.C.	5.75%	Taxable	Exempt	Taxable
West Virginia	Not Taxed	Not Taxed	Not Taxed	Not Taxed
Alabama	6% Excise Tax	Taxable	Taxable	Taxable
Alaska	Not Taxed	Not Taxed	Not Taxed	Not Taxed
Arizona	5.6%	Taxable	Exempt	Exempt
Arkansas	6.5%	Taxable	Taxable	Taxable
California	Not Taxed	Not Taxed	Not Taxed	Not Taxed
Colorado	2.9%	Taxable	Exempt	Taxable
Connecticut	6.35%	Taxable	Taxable	Exempt
Delaware	Not Taxed	Not Taxed	Not Taxed	Not Taxed
Florida	9.17%	Taxable	Taxable	Exempt
Georgia	4%	Taxable	Exempt	Exempt
Hawaii	4%	Exempt	Taxable	Exempt
Idaho	Not Taxed	Not Taxed	Not Taxed	Not Taxed
Illinois	7% Excise Tax	Taxable	Taxable	Taxable
Indiana	7%	Taxable	Exempt	Taxable
Iowa	6%	Taxable	Exempt	Taxable
Kansas	6.15%	Taxable	Taxable	Exempt
Louisiana	3%	Taxable	Taxable	Taxable
Maine	5.5%	Taxable	Exempt	Taxable
Massachusetts	6.25%	Taxable	Taxable	Taxable
Michigan	6%	Taxable	Taxable	Taxable
Minnesota	6.875%	Taxable	Taxable	Taxable
Mississippi	7%	Taxable	Taxable	Taxable
Missouri	4.225%	Taxable	Exempt	Taxable
Montana	3.75% Excise Tax	Taxable	Taxable	Exempt

Appendix IV
Matrix of Other States' Taxes on Communications Services

<u>State</u>	<u>Telecommunications Services</u> <u>2015 Tax Rate</u>	<u>Intrastate Communications Services</u>	<u>Interstate Communications Services</u>	<u>"900" Type Phone Services</u>
Nebraska	5.5%	Taxable	Exempt	Exempt
Nevada	Not Taxed	Not Taxed	Not Taxed	Not Taxed
New Hampshire	7%	Taxable	Taxable	Taxable unless separately charge for communications service
New Jersey	7%	Taxable	Taxable	Exempt
New Mexico	5.125% Intrastate; 4.25% Interstate Excise Tax	Taxable	Taxable	Exempt
New York	4% Intrastate	Taxable	Exempt	Certain services taxable
North Carolina	7%	Taxable	Taxable	Taxable
North Dakota	5%	Taxable	Exempt	Taxable
Ohio	5.75%	Taxable	Taxable	Exempt
Oklahoma	4.5%	Taxable	Taxable	Exempt
Oregon	Not Taxed	Not Taxed	Not Taxed	Not Taxed
Pennsylvania	6%	Taxable	Taxable	Exempt
Rhode Island	7%	Taxable	Taxable	Taxable
South Carolina	6% Intra- and Interstate; 10% "900" type services	Taxable	Taxable	Taxable
South Dakota	4%	Taxable	Taxable	Exempt
Texas	6.25%	Taxable	Taxable	Exempt
Utah	5.7%	Taxable	Exempt	Taxable
Vermont	6/0%	Taxable	Taxable	Exempt
Washington	6.5%	Taxable	Taxable	Taxable
Wisconsin	5%	Taxable	Taxable	Taxable
Wyoming	4%	Taxable	Exempt	Taxable

Appendix V

CSUT Fund Distributions for Fiscal Years 2013 and 2014

CSUT Fund Distributions, Fiscal Year 2013

Town	Distribution	Town	Distribution	Town	Distribution	Town	Distribution
Abingdon	\$125,475	Culpeper	\$127,226	Lebanon	\$83,889	Saint Charles	\$1,448
Accomac	5,569	Damascus	25,745	Leesburg	2,241,021	Saint Paul	24,974
Alberta	12,626	Dayton	26,408	Louisa	7,424	Saltville	49,865
Altavista	42,098	Dillwyn	4,040	Lovettsville	13,830	Scottsville	18,325
Amherst	105,945	Drakes Branch	1,465	Luray	80,027	Shenandoah	28,853
Appalachia	41,010	Dublin	96,137	Marion	134,967	Smithfield	245,203
Appomattox	6,549	Dumfries	193,860	McKenney	9,436	South Boston	810,045
Ashland	282,841	Edinburg	10,151	Melfa	4,252	South Hill	183,783
Berryville	96,735	Elkton	54,594	Middleburg	46,948	Stanardsville	3,888
Big Stone Gap	198,077	Farmville	541,368	Middletown	14,853	Stanley	17,220
Blacksburg	1,279,548	Fincastle	2,939	Mineral	1,864	Stephens City	28,302
Blackstone	18,464	Floyd	481	Monterey	7,134	Strasburg	86,298
Bluefield	45,188	Fries	13,232	Montross	14,442	Stuart	3,285
Boones Mill	3,467	Front Royal	176,398	Mount Jackson	23,227	Tappahannock	65,646
Bowling Green	42,241	Gate City	40,937	Narrows	46,038	Tazewell	28,532
Boyce	2,575	Glade Spring	30,092	New Castle	2,410	Timberville	33,932
Boydton	15,542	Glasgow	21,684	New Market	53,172	Troutville	2,306
Boykins	3,775	Gordonsville	31,549	Newsoms	1,331	Urbanna	3,753
Bridgewater	94,494	Goshen	7,841	Nickelsville	1,599	Victoria	53,116
Broadway	49,410	Gretna	27,223	Occoquan	48,027	Vienna	1,105,906
Brodnax	10,749	Grottoes	35,848	Onancock	101,693	Vinton	352,072
Brookneal	19,227	Grundy	20,514	Onley	4,343	Wachapreague	2,627
Buchanan	2,969	Halifax	105,937	Orange	183,007	Wakefield	18,386
Burkeville	1,838	Hamilton	17,051	Painter	2,527	Warrenton	558,007
Cape Charles	48,833	Haymarket	130,290	Parksley	22,286	Warsaw	48,790
Cedar Bluff	39,121	Haysi	15,356	Pearisburg	25,554	Washington	3,801
Charlotte Court House	2,596	Hemdon	1,784,864	Pembroke	8,079	Waverly	33,092
Chase City	54,754	Hillsville	19,062	Pennington Gap	48,768	Weber City	23,539
Chatham	77,058	Honaker	16,076	Phenix	1,439	West Point	89,584
Chilhowie	44,196	Hurt	24,627	Pocahontas	18,680	White Stone	3,424
Chincoteague	176,242	Independence	35,571	Port Royal	3,996	Windsor	69,148
Christiansburg	918,799	Iron Gate	16,656	Pound	34,002	Wise	111,614
Clarksville	36,394	Irvington	2,566	Pulaski	470,179	Woodstock	97,394
Cleveland	1,742	Ivor	1,929	Purcellville	166,823	Wytheville	442,232
Clifton	6,051	Jarratt	4,794	Quantico	29,369		
Clifton Forge	97,338	Jonesville	20,783	Remington	19,582	Total Towns	\$17,170,130
Clintwood	75,619	Kenbridge	32,585	Rich Creek	8,114	Total Counties	\$244,617,376
Coeburn	47,811	Keysville	2,453	Ridgeway	20,002	Total Cities	\$171,716,566
Colonial Beach	210,360	Kilmarnock	78,926	Rocky Mount	202,646		
Courtland	6,159	La Crosse	12,660	Round Hill	14,472	Aggregate	\$433,504,072
Crewe	43,923	Lawrenceville	53,631	Rural Retreat	41,335		

Appendix V
CSUT Fund Distributions for Fiscal Years 2013 and 2014

CSUT Fund Distributions, Fiscal Year 2014

<u>County</u>	<u>Distribution</u>	<u>County</u>	<u>Distribution</u>	<u>County</u>	<u>Distribution</u>	<u>City</u>	<u>Distribution</u>
Accomack	\$1,026,284	Halifax	\$1,159,887	Scott	\$773,920	Manassas Park	\$730,016
Albemarle	4,622,946	Hanover	4,969,833	Shenandoah	1,190,707	Martinsville	907,371
Alleghany	413,397	Henrico	13,125,286	Smyth	587,531	Newport News	11,628,359
Amelia	253,464	Henry	2,317,801	Southampton	556,197	Norfolk	21,857,487
Amherst	1,263,487	Highland	75,332	Spotsylvania	4,704,260	Norton	210,726
Appomattox	562,361	Isle of Wight	1,329,969	Stafford	5,784,031	Petersburg	1,835,555
Arlington	7,501,814	James City	1,701,639	Surry	51,295	Poquoson	411,633
Augusta	2,495,230	King and Queen	175,292	Sussex	174,964	Portsmouth	8,286,930
Bath	115,221	King George	386,247	Tazewell	600,700	Radford	744,824
Bedford	1,911,648	King William	357,792	Warren	889,060	Richmond City	20,475,380
Bland	104,315	Lancaster	330,625	Washington	1,613,430	Roanoke City	6,940,564
Botetourt	714,157	Lee	420,210	Westmoreland	635,258	Salem	1,066,735
Brunswick	417,944	Loudoun	11,609,949	Wise	1,002,292	Staunton	1,395,691
Buchanan	842,935	Louisa	346,994	Wythe	761,242	Suffolk	3,496,495
Buckingham	422,693	Lunenburg	205,995	York	1,312,727	Virginia Beach	26,071,764
Campbell	1,389,880	Madison	579,794	Total Counties	\$235,664,701	Waynesboro	1,295,277
Caroline	783,203	Mathews	447,729			Williamsburg	717,508
Carroll	1,009,648	Mecklenburg	575,802			Winchester	2,132,974
Charles City	154,381	Middlesex	438,249			Total Cities	\$165,336,647
Charlotte	128,235	Montgomery	1,016,523	City	Distribution		
Chesterfield	14,533,357	Nelson	472,927	Alexandria	\$10,788,439		
Clarke	428,655	New Kent	595,095	Bristol	605,173		
Craig	115,221	Northampton	506,989	Buena Vista	314,637		
Culpeper	2,030,965	Northumberland	381,715	Charlottesville	3,196,411		
Cumberland	381,978	Nottoway	346,714	Chesapeake	11,871,908		
Dickenson	492,537	Orange	1,429,100	Colonial Heights	694,635		
Dinwiddie	920,340	Page	488,544	Covington	309,963		
Essex	351,496	Patrick	487,794	Danville	3,213,753		
Fairfax	78,933,805	Pittsylvania	2,266,627	Emporia	266,387		
Fauquier	2,889,832	Powhatan	859,596	Fairfax City	2,268,808		
Floyd	619,206	Prince Edward	310,773	Falls Church	858,268		
Fluvanna	836,358	Prince George	1,272,125	Franklin City	554,495		
Franklin	2,216,009	Prince William	19,337,496	Fredericksburg	1,776,692		
Frederick	1,347,858	Pulaski	822,277	Galax	233,198		
Giles	252,574	Rappahannock	346,238	Hampton	9,132,557		
Gloucester	1,525,570	Richmond	306,947	Harrisonburg	1,615,192		
Goochland	853,600	Roanoke	3,933,244	Hopewell	841,883		
Grayson	379,969	Rockbridge	930,937	Lexington	320,918		
Greene	491,798	Rockingham	1,590,278	Lynchburg	3,386,571		
Greensville	176,912	Russell	859,439	Manassas	2,881,468		

Appendix V
CSUT Fund Distributions for Fiscal Years 2013 and 2014

CSUT Fund Distributions, Fiscal Year 2014

Town	Distribution	Town	Distribution	Town	Distribution	Town	Distribution
Abingdon	\$120,917	Courtland	\$5,935	La Crosse	\$12,200	Round Hill	\$13,946
Accomac	5,367	Crewe	42,327	Lawrenceville	51,683	Rural Retreat	39,834
Alberta	12,167	Culpeper	122,602	Lebanon	80,838	Saint Charles	1,395
Altavista	40,569	Damascus	24,810	Leesburg	2,159,594	Saint Paul	24,066
Amherst	102,097	Dayton	25,449	Louisa	7,155	Saltville	48,054
Appalachia	39,520	Dillwyn	3,893	Lovettsville	13,328	Scottsville	17,659
Appomattox	6,311	Drakes Branch	1,412	Luray	77,120	Shenandoah	27,805
Ashland	272,564	Dublin	92,645	Marion	130,064	Smithfield	236,293
Bedford	140,704	Dumfries	186,815	McKenney	9,093	South Boston	780,614
Berryville	93,221	Edinburg	9,782	Melfa	4,097	South Hill	177,104
Big Stone Gap	190,879	Elkton	52,610	Middleburg	45,243	Stanardsville	3,747
Blacksburg	1,233,058	Farmville	521,696	Middletown	14,314	Stanley	16,594
Blackstone	17,790	Fincastle	2,832	Mineral	1,796	Stephens City	27,274
Bloxom	10,879	Floyd	464	Monterey	6,875	Strasburg	83,163
Bluefield	43,547	Fries	12,752	Montross	13,917	Stuart	3,166
Boones Mill	3,341	Front Royal	169,990	Mount Jackson	22,383	Tappahannock	63,261
Bowling Green	40,707	Gate City	39,447	Narrows	44,366	Tazewell	27,496
Boyce	2,481	Glade Spring	28,999	New Castle	2,322	Timberville	32,700
Boynton	14,978	Glasgow	20,896	New Market	51,240	Troutville	2,222
Boykins	3,638	Gordonsville	30,403	Newsoms	1,282	Urbanna	3,617
Bridgewater	91,062	Goshen	7,553	Nickelsville	1,541	Victoria	51,186
Broadnax	10,358	Gretna	26,234	Occoquan	46,280	Vienna	1,065,725
Broadway	47,615	Grottoes	34,546	Onancock	97,999	Vinton	339,279
Brookneal	18,528	Grundy	19,769	Onley	4,185	Wachapreague	2,531
Buchanan	2,861	Halifax	102,088	Orange	176,357	Wakefield	17,718
Burkeville	1,771	Hamilton	16,431	Painter	2,435	Warrenton	537,731
Cape Charles	47,057	Haymarket	125,558	Parksley	21,477	Warsaw	47,018
Cedar Bluff	37,699	Haysi	14,798	Pearisburg	24,626	Washington	3,663
Charlotte Court House	2,502	Herndon	1,720,010	Pembroke	7,785	Waverly	31,890
Chase City	52,765	Hillsville	18,369	Pennington Gap	46,997	Weber City	22,684
Chatham	74,259	Honaker	15,492	Phenix	1,387	West Point	86,329
Chilhowie	42,590	Hurt	23,732	Pocahontas	18,002	White Stone	3,300
Chincoteague	169,837	Independence	34,279	Port Royal	3,851	Windsor	66,633
Christiansburg	885,414	Iron Gate	16,051	Pound	32,764	Wise	107,560
Clarksville	35,072	Irvington	2,473	Pulaski	453,093	Woodstock	93,856
Cleveland	1,676	Ivor	1,859	Purcellville	160,761	Wytheville	426,164
Clifton	5,831	Jarratt	4,619	Quantico	28,302	Total Towns	\$16,697,839
Clifton Forge	93,802	Jonesville	20,028	Remington	18,871	Total Counties	\$235,664,701
Clintwood	72,869	Kenbridge	31,398	Rich Creek	7,819	Total Cities	\$165,336,647
Coeburn	46,074	Keysville	2,364	Ridgeway	19,276	Aggregate	\$417,699,187
Colonial Beach	202,719	Kilmarnock	76,059	Rocky Mount	195,282		

