

Internet Protocol (IP) enabled telecommunications service taxability, sourcing, and allocation

What does this ETA address?

This Excise Tax Advisory (ETA) addresses telecommunications service provided using Voice over Internet Protocol (VoIP) or Fax over Internet Protocol (FoIP) technologies (collectively referred to as “IP telecommunications services”). This ETA provides:

- **Taxability:** An explanation of the taxability of these services under Washington’s retail sales tax (“sales tax”) and retailing business and occupation tax (“B&O tax”); and
- **Sourcing and allocation:** An explanation of when a sale of these IP telecommunications services is considered to take place in Washington such that a seller must collect and remit sales tax and pay retailing B&O tax.

This ETA is limited to IP telecommunications services sold on either a call-by-call basis or an other than call-by-call basis in regard to sourcing and allocation.

What is outside the scope of this ETA?

Taxability:

This ETA addresses IP telecommunications service in the context of Washington’s sales and retailing B&O taxes and does not address other Washington state or local taxes, such as E-911 taxes.

Sourcing and allocation:

This ETA does not address sourcing and allocation of IP telecommunications of retailing B&O and retail sales tax related to:

- Prepaid calling services,
- Prepaid wireless calling services,

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- Postpaid calling services,
- Commercial mobile radio services, or
- Private communication services.

See RCW 82.32.520 for more information on these items.

What are IP telecommunications services?

Telecommunications service. A telecommunications service is “the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points” and “includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services . . . [.]” See *RCW 82.04.065*.

- This definition is functional; it is not based upon the type of technology used to accomplish the stated function.

IP telecommunications services. IP telecommunications services refer to those telecommunications services that use an Internet protocol technology, such as VoIP or FoIP, to act on the form, code, or protocol of content for the purpose of transmission, conveyance, or routing of the content. “IP telecommunications service” is simply a descriptive term used for the purposes of this ETA; it does not represent a statutorily defined term or have any independent legal effect.

- VoIP and FoIP are Internet Protocols that enable the transmission of voice and data signals through the [Internet](#) and [packet-switched networks](#). These protocols allow users to send voice or data signals in a digital format as opposed to the traditional analog technology associated with the Public Switched Telephone Network.
 - VoIP is often used for voice signals and is frequently marketed under VoIP phone, Internet or IP telephony, voice over broadband or [broadband](#) telephony, broadband phone, and other names.
 - FoIP is used for inter-networking of facsimile transmissions within packet-based networks.

Fixed and nomadic services. Some sellers provide IP telecommunications services on a fixed basis, meaning the IP telecommunications services can be used only from one fixed location or between a number of fixed locations. Other sellers provide IP telecommunications services nomadically, meaning the services can be used at locations of the purchaser’s choosing and that are not limited to one or more fixed locations.

Taxability

The sale of a telecommunications service to a consumer is a retail sale subject to sales tax and retailing B&O tax. See *RCW 82.04.050, 82.08.020, 82.04.250, and RCW*

82.04.190. Because an IP telecommunications service is a telecommunications service, it is subject to the sales tax and retailing B&O tax. Local sales tax may also apply.

Prior to August 1, 2013, IP telecommunications services were not exempt as a “local service” under RCW 82.08.0289 because they were not associated with regulatory tariffs filed by telephone companies. No regulatory tariffs were applicable to IP telecommunications services and thus this exemption did not apply to these services. The definition of “local service” under RCW 82.08.0289 reflected the customary division of telephone service into separate “residential” and “business” classifications, as defined by regulatory tariffs filed by telephone companies. These separate classes were mandated by state regulatory approval of telephone rates, and telephone carriers filed separate tariffs with the Washington Utilities and Transportation Commission (WUTC) governing each class of service. Land-line telephone carriers continue to file such tariffs with the WUTC.

Effective August 1, 2013, the Legislature adopted Second Engrossed Second Substitute House Bill (SESSHB) 1971 (Chapter 8, Laws of 2013, 2nd Special Session) that eliminated the local services exemption. However, the bill retroactively allowed application of the “local services” exemption to fixed interconnected voice over Internet protocol services sold by certain specified providers, except for the non-local service allocation associated with those services, as defined in SESSHB 1971. SESSHB 1971 also states that no refund may be provided with respect to fixed interconnected voice over Internet protocol services for any retail sales tax validly collected before August 1, 2013.

Sourcing and Allocation

Sellers charging for an IP telecommunications service must collect and remit sales tax if the sale of service is **sourced** to Washington under RCW 82.32.520. *See RCW 82.32.520.* If a sale is sourced to Washington for sales tax purposes, the seller must allocate gross proceeds of the sale to Washington and pay retailing B&O tax. *See RCW 82.04.530.* Table A provides the sourcing rules for services sold on a call-by-call basis or on an other than call-by-call basis as follows:

Table A

If the service is...	The sale is sourced to...	Important terms
Sold on a call-by-call basis	<ul style="list-style-type: none"> • The taxing jurisdiction where a call both originates and terminates, <p style="text-align: center;"><u>OR</u></p> <ul style="list-style-type: none"> • If the call does not 	<p>"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.</p> <p>"Service address" means:</p> <ul style="list-style-type: none"> • (i) The location of the

	<p>originate and terminate within one taxing jurisdiction, then the taxing jurisdiction where the call either</p> <ul style="list-style-type: none"> – originates or terminates, and – in which the service address is also located. 	<p>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;</p> <ul style="list-style-type: none"> • (ii) If the location in (i) is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; • (iii) If the locations in (i) and (ii) are not known, the location of the customer's place of primary use.
<p>Sold on an other than call-by-call basis</p>	<p>Place of primary use</p>	<p>"Other than call-by-call basis" refers to any method of charging for telecommunications services that is not done on a call-by-call basis. Prepaid and postpaid calling services, prepaid wireless calling services, commercial mobile radio services, and private communications services all have sourcing rules that are separate and distinct from telecommunications services sold on an other than call-by-call basis. <i>See RCW 82.32.520.</i></p> <p>“ Place of primary use” means: The street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.</p>

Note:

- **Local sales taxes:** *The same sourcing rules above apply for sourcing any applicable local sales tax.*
- **Nexus:** *A seller is obligated to collect and remit sales tax and pay retailing B&O tax only if the seller has nexus with Washington. Nexus refers to contacts with Washington sufficient to subject the seller to tax payment or tax collection obligations. For information on determining nexus, please see the Department's website at www.dor.wa.gov under the "Doing business" tab.*

Mixed methods of charging: Some IP telecommunications services may be sold in part on a call-by-call basis and in part on an other than call-by-call basis. In particular, an IP telecommunications provider may charge on an other than call-by-call basis for calls within the U.S., but separately charge for international calls on a call-by-call basis. In this and similar instances, the call-by-call basis sourcing rules will apply to the services charged on a call-by-call basis, while the services charged on an other than call-by-call basis will be sourced to the place of primary use.

**Sourcing
Examples**

These examples illustrate the sourcing rules in Table A and are intended to provide guidance to sellers in the collection and remittance of sales tax and payment of retailing B&O tax on the sale of IP telecommunications services. Examples 1, 2, & 3 address IP telecommunications services provided on a fixed basis. Examples 4 & 5 address IP telecommunications services provided on a nomadic basis.

Each example assumes the seller has nexus with Washington and identifies a number of facts and then states a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined separately after a review of all of the facts and circumstances. The examples are as follows:

1: Fixed IP telecommunications sold on a call-by-call basis.

Facts:

Barb, a consumer, purchases a calling service from Telco. Barb uses the service to make and receive voice calls from her home in Tacoma, Washington. Barb cannot make or receive calls from any location other than her residential street address in Tacoma. Telco provides Barb with the Internet enabled telephone and broadband connection over which calls are conducted and to which the service is charged. The calls are made using VoIP technology. Barb is charged per the minutes of use for each call. Barb places one call to her sister in Spokane, Washington and a second call to her brother in Raleigh, North Carolina.

Result and explanation:

Telco is providing an IP telecommunications service subject to sales tax and retailing B&O. The service is charged on a call-by-call basis. That is, the price is measured by the individual calls.

- The first call both originates and terminates in Washington and thus is sourced to Washington for tax purposes.

- The second call originates in Washington and terminates in North Carolina, and Barb's calls are charged to her (the customer's) phone and broadband equipment located in Tacoma, Washington. Under the sourcing rules above, this second call is also sourced to Washington because the call originated in Washington and the "service address" is located in Washington.
- Telco must collect and remit retail sales tax and pay retailing B&O tax on both calls. This result would be the same whether Telco did or did not provide the broadband connection over which calls are conducted.

2: Fixed IP telecommunications sold on an other than call-by-call basis.

Facts:

Assume the same facts as Example 1, except that Telco charges Barb a flat monthly rate for unlimited calling.

Result and explanation:

Telco is providing a taxable IP telecommunications service subject to sales tax and retailing B&O. The service is charged on an other than call-by-call basis and thus is sourced to the customer's place of primary use. Under the statute, the "customer" is the person or entity that contracts with the seller of telecommunications service. *See RCW 82.32.520(4)(d)*. Barb is the person contracting with Telco for the service.

- Telco must collect and remit sales tax and pay retailing B&O tax according to Barb's place of primary use.
- Barb's residential street address in Tacoma, Washington is the sole location where her use of the IP telecommunications service occurs and constitutes her place of primary use.
- Telco must collect and remit sales tax and pay retailing B&O tax on the sale because Barb's place of primary use is in Washington. This result would be the same whether Telco did or did not provide the broadband connection over which calls are conducted.

3: Fixed IP telecommunications sold on an other than call-by-call basis where the end user is not the contracting party.

Facts:

CorpCo, a business consumer, contracts to purchase a calling service from Telco. Armikka, a CorpCo employee, will use this service to make voice and fax calls. Armikka works at a CorpCo field office located at a business street address in Bellevue, Washington. The calls are made using VoIP and FoIP technologies and calls can be made only from the fixed location of Armikka's field office. The service is charged at a flat monthly rate for unlimited calling. Telco sends billings for the service to CorpCo's corporate headquarters in Portland, Oregon.

Result and explanation:

Telco is providing a taxable IP telecommunications service subject to sales tax and retailing B&O tax. The service is charged on an other than call-by-call basis. Telco must collect and remit sales tax and pay retailing B&O tax according to the customer's place of primary use. Under statute, the "customer" is the person or entity

that contracts with the seller of telecommunications service. However, if the end user of the telecommunications service is not the contracting party, the end user is the customer of the telecommunications service. *See RCW 82.32.520(4)(d)*. "End user" means the person who uses the telecommunications service. In the case of an entity, the term end user means the individual who uses the service on behalf of the entity. *RCW 82.32.520(4)(f)*.

- Telco must collect and remit sales tax and pay retailing B&O tax according to Armikka's place of primary use.
- Armikka's business street address in Bellevue, Washington is the sole location where his use of the IP telecommunications service occurs and constitutes the place of primary use.
- Telco must collect and remit sales tax and pay retailing B&O tax on the sale because Armikka's place of primary use is in Washington.

4: Nomadic IP telecommunications sold on a call-by-call basis.

Facts:

Bill, a consumer, purchases a calling service from Telco. Bill uses this service to make voice calls using an assigned telephone number associated with the origination and termination of his calls. Bill's use of the service primarily occurs at a residential street address in Ocean Shores, Washington. Telco provides Bill with Internet compatible software to make calls, which Bill can place on a number of devices, including his portable laptop computer. The calls are made using VoIP technology and routed through Telco's servers. Bill can make calls from any location of his choosing, if he obtains a broadband Internet connection at the time of the call. Telco does not know the origination or termination point of Bill's calls or the location of the telecommunication equipment to which calls are charged. Bill is charged on a per minute basis for each call.

Result and explanation:

Telco is providing a taxable IP telecommunications service subject to sales tax and retailing B&O tax. Bill is charged on a call-by-call basis. The service is nomadic and Telco does not know the origination or termination point for particular calls or the location of the telecommunications equipment to which particular calls are charged. Therefore, the defaults under the definition of "service address" apply. *See "Important Terms" for services sold on a call-by-call basis in Table A above.*

Because the system used to transport the signals is that of the seller and the second default does not otherwise apply, the default of the customer's place of primary use applies. Under statute, the "customer" is the person or entity that contracts with the seller of telecommunications service. *See RCW 82.32.520(4)(d)*. Bill is the person contracting with Telco for the service.

- Telco will collect and remit sales tax and pay retailing B&O tax according to Bill's place of primary use.
- Bill's residential street address in Ocean Shores, Washington is the address where the service is primarily used.
- The sale will be sourced to Bill's residential street address.
- Telco must collect and remit sales tax and pay retailing B&O tax on the sale

because Bill's place of primary use is in Washington.

- A different result may be appropriate if origination and termination points outside Washington are later identified.

5: Nomadic IP telecommunications sold on an other than call-by-call basis.

Facts:

Assume the same facts as Example 4, except that Telco charges Bill a flat monthly rate for unlimited calling.

Result and explanation:

Telco is providing a taxable IP telecommunications service subject to sales tax and retailing B&O. Bill is charged on an other than call-by-call basis and thus the service is sourced to the customer's place of primary use. Under the statute, the "customer" is the person or entity that contracts with the seller of telecommunications service. *See RCW 82.32.520(4)(d)*. Bill is the person contracting with Telco for the service.

- Telco must collect and remit sales tax and pay retailing B&O tax according to Bill's place of primary use.
- Bill's residential street address in Ocean Shores, Washington, is the address where the service is primarily used.
- The sale will be sourced to Bill's residential address.
- Telco must collect and remit sales tax and pay retailing B&O on the sale because Bill's place of primary use is in Washington.
