

## **Legal Q&A**

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**October 2008**

### **Are phone bills subject to city sales tax?**

It depends. The various services that appear on phone bills, known as “telecommunications services,” are one of the few areas where a city’s sales tax base doesn’t automatically mirror the state’s sales tax base. The state does tax telecommunications services at the usual 6.25-percent state rate. Tex. Tax Code Sec. 151.0101(6).

Telecommunications services are exempt from city taxes, however, unless the city council repeals the exemption by an ordinance recorded in the minutes and filed with the comptroller. Tex. Tax Code Sec. 321.210. A city that repeals the exemption may tax only those telecommunications services taxable by the state, with the exception of otherwise taxable interstate long-distance service.

Repeal of the city telecommunications exemption can be a significant source of revenue for cities, but many cities do not take advantage of it.

### **Will the repeal of the exemption apply to cell phones?**

Yes, the definition of potentially taxable telecommunications services reads as follows:

§ 151.0103. TELECOMMUNICATIONS SERVICES. (a) For the purposes of this title only, “telecommunications services” means the electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or that may be devised, including but not limited to long-distance telephone service. The term does not include:

- (1) the storage of data or information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change its form or content;
- (2) the sale or use of a telephone prepaid calling card;
- (3) Internet access service; or
- (4) a pay telephone coin sent-paid telephone call.

### **Will the city have to determine where calls and phone bills are sourced in order to receive taxes if it repeals the exemption?**

No, sourcing of local sales tax is handled by the comptroller. The city need only repeal the exemption and notify the comptroller. The comptroller handles things from there.

## **How much new sales tax will repeal of the telecommunications exemption generate for a city?**

An interested city can call the comptroller to discuss this issue, but historically it has been difficult for the comptroller to estimate the value of the repeal ahead of time. The reason for this is that the state, as was mentioned above, already includes telecommunications in its sales tax base, so it has little reason to break out those taxes from among others in its base for analysis purposes. Another issue is that local sourcing issues, which can be complex in the telecommunications services area, often aren't worked out until after the exemption is repealed by a city.

## **Are gas and electricity bills subject to city sales taxes?**

Gas and electricity sold for most commercial use are subject to both state and city sales tax. Tex. Tax Code Sec. 151.317. Industrial and manufacturing uses are typically exempt.

Residential gas and electricity are exempt from state sales tax and are ordinarily exempt from city sales tax. Some cities, however, have the option to repeal the residential gas and electricity sales tax exemption.

## **Which cities can repeal the sales tax exemption for residential gas and electricity?**

If a city imposed a sales tax prior to October 1, 1979, it has the option to pass an ordinance repealing the exemption on residential gas and electricity. If the city had no sales tax prior to October 1, 1979, it is ineligible to repeal the exemption. Tex. Tax Code Sec. 321.105.

## **What steps must an eligible city take to tax residential gas and electricity?**

The city must adopt an ordinance by majority vote of the membership of the city council. The vote must be a record vote and recorded in the minutes of the city. Finally, the city must send a copy of the ordinance to the comptroller by registered or certified mail. Tex. Tax Code Sec. 327.105(d).

## **How are other utilities treated for sales tax purposes?**

All water service is exempt from sales tax. Tex. Tax Code Sec. 151.315.

Domestic sanitary sewer service is not subject to state or local sales taxes, nor is industrial discharge, provided it is regulated by TCEQ. Tex Tax Code Sec.'s 151.0048(3) and 151.0101(a).

Garbage collection service is subject to the state and local sales tax as a taxable real property service. Tex. Tax Code Sec.'s 151.0048(3) and 151.317. Industrial solid waste is not taxable, however, nor are garbage collection services used by some contractors.

Cable television services are subject to both state and local sales taxes. Tex. Tax Code Ann. Sec. 151.0101(a)(2). This includes satellite T.V. T.A.C. Title 34, Chapter 3, Subchapter O, Section 3.313.