

# Notice of Proposed Rulemaking

## Excise Taxes; Communications Services, Distance Sensitivity

### REG-141097-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the definition of toll telephone service for purposes of the communications excise tax. These regulations affect providers and purchasers of communications services.

DATES: Written and electronic comments and requests for a public hearing must be received by June 30, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-141097-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-141097-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita Van Dyke, (202) 622-7180; concerning the regulations, Cynthia McGreevy (202) 622-3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains proposed amendments to the Facilities and Services Excise Tax Regulations (26 CFR part 49) relating to the definition of toll telephone service.

Section 4251 imposes tax on amounts paid for certain communications services, including local and toll telephone service. Section 4252(b)(1) provides that toll telephone service means a telephonic quality communication for which there is a toll charge that varies in amount with the distance and elapsed transmission time of each individual communication.

Section 4252(b)(1), as enacted in 1965, describes the long distance telephone service sold to residential and most business subscribers under the 1965 Federal Communications Commission rules. At that time, the charge for a long distance telephone call increased as the duration of the call increased and generally increased as the distance between the originating telephone station and the terminating telephone station increased. By the late 1990's, most carriers had moved toward a fee structure that includes a flat per-minute rate for domestic calls.

In 1979, the Treasury Department published Rev. Rul. 79-404, 1979-2 C.B. 382, which stands for the principle that a long distance telephone call for which the charge varies with elapsed transmission time but not with distance is toll telephone service described in section 4252(b)(1).

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Cynthia McGreevy, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 49 is proposed to be amended as follows:

#### PART 49—FACILITIES AND SERVICES EXCISE TAXES

1. The authority citation for part 49 continues to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

2. Section 49.4252-0 is added to read as follows:

*§49.4252-0 Section 4252(b)(1); distance sensitivity.*

(a) *In general.* For a communications service to constitute toll telephone service described in section 4252(b)(1), the charge for the service need not vary with the distance of each individual communication.

(b) *Effective date.* This section applies to amounts paid on and after the date of publication of these regulations in the **Federal Register** as final regulations.

David A. Mader,  
*Assistant Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on March 31, 2003, and published in the issue of the Federal Register for April 1, 2003, 68 F.R. 15690)