DEPARTMENT OF TAXATION
2008 Fiscal Impact Statement

1. Patron Kathy J. Byron

2. Bill Number HB 924

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Income Tax and Sales and Use Tax; Tax Preferences for Certain Telecommunications Service Providers

5. Summary/Purpose:

This bill would provide a nonrefundable individual and corporate income tax credit to taxpayers who purchase and install wireless and broadband equipment in order to provide communications services, including Internet access, to rural areas within the Commonwealth. The amount of the credit would be equal to thirty percent of such expenditures. Taxpayers would be allowed to carry over unused amounts of the credit for the next five tax years until the total amount of the credit has been taken.

The total amount of tax credits granted to all taxpayers could not exceed $10 million per tax year. Taxpayers would be required to apply for the credit by making an application to TAX. If the applications for the credit exceeded the $10 million amount, TAX would be required to apportion the money by dividing the $10 million by the total amount of tax credits applied for in order to determine the percentage that each taxpayer would receive.

In addition, this bill would provide a sales and use tax exemption for tangible personal property that was sold or leased to a telecommunications company for use or consumption by such a company directly in the rendition of its public service. This exemption would be phased in over three years.

The tax credit portion of this bill would be effective for taxable years beginning on and after January 1, 2008. The sales and use tax exemption portion would be effective beginning January 1, 2009.

6. Fiscal Impact Estimates are: Not Available. (See Line 8.)

6a. Expenditure Impact:

Fiscal Year	*Dollars*	*Fund*
2007-08	$23,000	GF
2008-09	$26,000	GF
2009-10	$27,000	GF
2010-11	$27,000	GF
2011-12	$28,000	GF
2012-13	$28,000	GF
2013-14	$29,000	GF

7. Budget amendment necessary: Yes.
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8. Fiscal implications:

Administrative Costs

The Department would incur administrative costs of $23,000 for Fiscal Year 2008, $26,000 for Fiscal Year 2009, $27,000 for Fiscal Year 2010, $27,000 for Fiscal Year 2011, $28,000 for Fiscal Year 2012, $28,000 for Fiscal Year 2013, and $29,000 for Fiscal Year 2014 in order to hire a part-time employee to administer and allocate the tax credit.

Revenue Impact

This bill would have an unknown negative revenue impact on state and local revenues. The proposed tax credit for the purchase of wireless and broadband equipment has a limit of $10 million for each tax year, beginning with Taxable Year 2008. While there is a documented lack of wireless and broadband access in rural areas, the amount of investment that will occur and qualify for the proposed credit is unknown.

The revenue impact of the proposed restoration of the sales and use tax exemption for telecommunication companies is also unknown. Based on information regarding plant additions by telecommunications companies obtained from the State Corporation Commission and survey results obtained from responding telecommunications companies, the estimated annual state and local revenue loss at the current level of spending would likely be more than $41 million if the exemption was fully restored. The sales and use tax exemption would be gradually phased in over three years. From January 1, 2009, to June 30, 2009, the exemption would be for twenty-five percent of the purchase price. From July 1, 2009, to June 30, 2010, the exemption would be for fifty percent. From July 1, 2010, to June 30, 2011, the exemption would be for seventy-five percent; and, beginning on July 1, 2011, the exemption would be for one hundred percent of the purchase price. As the growth of expenditures for this industry is difficult to estimate, this estimate does not reflect any growth in purchases.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Until 2004, public service corporations had an exemption for the purchase of all tangible personal property used directly in the rendition of their public service. Direct usage refers to those activities that are an integral part of the rendition of a public utility service, including all steps of a utility's production, generation or initiation process as well as a utility's transmission or distribution process, but not including incidental public utility functions such as administration and management. This exemption was enjoyed by (i) public service corporations subject to state franchise or license tax on gross receipts, (ii) telecommunications companies and certain telephone companies, and (iii) common carriers of property or passengers by motor vehicle or railway.

With the exception of common carriers by railway, the 2004 tax reform (House Bill 5018, Chapter 3, 2004 Acts of Assembly, Special Session I) repealed all the exemptions for public service corporations. These included all public service corporations subject to the state franchise and license tax on gross receipts, telecommunications and certain telephone companies, and motor vehicle common carriers.

The law that repealed these exemptions also contained an enactment clause, which allows those entities that are now required to pay a sales and use tax to impose a separate line item surcharge on customers' bills in order to recoup the taxes paid as a result of the repeal of the exemption. This enactment clause does not apply to motor vehicle common carriers.

Proposal

Income Tax Credit

This bill would provide a nonrefundable individual and corporate income tax credit to taxpayers who purchase and install wireless and broadband equipment in order to provide communications services, including Internet access, to rural areas within the Commonwealth. This bill would define a "rural area" as any locality with an overall population density of less than or equal to 120 people per square mile.

The amount of the credit would be equal to thirty percent of such expenditures. Taxpayers would be allowed to carry over unused amounts of the credit for the next five tax years until the total amount of the credit has been taken. The amount of any credit that was attributable to a partnership, electing small business corporation (S corporation), or limited liability company would be required to be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

The total amount of tax credits granted to all taxpayers could not exceed $10 million per tax year, however. Taxpayers would be required to apply for the credit by making an application to TAX. If the applications for the credit exceeded the $10 million amount, TAX would be required to apportion the money by dividing the $10 million by the total amount of tax credits applied for in order to determine the percentage that each taxpayer would receive. If a pass-through entity were involved, the partnership, S corporation, or limited liability company making the expenditures would be responsible for making the application to TAX, not the individual taxpayers.

Sales and Use Tax Exemption

This bill would provide a sales and use tax exemption for tangible personal property that was sold or leased to a telecommunications company for use or consumption by such a company directly in the rendition of its public service. It would not reinstate the exemption for the other public service corporations that lost the exemption in 2004, however.

If this sales tax exemption were reinstated, telecommunications companies would no longer have the authority to impose a separate line item surcharge on customers' bills in order to recoup the taxes paid as a result of the repeal of the exemption.

This sales and use tax exemption would be gradually phased in over three years. From January 1, 2009, to June 30, 2009, the exemption would be for twenty-five percent of the purchase price. From July 1, 2009, to June 30, 2010, the exemption would be for fifty percent. From July 1, 2010, to June 30, 2011, the exemption would be for seventy-five percent; and, beginning on July 1, 2011, the exemption would be for one hundred percent of the purchase price.

Similar Legislation

Senate Bill 117 is identical to this bill.

House Bill 1433 would provide a sales and use tax exemption for tangible personal property that was sold or leased to a telecommunications company for use or consumption by such a company directly in the rendition of its public service. This bill would also provide a sales and use tax exemption for tangible personal property that was sold or leased to certain telephone companies chartered in the Commonwealth.

cc : Secretary of Finance

Date: 1/29/2008 AM
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