

CHAPTER Rev 1600 COMMUNICATIONS SERVICES TAX

PART Rev 1601 DEFINITIONS

**Readopt Rev 1601.01, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1601.01 “Agency” means any:

- (a) Legislative body;
- (b) Department;
- (c) Commission;
- (d) Board;
- (e) Institution;
- (f) Bureau; or

(g) Other entity under the authority of the state or federal government, and not otherwise specifically excluded by law as a state or federal entity.

**Adopt Rev 1601.02 to read as follows:**

Rev 1601.02 “Agent” means a person who has the authority to act on behalf of another person, or a person who could be reasonably inferred by others to represent another person.

**Readopt Rev 1601.02 through 1601.09, effective 10-24-12 (Document #10213), as Rev 1601.03 through Rev 1601.10 respectively, to read as follows:**

Rev 1601.03 “Channel” means a frequency band of sufficient width for communications services.

Rev 1601.04 “Channel termination point” means the location where a customer either inputs or receives the private communications service.

Rev 1601.05 “Communications services” means “communications services” as defined in RSA 82-A:2, III.

Rev 1601.06 “Dial around call” means the long-distance call which is made from a payphone where the caller uses a carrier other than the payphone’s presubscribed long distance carrier.

Rev 1601.07 “Department” means the New Hampshire department of revenue administration.

Rev 1601.08 “Default compensation” means the per call amount set by the Federal Communications Commission to be paid to a pay phone service provider to cover the costs of an access-code call or a toll-free subscriber call in the absence of a negotiated agreement between the pay phone service provider and the carrier handling the call.

Rev 1601.09 “Disaggregated” means a charge which is separately identified, at a minimum on a semiannual basis, from all other charges whether or not it is included on the same billing statement.

Rev 1601.10 “Gross charge” means “gross charge” as defined in RSA 82-A:2, V.

**Repeal Rev 1601.10, effective 10-24-12 (Document #10213), as follows:**

~~Rev 1601.10 “Initial cell site” means the equipment that is first in radio contact with a subscriber with respect to a particular cellular communication.~~

**Readopt with amendment Rev 1601.11, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1601.11 “Paid calling service” means “paid calling service” as defined in RSA 82-A:2, XXIII, and includes prepaid phone calls.

**Readopt with amendment Rev 1601.12, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1601.12 “Personal communications services” means a form of wireless service for the transport or transmission of voice, advanced messaging, such as portable 2-way messaging, and data.

**Readopt Rev 1601.13 and 1601.14, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1601.13 “Place of primary use” means “place of primary use” as defined in RSA 82-A:2, XXI.

Rev 1601.14 “Political subdivision” means any:

- (a) County;
- (b) City;
- (c) Town;
- (d) School district;
- (e) Village district;
- (f) School administrative unit;
- (g) Conservation district;
- (h) Refuse disposal district; or
- (i) Other body corporate and politic created by the legislature as a political subdivision.

**Readopt Rev 1601.15, effective 3-17-20 (Document #13002), to read as follows:**

Rev 1601.15 “Prepaid wireless telecommunications service” means “prepaid wireless telecommunications service” as defined in RSA 82-A:2, XXVII.

**Readopt Rev 1601.16 through Rev 1601.20, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1601.16 “Private communications service” means “private communications service” as defined in RSA 82-A:2, XXIV.

Rev 1601.17 “Private line service” means the communications service furnished to a customer and billed on or before December 31, 2004, which entitles the customer to:

- (a) Exclusive use of any communication channel or groups of channels; or
- (b) The use of an intercommunication system for the customer’s stations.

Rev 1601.18 “Reseller” means any person who purchases communications services for use as a component part of the service provided by the reseller to the ultimate retail consumer who originates or terminates the taxable communications services.

Rev 1601.19 “Residential customer” means any individual who primarily utilizes communications services for a non-business purpose either from their place of residence or from another location.

Rev 1601.20 “Retailers” means:

(a) All persons, whether natural, corporate or otherwise, who engage in the business of making sales of communications services at retail, such as, but not limited to:

- (1) Telephone services;
- (2) Telegraph services;
- (3) Mobile telecommunications services;
- (4) Paging services;
- (5) Facsimile transmission services;
- (6) Party line services;
- (7) Personal communications services;
- (8) Prepaid wireless telecommunications services; or
- (9) Voice over Internet protocol (VoIP) services;

(b) Hotels, motels, inns, bed and breakfast facilities, colleges, and other businesses who sell telecommunication services to guests, students, or other persons at retail; and

(c) For purposes of prepaid wireless telecommunications services, to have the same meaning as “seller”, defined below.

**Readopt Rev 1601.21 and Rev 1601.22, effective 3-17-20 (Document #13002), to read as follows:**

Rev 1601.21 “Retail transaction” means “retail transaction” as defined in RSA 82-A:2, XXVIII.

Rev 1601.22 “Seller” means “seller” as defined in RSA 82-A:2, XXIX.

**Readopt Rev 1601.23 effective 10-24-12, (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1601.23 “Taxing jurisdiction” means any state, the District of Columbia, any territory or possession of the United States, or any political subdivision within the territorial limits of the United States that has the authority to impose a tax, charge, or fee.

**Readopt Rev 1601.24, effective 3-17-20 (Document #13002), to read as follows:**

Rev 1601.24 “Voice over Internet protocol” (VoIP) means “voice over Internet protocol” as defined in RSA 82-A:2, XXX.

PART Rev 1602 CALCULATION OF GROSS CHARGE

**Readopt with amendment Rev 1602.01, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1602.01 Charges Directly Related or Necessary to Communications Services.

(a) All amounts charged by a retailer for services used by customers in connection with the origination or reception of communications services shall be included in the amount of the gross charge, unless otherwise specified in these rules.

(b) Hotels, motels, inns, bed and breakfast facilities, colleges, or other similar organizations reselling communications services to their guests or students shall not be required to collect the tax on such sales provided:

(1) The fee charged, other than the cost of the communications services from the initial retailer, shall be one dollar or less for the use of the equipment; and

(2) The cost of the communications services from the initial retailer shall not be increased in amount but merely passed on to the consumer by the reseller.

**Readopt Rev 1602.02, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1602.02 Disaggregated Charges.

- (a) Services provided by a retailer to a customer shall not be included in the gross charge when:
- (1) They are not necessary for, or directly related, to the provision of communications services;
  - (2) They are identified as separate services to the customer; and
  - (3) The cost for such services are disaggregated.
- (b) Disaggregated services shall include, but not be limited to the following:
- (1) Directory advertising;
  - (2) Consulting services;
  - (3) Billing and collection revenue; and
  - (4) Non-communication products.

**Readopt with amendment Rev 1602.03, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1602.03 Charges for Customer Equipment.

(a) Charges for customer equipment which are aggregated with a billing for communications services shall be included within the gross charge.

(b) The charge for the equipment provided or sold by a retailer and the associated installation charges shall not be included within the gross charge when:

- (1) The equipment, including installation charges, is separately identified on the customer's invoice; and
  - (2) The charge for the use, rental, purchase, and installation of the equipment is separately stated on the customer's invoice.
- (c) Equipment, referred to in (b), above, shall include:
- (1) Telephone instruments, accessories, and station sets;
  - (2) Dialers and modems;
  - (3) Private branch exchanges;
  - (4) Inside wiring;
  - (5) Facsimile machines;
  - (6) Pagers; and
  - (7) Non-electronic items such as, but not limited to:

- a. Documentation manuals; and
- b. Furniture.

**Readopt Rev 1602.04, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1602.04 Charges for Additional Services.

(a) Charges for additional services provided to customers by a retailer of communications services, and aggregated with the billing for communications services, shall be included within the gross charge.

(b) Charges for the transmission of data by a retailer shall be included in the gross charge.

(c) The gross charge shall not include the cost of providing service for:

- (1) Automated data storage;
- (2) Data retrieval and processing services;
- (3) The use of computer time; or
- (4) The use of other equipment.

(d) The gross charge shall include the following additional services:

- (1) Unlisted or unpublished telephone numbers;
- (2) Operator assistance;
- (3) Directory information;
- (4) Call-waiting;
- (5) Call-forwarding;
- (6) Burglar alarm services;
- (7) Answering services;
- (8) Time or weather services;
- (9) Dial-a-prayer services;
- (10) Gab line or party line services; and
- (11) Services providing public announcement or entertainment information.

(e) Premium services such as a 900 number shall be subject to tax for the entire amount unless the charges on the consumer's invoice provide a separate charge for:

- (1) The cost for the communications services; and
- (2) The cost for the specific service or product purchased.

(f) Premium services where the charges are separately stated to the consumer shall be subject to tax on the charge for the communications services.

**Readopt with amendment Rev 1602.05, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1602.05 Paid Calling Service.

(a) Communications services provided by retailers through the use of a paid calling service shall be subject to tax on the gross charge when the origination point of the telecommunication signal is first identified in New Hampshire.

(b) Retailers shall include the amount of tax due from paid calling services during a calendar month in their communications services retailer tax return for the applicable period.

**Readopt Rev 1602.06 and Rev 1602.07, effective 10-24-12 (Document #10213), to read as follows:**

Rev 1602.06 Coin Operated Telephone Service.

(a) Retailers shall impose the tax on a customer by one of the following methods:

- (1) Using the statutory rate of 7% of the total charge for the call;
- (2) Using the nearest positive multiple of \$.05; or
- (3) Including the tax in the individual charge to the customer.

(b) When the retailer selects the nearest positive multiple method in (a)(2) above:

- (1) A zero amount shall not be a positive multiple of \$.05; and
- (2) The minimum amount of tax for a call shall be \$.05.

(c) When the retailer selects to include the tax in the individual charge to the consumer in (a)(3) above, the retailer shall multiply the gross receipts by a tax rate of 6.54% to determine the tax portion of the combined amount.

Rev 1602.07 Dial Around Calls. All charges by a retailer for the per-call dial around default compensation amount shall be included in the gross charge.

**Readopt Part Rev 1603, effective 10-24-12 (Document #10213), to read as follows:**

PART Rev 1603 RESPONSIBILITY FOR ACCOUNTING FOR TAXES COLLECTED

Rev 1603.01 Agent Liability.

- (a) A retailer's agent shall be liable for the tax it retains when it:
- (1) Bills customers for long distance or local services including the tax applicable for such services on behalf of:
    - a. A long distance carrier;
    - b. An inter-exchange carrier;
    - c. An alternative operator service; or
    - d. Any other party; and
  - (2) Remits a part of the tax collections to its principal.

- (b) When an agent remits part or all of the tax funds collected to its principal, the agent shall:
- (1) Retain all data relating to the billing, collection, and remittance of tax such as, but not limited to:
    - a. Customer invoices;
    - b. Journals;
    - c. General ledgers; or
    - d. Other financial records of the agent used in recording the transactions; and
  - (2) Provide such data to the department and its principal upon request by the department.

(c) The data shall be retained for a period of 3 years from the due date of the return unless notified by the principal or the department that the retention of the data is required for a longer period of time.

**Readopt Part Rev 1604, effective 10-24-12 (Document #10213), to read as follows:**

PART Rev 1604 MOBILE, TELECOMMUNICATIONS

Rev 1604.01 Sourcing Gross Charges for Mobile Telecommunications.

(a) Gross charges for intrastate and interstate mobile telecommunications services which are deemed provided by the customer's home service provider, as defined in RSA 82-A:2, XVIII, shall be sourced to the customer's place of primary use.

(b) The communications services tax shall be imposed on gross charges for intrastate and interstate mobile telecommunication services which have been deemed to be provided by the customer's home service provider and sourced to the customer's place of primary use within New Hampshire.

(c) Exceptions to (b), above, shall include:



- (1) Gross charges to a customer whose place of primary use is outside of New Hampshire;
- (2) Gross charges for paid calling services and air-ground radio telephone service;
- (3) Any mobile telecommunications services which are precluded from inclusion in gross charges by federal law; and
- (4) Any local tax or 911 surcharge.

Rev 1604.02 Use of Enhanced Zip Code.

(a) Home service providers shall employ the enhanced zip code, as defined in RSA 82-A:2, XVII, to assign each customer a place of primary use.

(b) If the enhanced zip code overlaps boundaries of taxing jurisdictions, the home service provider shall designate one specific jurisdiction within the overlapping boundaries for use in taxing.

(c) A home service provider shall not be liable for the tax on improperly sourced charges if the provider shall show it exercised due diligence by:

- (1) Implementing and maintaining internal controls to promptly correct erroneous assignments of street addresses to taxing jurisdictions; and
- (2) Using all obtainable data pertaining to changes in jurisdictional boundaries that materially affect the accuracy of the database.

Rev 1604.03 Maintenance of Primary Use Address.

(a) If the department notifies the home service provider to change the place of primary use on a prospective basis, the home service provider shall collect communications services taxes in accordance with the new place of primary use from the date notice is issued.

(b) The home service provider shall provide proof that it selected the correct taxing jurisdiction for any address that the department noticed in (a) above.

Rev 1604.04 Billing.

(a) Any charge on a customer's bill for services shall be considered provided by the home service provider.

(b) The customer shall be responsible for notifying the home service provider in writing pursuant to the requirements of RSA 82-A:4-b, V of any billing error involving the assignment of place of primary use or taxing jurisdiction.

(c) A refund or credit shall be issued for the amount of tax erroneously collected from the customer for a period of 3 years from the date that the erroneous tax was billed.

**Readopt Part Rev 1605, effective 3-17-20 (Document #13002), to read as follows:****PART Rev 1605 PREPAID WIRELESS TELECOMMUNICATIONS AND VOICE OVER INTERNET PROTOCOL (VoIP) SERVICES**Rev 1605.01 Sourcing Prepaid Wireless Telecommunications Services.

(a) Gross charges for retail transactions of prepaid wireless telecommunications services shall be subject to the tax specified in RSA 82-A:4-e if:

- (1) The retail transaction occurs in person at a seller's location in New Hampshire;
- (2) Subparagraph (1) does not apply, the prepaid wireless telecommunications service is evidenced by a physical item, such as a card, and the purchaser provides a New Hampshire delivery address for such item;
- (3) Subparagraphs (1) and (2) do not apply, the consumer gives a New Hampshire address during the consummation of the sale, including the address associated with the consumer's payment instrument if no other address is available, and the address is not given in bad faith; or
- (4) Subparagraphs (1)-(3) do not apply, the consumer's mobile telephone number is associated with a postal zip code, telephone area code, or location within New Hampshire.

(b) If prepaid wireless telecommunications service is sold with one or more other products or services as a single, non-itemized charge, the tax shall apply to the entire non-itemized charge except as provided in RSA 82-A:2, V(e).

(c) If prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized charge, the seller may elect to not collect the tax for such transaction provided that the amount of service denominated is 10 minutes or less, or \$5 or less.

Rev 1605.02 Sourcing VoIP Services.

(a) Gross charges for VoIP services provided by a retailer to a person with a place of primary use in this state shall be subject to the tax specified in RSA 82-A:4-d, regardless of where the VOIP services originate, terminate, or pass through.

(b) VoIP services provided to a person with a place of primary use outside this state shall not be subject to the tax.

**Readopt Part Rev 1606, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:****PART Rev 1606 EXEMPTIONS**Rev 1606.01 Exemptions for Governmental Agencies or Political Subdivisions.

(a) In accordance with RSA 82-A:2, XII, the communications services tax shall not be applied to communications services sold to a federal or state agency or political subdivision of the state.

(b) Communications services which are not billed directly to the governmental agency or political subdivision shall be subject to the communications services tax.

(c) Retailers who provide communications services to a governmental agency or political subdivision shall:

(1) Not be held liable for any uncollected taxes from an agency who claimed an exemption from tax for which it was not qualified; and

(2) Be responsible for the subsequent collection of the communications services tax once notified by the department that the agency is not exempt.

(d) Entities improperly exempted from the tax by a retailer shall be required to pay the past due taxes, interest, and applicable penalties directly to the department.

(e) Entities receiving part or all of their funding from the state or federal government shall not be exempted from the tax solely on the basis of their funding source.

**Readopt Part Rev 1607, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

PART Rev 1607 CLAIMS FOR CREDIT OR REFUND

Rev 1607.01 Credits.

(a) Credits shall be issued by the department to retailers or to taxpayers in cases where:

(1) A tax was improperly charged and remitted to the department; or

(2) A taxpayer was assessed and paid a tax on the identical communications services to another state.

(b) Taxpayers who pay taxes to a retailer for an improper charge shall request a refund from the retailer.

(c) Retailers shall request a credit from the department for amounts which have been requested by the taxpayer under the provisions of (b), only after such amounts have been properly returned to the taxpayer.

(d) Taxpayers or retailers, upon audit, shall present the department with:

(1) Information sufficient to calculate the amount of any credit; and

(2) Documentation for the credit request.

(e) Documentation sufficient to support the request of a credit shall include:

- (1) The name and address of the taxpayer;
- (2) Amount of the individual credit;
- (3) Reason for the credit request citing the specific cause of the billing error; and
- (4) In the instance of a retailer, proof that the amounts requested have been repaid or credited to the taxpayer.

Rev 1607.02 Refunds.

(a) Retailers who are no longer subject to the requirement to collect and remit the communications services tax shall receive a refund:

- (1) Subject to adjustments for any improperly collected or remitted taxes that has been returned to taxpayers under Rev 1607.01(b) and (c), and substantiated through the provisions in Rev 1607.01(e); and
- (2) Net of any taxes owing to the department imposed under RSA 82-A, and any penalties or interest owing on those taxes.

(b) Taxpayers who improperly paid taxes to the department shall receive refunds if:

- (1) The taxpayer is required under RSA 82-A:8 to pay the communications services tax directly to the department; or
- (2) The taxpayer paid a tax to another state on the same communications services taxed under RSA 82-A:4.

(c) Taxpayers shall submit to the department:

- (1) Information sufficient to calculate the amount of any refund; and
- (2) Documentation for the refund request.

(d) Documentation sufficient to support the request of a refund shall include:

- (1) The name and address of the taxpayer;
- (2) Amount of the individual refund;
- (3) Reason for the refund request citing the specific cause of the overpayment of tax; and
- (4) In the instance of a refund for the payment of taxes to another state, proof such as but not limited to:
  - a. A copy of the tax return filed with the other state;
  - b. A canceled check for the amount of the tax paid; or

- c. A receipt from the other state showing that the amounts requested have been paid.

PART Rev 1608 RETURNS, EXTENSIONS AND PAYMENT OF TAX

**Readopt Rev 1608.01 and Rev 1608.02, effective 10-24-20 (Document #13126-B), to read as follows:**

Rev 1608.01 Filing.

- (a) Tax documents and payments shall be considered timely filed when:

- (1) The cover or envelope in which they are delivered is postmarked by the United States Postal Service on or before the due date, in accordance with RSA 80:55;
- (2) They are hand delivered to the department on or before the due date; or
- (3) They are filed electronically via the Granite Tax Connect web portal located at [www.revenue.nh.gov/gtc](http://www.revenue.nh.gov/gtc) on or before the due date.

(b) Tax documents and payments bearing a date indicated by a postmark affixed by a postage meter operated by the business or someone other than as provided in (a), above, shall not be considered timely filed, unless received by the department on or before the due date.

(c) Tax returns filed after the original due date shall be subject to interest as prescribed in RSA 21-J:28 and penalties as prescribed in RSA 21-J:31 and 21-J:33.

(d) Retailers and taxpayers which fail to receive tax forms from the department shall not be relieved of their obligation to prepare and file a timely return or extension request.

(e) All tax documents and payments containing monetary values filed with the department may be prepared by rounding off to the nearest whole dollar.

(f) Any retailer required to file a telecommunications services tax return, shall complete and file Form DP-135, communications services tax return, with the department pursuant to RSA 82-A:7.

Rev 1608.02 Extension of Time to File Returns.

(a) Retailers or taxpayers shall be granted an automatic 31-day extension of time to file a return provided the retailer or taxpayer has paid 100% of the tax determined to be due by the original due date.

(b) A retailer or taxpayer shall pay 100% of the tax determined to be due by the original due date by filing form DP-135-ES, Estimated Communication Services Tax Payment Form.

(c) Extensions shall be automatically denied for non-compliance with (a) and (b) above.

(d) An extension of time for filing a return shall not extend the time for the payment of the tax.

(e) Payments not made by the prescribed payment date shall be subject to the interest and penalty provisions of RSA 21-J.

**Readopt with amendment Rev 1608.03, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1608.03 Amended Tax Returns.

(a) Retailers amending an original communications services tax return shall file a Form DP-135, communications services tax return, and place an “X” in the box next to the word “Amended Return” on the return.

(b) Amended communications services tax returns not requesting a refund or credit shall be filed within 3 years of the filing date for the original return.

(c) Amended communications services tax returns requesting a refund or credit shall be filed by whichever date is later:

(1) Within 3 years of the original due date for the tax; or

(2) Within 2 years from the date the tax was paid.

(d) The 2-year period from the date the tax was actually paid shall not be applicable to an amended return requesting a refund or credit where the payment of tax, interest, or penalty that was paid was a result of an assessment or a demand for payment.

**Readopt Rev 1608.04, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1608.04 Payment of the Tax. When the taxpayer is billed by a retailer who has a place of business in New Hampshire or has a communications services tax registration number, pursuant to Rev 1612.05, the taxpayer shall pay the tax to the retailer.

**Readopt with amendment Rev 1608.05, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1608.05 Estimated Payments.

(a) Estimated payments shall be filed with the department, using Form DP 135-ES.

(b) The penalties of RSA 21-J:32 shall apply to underpayment of estimated payments in (a) above.

**Readopt with amendment Rev 1608.06, effective 10-24-20 (Document #13126-B), to read as follows:**

Rev 1608.06 Permission to File Quarterly Returns.

(a) A retailer may request permission from the department to file quarterly returns for calendar quarters ending March, June, September, and December.

(b) Such request shall:

(1) Be submitted:

a. Electronically through the Granite Tax Connect portal located at [www.revenue.nh.gov/gtc](http://www.revenue.nh.gov/gtc); or

b. In writing to:

New Hampshire Department of Revenue Administration  
Division of Taxpayer Services  
109 Pleasant Street  
PO Box 637  
Concord, NH 03302-0637; and

(2) Certify that the retailer:

a. Has been in operation for a full year prior to the request;

b. Is in full compliance with all provisions of RSA 82-A; and

c. Has an average monthly liability to the department that is less than \$100.00 per month for the calendar quarter immediately preceding the submission of the request.

(c) Permission to file quarterly shall be granted provided that retailer:

(1) Meets the requirements in (b) above;

(2) Has a history of timely filing and payment of tax; and

(3) Has no outstanding tax liability at the time of the request.

(d) The due date, pursuant to RSA 82-A:7, II, of a quarterly filing shall be the 15th day of the month following the end of each calendar quarter, beginning with the first quarter after receipt of the department's approval.

(e) The department shall revoke permission to file on a quarterly basis if:

(1) The retailer fails to file a complete return or remit taxes on a timely basis;

(2) Any payments are returned for nonsufficient funds;

(3) The retailer fails to comply with the requirements of RSA 82-A or this rules chapter; or

(4) The retailer's tax liability exceeds \$100 per month, pursuant to (f) below.

(f) The retailer shall commence monthly filings beginning with the first month of the next calendar quarter if, during any subsequent calendar quarter, the average tax liability exceeds \$100.00 per month.

**Readopt Part Rev 1609, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

PART Rev 1609 RESALE NUMBERS AND CERTIFICATES

Rev 1609.01 Application for Resale Number.

(a) All resellers of communications services shall apply to the department of revenue administration for a resale number on Form DP-143, application for resale.

(b) Customers whose purchases of communications services are 100 percent for resale shall present their resale number to the provider of communications services for allowance of a tax exemption.

(c) Customers whose purchases of communications services are less than 100 percent for resale shall:

- (1) Pay the communications services tax to the provider of communications services; and
- (2) Be allowed a credit on their retailers tax return on a pro rata basis for the amount of tax paid for the communications services resold as a percentage of services purchased.

(d) The applicant shall receive:

- (1) A certificate of resale containing an effective date; or
- (2) A rejection letter stating the reason for rejection such as:
  - a. Lack of details relative to the retailer's exempt status;
  - b. Lack of detail relative to the percentage of line usage; or
  - c. Other instances of lack of detail sufficient for the commissioner to make a decision.

(e) Resellers of communications services who do not obtain a certificate of resale or who fail to present a certificate of resale, upon request by a seller of communications services, shall be subject to the communications services tax.

**Readopt Rev 1610.01, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

PART Rev 1610 ADMINISTRATION

Rev 1610.01 Records and Information.

(a) Each retailer and each customer who remits a tax to the department shall maintain:

- (1) Accounting, financial, and general information necessary to establish the amount of the gross charge; and



- (2) Any other information required to be shown on any return, schedule or attachment required under RSA 82-A, and any rules of the department.
- (b) The records and information shall be retained for a period of 3 years from the due date of the return unless notified by the department that the retention of the data is required for a longer period of time as a result of:
- (1) An extension of the statute of limitations on the assessment of taxes;
  - (2) The commencement of an adjudicative proceeding involving the parties; or
  - (3) The completion of any litigation in which the data may be relevant.
- (c) Each retailer or customer who remits a tax to the department shall, upon request of the department, provide the commissioner or the commissioner's representative with the following information, records, or access to company personnel for interviews during the regular business day:
- (1) An accurate listing of all the communications services sold by the retailer or purchased by the customer for which a tax is due;
  - (2) Information to substantiate the amount of basic charge included in the customer's bill with the amount of exemption applied to the bill; and
  - (3) Information pursuant to RSA 82-A:9, to substantiate:
    - a. Any tax-exempt sales or sales for resale of communications services; and
    - b. The applicable resale number, as obtained from the department.

**Readopt Rev 1610.02, effective 9-27-17 (Document #12390), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1610.02 Confidentiality of Department Records.

- (a) All communications services tax returns and information shall be confidential and disclosed only in conformity with the provisions of RSA 21-J:14.
- (b) A retailer or customer may authorize the department to disclose their tax information to their authorized representatives.
- (c) The department shall only make such disclosure if:
- (1) A properly executed power of attorney form is on file with the department; or
  - (2) The retailer or customer authorizes the specific disclosure in a letter to the department.
- (d) A power of attorney may be provided using either the department's Form DP 2848, power of attorney, or a letter addressed to the department which shall contain the following:

- (1) Name, mailing address, and federal identification number of the retailer or customer who is granting the power of attorney;
- (2) Name, mailing address and telephone number of the person to whom the power of attorney is granted;
- (3) The specific purpose for which the power of attorney is granted and the extent of the authority granted;
- (4) The period of time for which the authority is to be in effect; and
- (5) The dated signature of the retailer, customer, or other authorized agent, granting the power of attorney.

**Readopt Rev 1610.03, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1610.03 Pre-Assessment Conferences.

(a) The purpose of an informal pre-assessment conference shall be to discuss the audit's findings with audit division management personnel in an effort to reach an agreement on the issues of fact, audit results, or both.

(b) The audit division shall provide an informal pre-assessment conference for the retailer, customer, or their representative at the conclusion of an audit when the facts and circumstances of the audit review indicate to the department that an informal pre-assessment conference would benefit both the state and the retailer or the customer.

(c) The department shall notify the retailer, customer, or their authorized representative by mail when a pre-assessment conference is scheduled.

(d) Upon receipt of the notification in (c) above, the retailer, customer, or authorized representative electing to participate in such conference shall advise the department within 20 business days from the date of the notification letter.

(e) The response to the notification letter shall contain the following information:

- (1) Name and address of the retailer or customer;
- (2) Federal identification number of the retailer or customer;
- (3) An outline of the areas of agreement and disagreement;
- (4) Documentation in support of the retailer or customer's position;
- (5) Responses to any outstanding questions raised by the auditor during the audit; and
- (6) The names of the individuals who shall participate in the conference on behalf of the retailer or customer.

(f) Upon completing the review of material provided during the pre-assessment conference, the audit division shall issue:

- (1) A tax notice;
- (2) A notice of refund; or
- (3) A no change letter.

(g) Each and any action taken in (f), above, shall begin the period for formal appeal pursuant to RSA 21-J:28-b and Rev 200.

#### PART Rev 1611 APPLICATION OF PENALTIES

**Readopt with amendment Rev 1611.01, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

##### Rev 1611.01 Substantial Understatement of Tax.

(a) The department shall assess the penalty for understatement of tax provided by RSA 21-J:33-a on returns where the understatement exceeds the greater of 10% of the correct tax liability or \$5,000 unless the retailer or customer meets the exceptions provided in RSA 21-J:33-a, IV(a) and (b).

(b) The exception as provided in RSA 21-J:33-a, IV(b) shall occur when a retailer or customer has adequately disclosed the tax treatment of an item on the return or in a statement attached to the front of the return and all of the following criteria are met:

- (1) The statement contains a prominent caption identifying the statement as a disclosure of the tax treatment for the penalty for understatement of tax on return where the understatement exceeds the greater of 10% of the correct tax liability or \$5,000;
- (2) The item for which the disclosure is made is clearly identified;
- (3) The dollar amount of the item is disclosed; and
- (4) The statement contains those facts affecting the tax treatment of the item that reasonably will apprise the department of the nature of the potential controversy or a concise description of the legal issues presented by the facts in question.

(c) In determining whether a retailer or customer has substantial authority, as stated in RSA 21-J:33-a, IV(a), the department shall consider the following as being authoritative sources, which shall be considered in the following order of review, based on the relevance of the source, the similarity of the facts, and the precedential value of the source compared to the matters at issue:

- (1) United States and New Hampshire supreme court decisions;
- (2) Communications services tax law and any other New Hampshire statutes that have a bearing on the tax statutes;
- (3) Rules issued by the department;

- (4) Declaratory rulings requested by and issued to the retailer or customer;
  - (5) Technical information releases issued by the department;
  - (6) Superior court and board of tax and land appeals decisions;
  - (7) Federal District Court and First Circuit Court of Appeals decisions;
  - (8) Legislative committee reports specifying legislative intent; and
  - (9) Written advice from the department issued to the retailer or customer about the tax treatment of the item in question.
- (d) In addition to (c) above, a retailer or customer shall have substantial authority for the tax treatment of an item only if the authoritative sources supporting the retailer or customer's position outweighs the authoritative sources supporting the department's position on the tax treatment of the same item.
- (e) The following shall not be considered authoritative sources:
- (1) Opinions reached by tax professionals;
  - (2) Tax publication opinions or narrative statements; and
  - (3) Articles contained in any professional or tax periodicals.
- (f) The existence of substantial authority for a particular item shall be determined as of the date the return containing the item was filed or as of the last day of the period to which the return relates.
- (g) The penalty shall be applied to the net understatement determined by reducing the understatement as defined in RSA 21-J:33-a, III by the portion of the understatement for which the retailer or customer had substantial authority or had adequately disclosed the position taken on the return.

**Readopt Rev 1611.02 and Rev 1611.03, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1611.02 Understatement of Taxpayer's Liability by Tax Preparer.

- (a) For purposes of RSA 21-J:33-b, I, "substantial portion" means any instance where the efforts of the tax preparer have affected more than 25% of the retailer's or customer's tax liability.
- (b) An individual or company providing more than typing, reproducing, or other mechanical assistance shall be deemed to be a tax preparer when the individual or company uses computer software which makes determinations about the applicability of tax laws or the characterization of income and the allowability of deductions or credits.
- (c) The penalty provided in RSA 21-J:33-b, III shall be assessed when any part of an understatement of tax is the result of a tax preparer's willful neglect or intentional disregard of the statute or departmental rules unless the retailer or customer shall have adequately disclosed the tax treatment of an item on the return or in a statement attached to the front of the return.

(d) The penalty provided in RSA 21-J:33-b, IV shall be applied when:

(1) Any part of an understatement of tax is the result of a preparer's willful attempt to understate the retailer's or customer's tax liability or;

(2) A tax preparer shall have willfully attempted to understate a tax liability of a retailer or customer in the following instances:

a. The preparer disregards or misstates information furnished by the retailer, customer, or other person in an attempt to wrongfully reduce the tax liability; or

b. The preparer does not make inquiries of the retailer, customer, or other person when the information provided is incorrect or incomplete, and the preparer knows or should have known that the information was incorrect or incomplete.

(e) If, in an adjudicative proceeding or a judicial decision, it is established that there was no understatement of liability and if previously paid by the preparer, the penalty imposed shall be abated and refunded without any consideration of any period of limitation for the issuance of a refund.

Rev 1611.03 Aiding and Abetting an Understatement of Tax Liability.

(a) An individual or company providing more than typing, reproducing, or other mechanical assistance shall be deemed to be a tax preparer when the individual or company uses computer software which makes determinations about the applicability of tax laws or the characterization of income and the allowability of deductions or credits.

(b) The penalty provided in RSA 21-J:33-c shall be assessed against any person who aids, assists in, procures, or advises in the preparation of any return or other document in connection with the communications services tax law or departmental rules if the person knows:

(1) The information provided will be used in the preparation of any material document; and

(2) If used, the information will result in an understatement of tax liability.

(c) The penalty shall not be assessed in instances where the retailer or customer adequately disclosed the relevant facts regarding the tax treatment of the item.

(d) If, in an adjudicative proceeding or a judicial decision, it is established that there was no understatement of liability and if previously paid by the preparer, then the penalty imposed by RSA 21-J:33-c shall be abated and refunded without any consideration of any period of limitation for the issuance of a refund.

(e) The refund of the penalty, as provided in (d), above, shall be made without consideration of any period of limitation for the issuance of a refund.

**Readopt with amendment Rev 1612.01 and Rev 1612.02, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1612.01 Availability of Forms. Forms may be obtained by:

(a) Writing to:

New Hampshire Department of Revenue Administration  
109 Pleasant Street  
P.O. Box 637  
Concord, NH 03302-0637; or

(b) Calling the forms line at 603-230-5001.

Rev 1612.02 Mailing Address. All forms, unless specified otherwise, shall be mailed to:

New Hampshire Department of Revenue Administration  
109 Pleasant Street  
PO Box 637  
Concord, NH 03302-0637

**Readopt Rev 1612.03, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), to read as follows:**

Rev 1612.03 Form DP-135, Communications Services Tax Return.

(a) Form DP-135, communications services tax return, shall be completed and filed with payment by retailers or taxpayers to report their monthly tax.

(b) If the return is an amended return, it shall include an explanation of the adjustments made to the original return.

**Repeal Rev 1612.04, effective 10-24-12 (Document #10213), and renumbered effective 3-17-2020 (Document #13002), as follows:**

~~Rev 1612.04 Form DP-137, Application for 31-day Extension of Time to File Communications Services Tax Return.~~

~~(a) Form DP-137, application for 31-day extension of time to file for communications services tax return, shall be completed and filed by retailers or customers to apply for the 31-day extension provided under RSA 82-A:7, VI.~~

~~(b) The 31-day extension shall be granted if the Form DP-137:~~

~~(1) Is timely filed;~~

~~(2) Has the completed tax payment schedule attached;~~

~~(3) Is signed by the retailer or customer; and~~

- ~~(4) Is accompanied by payment of any tax due.~~
- ~~(c) A granted extension of time shall extend the due date of the return, but shall not extend the due date of any tax owed.~~
- ~~(d) The department shall notify the retailer or customer only if the request for extension is denied.~~

**Readopt Rev 1612.05 through Rev 1612.08, effective 10-24-12 (Document #10213), as amended effective 3-17-2020 (Document #13002), to read as Rev 1612.04 through Rev 1612.07 respectively, to read as follows:**

Rev 1612.04 Form DP-139, Communications Services Tax Application for Registration Number. Form DP-139, communications services tax application for registration number, shall be completed and filed by retailers and customers to apply for a communications services tax registration number.

Rev 1612.05 Form DP-135-ES, Estimated Communications Services Tax. Form DP-135-ES, estimated communications services tax, shall be completed and filed with payment by retailers to make estimated payments.

Rev 1612.06 Form DP-143, Communications Services Tax Application for Resale. Form DP-143, communications services tax application for resale, shall be completed and filed by retailers to apply for resale certification.

Rev 1612.07 Form DP-144, Communications Services Tax Registration Change Request. A retailer changing its address, name, or entity shall complete and file Form DP-144, communications services tax registration change request.

### Appendix

<b>Rule</b>	<b>Specific State Statute the Rule Implements</b>
Rev 1601.01 – 1601.14	RSA 82-A:15
Rev 1601.15	RSA 82-A:2, XXVII; RSA 82-A:15, II
Rev 1601.16 – 1601.19	RSA 82-A:15
Rev 1601.20	RSA 82-A:2, X; RSA 82-A:15, II
Rev 1601.21	RSA 82-A:2, XXVIII; RSA 82-A:15, II
Rev 1601.22	RSA 82-A:2, XXIX; RSA 82-A:15, II
Rev 1601.23	RSA 82-A:2
Rev 1601.24	RSA 82-A:2, XXX; RSA 82-A:15, II
Rev 1602.01 – 1602.05	RSA 82-A:15; RSA 82-A:2, V
Rev 1602.06	RSA 82-A:4-a
Rev 1602.07	RSA 82-A:2, V
Rev 1603.01	RSA 82-A:2, XI; RSA 82-A:6; RSA 82-A:11
Rev 1604.01	RSA 82-A:2, XVIII; RSA 82-A:4-b
Rev 1604.02	RSA 82-A:2, XVII; RSA 82-A:4-b
Rev 1604.03	RSA 82-A:4-b, IV

<b>Rule</b>	<b>Specific State Statute the Rule Implements</b>
Rev 1604.04	RSA 82-A:4-b, V
Rev 1605.01	RSA 82-A:4-e; RSA 82-A:15, II
Rev 1605.02	RSA 82-A:4-d; RSA 82-A:15, II
Rev 1606.01	RSA 82-A:2, XII
Rev 1607.01	RSA 82-A:3; RSA 82-A:4; RSA 82-A:6; RSA 82-A:8
Rev 1607.02	RSA 82-A:6; RSA 82-A:8
Rev 1608.01	RSA 82-A:15; RSA 82-A:7, III
Rev 1608.02	RSA 82-A:15, II; RSA 82:7, VI
Rev 1608.03	RSA 21-J:29; RSA 82-A:7
Rev 1608.04	RSA 82-A:6; RSA 82-A:15
Rev 1608.05	RSA 82-A:7, V
Rev 1608.06	RSA 81-A:7
Rev 1609.01	RSA 82-A:9
Rev 1610.01 – Rev 1610.03	RSA 82-A:11; RSA82-A:15; RSA 82-A:16-a
Rev 1611.01	RSA 21-J:33-a
Rev 1611.02	RSA 21-J:33-b
Rev 1611.03	RSA 21-J:33-c
Rev 1612.01 – Rev 1612.03	RSA 82-A:7
Rev 1612.05	RSA 82-A:7
Rev 1612.06	RSA 82-A:9
Rev 1612.07	RSA 82-A:15