

**ANALYSIS OF
RETAIL SALES AND USE TAX EXEMPTION
FOR
PUBLIC SERVICE CORPORATIONS**

**Virginia Department of Taxation
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ANALYSIS OF RETAIL SALES AND USE TAX EXEMPTION FOR PUBLIC SERVICE CORPORATIONS CODE OF VIRGINIA § 58.1-609.3(3)

EXEMPTION SUMMARY

The provisions of this statute exempt tangible personal property purchased or leased by a public service corporation, telecommunications company, or common carrier of property or passengers by motor vehicle or railway when used in the rendition of the utility's or carrier's public service. To qualify for this exemption, the public service entity generally must have a certificate of convenience and necessity issued by the State Corporation Commission (SCC) or a federal regulatory body.

RATIONALE

The rationale behind exempting public service corporations, common carriers, etc. is that they perform a necessary service for the public good. Historically, the rates that public service corporations charge have been regulated by the SCC to provide the citizens of the Commonwealth the needed services at a fair price. This exemption presumably reduces the final cost of the service, thereby assuring that the necessary level of services are available while allowing the providers a reasonable return of investment.

Deregulations of various industries, however, have led to a decrease in a number of cases where government agencies control the rate structure. As such, the original intent of this exemption must be weighed as newly deregulated industries emerge in the Commonwealth.

BACKGROUND

Legislative History

This was one of the original exemptions enacted in 1966. The exemption was initially limited to public service corporations and common carriers. Railroads were added to the exemption in 1978 as a result of becoming subject to state income tax and being removed from the gross receipts tax administered by the SCC.

The exemption was amended in 1988 to reflect the shifting of telephone and telegraph companies from the SCC gross receipts tax to the corporate income tax. This technical correction ensured that telecommunications companies retained the exemption, which otherwise was limited to public service corporations subject to the gross receipts tax. Because the 1988 amendment was tied to the definition of telecommunications companies subject to the corporate income tax as defined in Code of Virginia § 58.1-400.1, it had the effect of somewhat broadening the exemption to include entities such as radio common carriers (such as paging services) which previously were not subject to the gross receipts tax and therefore did not enjoy the exemption.

Public Utilities

A public utility is generally defined as an entity that has been issued a certificate of convenience and necessity by the SCC and includes those entities that engage in the generation, transmission and distribution of electricity, natural or manufactured gas, and geothermal resources.

Telecommunications Companies

The sales and use tax exemption applies to telecommunications companies as defined in Code of Virginia § 58.1-400.1. The 1998 Virginia General Assembly amended § 58.1-400.1 to define telecommunications companies as:

A telephone company or other person holding a certificate of convenience and necessity issued by the SCC authorizing telephone service; a person authorized by the Federal Communication Commission to provide commercial mobile service which includes cellular mobile radio communications services or broadband personal communication services; a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934 authorizing domestic telephone service and belonging to an affiliated group including a person holding a certificate of convenience and necessity granted by the SCC authorizing telephone service; or a telegraph company or other person operating the apparatus necessary to communicate by telegraph.

Carriers

Federal deregulation of the trucking industry prompted the SCC, effective January 1, 1995, to cease issuing certificates of convenience and necessity to motor carriers of property. The function of issuing certificates of convenience and necessity was delegated to the Department of Motor Vehicles (DMV). DMV issues certificates to (1) movers of household goods, and (2) motor vehicle passenger carriers.

TAX continues to allow this exemption to common carriers by motor vehicles. Common carrier is defined by TAX as a carrier that holds itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes.

REVENUE ANALYSIS

The estimates for the three categories covered by this exemption are as follows. These figures represent tax year 1999.

Public Service Corporation	\$65.3 million
Telecommunications Companies	75.1 million
Common Carrier	<u>13.1 million</u>
Total	\$153.5 million