

HOUSE BILL REPORT

HB 2156

As Passed House:

March 12, 2001

Title: An act relating to the federal mobile telecommunications sourcing act.

Brief Description: Providing uniform mobile telecommunications laws.

Sponsors: By Representatives Cairnes and Morris.

Brief History:

Committee Activity:

Finance: 3/2/01, 3/8/01 [DP].

Floor Activity:

Passed House: 3/12/01, 95-0.

Brief Summary of Bill

- State and local excise taxes on mobile telecommunications are sourced to the customer's primary place of use, in a manner consistent with federal law.
- A procedure is created for customer complaints about incorrect tax amounts on mobile telecommunications billings.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 10 members: Representatives Cairnes, Republican Co-Chair; Morris, Democratic Co-Chair; Berkey, Democratic Vice Chair; Roach, Republican Vice Chair; Carrell, Conway, Pennington, Santos, Van Luven and Veloria.

Staff: Bob Longman (786-7139).

Background:

Telephone services are taxed as retail sales. Thus, telephone service providers pay state Business and Occupation (B&O) tax on gross receipts from sales of telephone service, and collect retail sales taxes from buyers of telephone services. Many cities also impose utility taxes on telephone services. State and county taxes are also imposed on telephone access lines to support emergency services communications systems (911).

Mobile telecommunication services, also known as wireless or cellular telephone services, are taxed as telephone service. The mobile nature of mobile telecommunication service raises questions about which jurisdiction may tax a particular transaction. For example, the state B&O and sales tax apply to sales of monthly service "in this state." Long distance charges are taxable if billed in this state and "originating from or received on" telecommunications equipment in this state. With mobile equipment, it could be difficult to determine when services or equipment are "in this state." Similar problem exist at the city level. The process of determining where a transaction is taxable is commonly referred to as "sourcing."

On July 28, 2000, the federal Mobile Telecommunications Sourcing Act became law. This law resulted from a collaborative effort between state and local government organizations (National Governors Association, National Conference of State Legislatures, Federation of Tax Administrators, Multistate Tax Commission, and National League of Cities) and the mobile telecommunications industry. The new federal law requires state and local governments to allow mobile telecommunication transactions to source the customer's primary place of use. The federal law defines primary place of use as "the street address representative of where the customer's use of the mobile telecommunications service primarily occurs." This address must be either the residential street address or the primary business street address of the customer and must be within the licensed service area of the provider.

Under the federal law, states have the option of supplying wireless providers with an electronic database that matches each street address with its appropriate taxing jurisdiction. The legislation outlines the technical standards a state-provided database must meet and the duties of the state and wireless providers when there are database changes. If the state fails to supply the provider with a database, the wireless provider can employ nine-digit zip codes to assign addresses to appropriate taxing jurisdictions. If a wireless provider uses one of these two designated methods for assigning addresses, the provider will be held harmless for any taxes that might otherwise be due as the result of an erroneous assignment, provided the provider exercises "due diligence" in assigning jurisdictions.

Summary of Bill:

State and local excise taxes on mobile telecommunications are sourced to the customer's primary place of use, in a manner consistent with federal law. This sourcing rule applies to the state B&O tax, state and local retail sales taxes, city utility taxes, and state and county telephone access line taxes.

If a customer believes that the amount of tax on a mobile telecommunications bill is erroneous, the customer may notify the service provider in writing. The service provider must respond within 60 days by correcting the error or providing a written explanation of

why the service provider believes the tax is correct. If the customer is dissatisfied with this response, the customer may seek a refund from the city imposing the tax. The customer may not file a lawsuit for refund of erroneous tax charges until these procedures are followed. These provisions relating to billing errors are not required by federal law.

If the federal Mobile Telecommunications Sourcing Act is held unconstitutional in a final court decision, this act shall be deemed invalid.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2001.

Testimony For: This is a housekeeping measure that simply makes state law conform to federal law. Industry worked closely with the Department of Revenue and cities on this legislation. We are continuing to work on potential changes to the bill that may improve it. This bill won't have any fiscal impact.

Testimony Against: None.

Testified: Daurell Bell, AT & T Wireless; Steve Gano, Cingular Wireless; and Tim Sekerak, Department of Revenue.