

SENATE BILL REPORT

HB 2156

As of March 23, 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: Economic Development & Telecommunications: 3/26/01.

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TELECOMMUNICATIONS

Staff: Andrea McNamara (786-7483)

Background: Mobile telecommunication services, also known as wireless or cellular telephone services, are taxed as telephone services.— 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 customers of the 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).

Due to the mobility of wireless telecommunications, determining which state and local taxes apply to a wireless call is a complicated task. The process of determining where a transaction is taxable is commonly referred to as sourcing.— Today, there are several methodologies for sourcing wireless calls, including using the location of the originating cell site, the billing address, or the switch that processes the call. These different methodologies can give rise to multiple claims on the same tax revenue.

In Washington, the state B&O and sales taxes apply to sales of monthly service in this state.— Long distance charges are taxable if they are billed in this state and originating from or received on— telecommunications equipment in this state.— With mobile equipment, it can be difficult to determine when services or equipment are in this state.— Similar problems exist at the city level.

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 that all charges for mobile telecommunications services must be sourced to 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.

The Department of Revenue or a designated database provider is authorized, but not required, to develop and provide an electronic database in a manner consistent with federal law. If no database is provided, carriers may use their own databases in a manner consistent with federal law.

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.

The changes in tax liabilities apply to customer bills issued on or after August 1, 2002.

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: Ninety days after adjournment of session in which bill is passed.