

SENATE BILL NO. 387  
INTRODUCED BY COBB

A BILL FOR AN ACT ENTITLED: "AN ACT CONFORMING THE RETAIL TELECOMMUNICATIONS EXCISE TAX TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT OF 2000 AND AN AGREEMENT AMONG STATES FOR SOURCING OF OTHER TELECOMMUNICATIONS SERVICES; AMENDING ~~SECTION~~ SECTIONS 15-53-129 AND 15-53-130, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-53-129, MCA, is amended to read:

**"15-53-129. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "CALL-BY-CALL BASIS" MEANS ANY METHOD OF CHARGING FOR TELECOMMUNICATIONS SERVICES THAT MEASURES THE PRICE BY INDIVIDUAL CALLS.

(~~1~~)(2) (a) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in 47 CFR 20.3, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(b) The term does not include one-way radio communications as included in 47 CFR 20.3, as in effect on June 1, 1999.

(~~1~~)(~~2~~)(3) (a) "Customer" or "purchaser" means, except as provided in subsection (~~2~~)(~~b~~) (3)(B), a person who acquires for consideration retail telecommunications services for use or consumption and not for resale.

(b) For purposes of mobile telecommunications services, the term means:

(i) the person or entity that contracts with the home service provider for mobile telecommunications services; or

(ii) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services, but only for the purpose of determining the place of primary use.

(c) The term does not include:

(i) a reseller of mobile telecommunications services; or

(ii) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(3)(4) "Home service provider" means the facilities-based carrier or reseller that the customer contracts with for the provision of mobile telecommunications services.

(4)(5) "Mobile telecommunications services" means commercial mobile radio service, as defined in 47 CFR 20.3, as in effect on June 1, 1999.

(5)(6) "Place of primary use" means the street address for the premises where the customer's use of the mobile telecommunications services primarily occurs, which must be:

(a) the residential street address or the primary business street address of the customer; and.

(b) FOR MOBILE TELECOMMUNICATIONS SERVICES, THE PLACE OF PRIMARY USE MUST BE within the licensed service area of the home service provider.

(7) "POSTPAID CALLING BASIS" MEANS THAT TELECOMMUNICATIONS SERVICES ARE OBTAINED BY MAKING A PAYMENT ON A CALL-BY-CALL BASIS, EITHER THROUGH THE USE OF A CARD OR PAYMENT MECHANISM, SUCH AS A BANK CARD, TRAVEL CARD, CREDIT CARD, OR DEBIT CARD, OR BY A CHARGE MADE TO A TELEPHONE NUMBER THAT IS NOT ASSOCIATED WITH THE ORIGINATION OR TERMINATION OF THE TELECOMMUNICATIONS SERVICE.

(8) "PRIVATE COMMUNICATIONS SERVICE" MEANS A TELECOMMUNICATIONS SERVICE THAT ENTITLES THE CUSTOMER TO EXCLUSIVE OR PRIORITY USE OF A COMMUNICATIONS CHANNEL OR GROUP OF CHANNELS BETWEEN OR AMONG TERMINATION POINTS, REGARDLESS OF THE MANNER IN WHICH THE CHANNEL OR CHANNELS ARE CONNECTED, AND INCLUDES SWITCHING CAPACITY, EXTENSION LINES, STATIONS, AND OTHER ASSOCIATED SERVICES THAT ARE PROVIDED IN CONNECTION WITH THE USE OF THE CHANNEL OR CHANNELS.

(6)(9) (a) "Reseller" means a provider who purchases mobile telecommunications services from another telecommunications services provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service.

(b) The term does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(2)(7)(10) (a) "Retail telecommunications" means, except as provided in subsection (7)(b) (10)(B), the two-way transmission of voice, image, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities that originates or terminates in this state and is billed CHARGED to a customer with a Montana service address.

(b) For mobile telecommunications services, the term means the two-way transmission of voice, image,

data, or other information that originates or terminates in a single state that is charged to a Montana service address.

(c) The term includes but is not limited to local exchange, long-distance, PRIVATE COMMUNICATIONS, two-way paging, wireless ~~telephony~~ telecommunication, and related services, REGARDLESS OF WHETHER THE SERVICES ARE PAID FOR ON A CALL-BY-CALL BASIS OR POSTPAID CALLING BASIS.

~~(3)(8)(11)~~ (a) "Sales price" means the consideration paid for the distribution, supply, furnishing, sale, transmission, or delivery of retail telecommunications services to the end-user customer.

(b) ~~Sales price~~ The term does not include:

(i) an amount added to the customer's bill because of a charge made pursuant to the tax imposed by this part;

(ii) charges added to a customer's bill under 10-4-201, 53-19-311, and 69-3-844;

(iii) federal excise taxes or other federally imposed charges or fees collected for and remitted to a federal government entity;

(iv) a charge for a dishonored check;

(v) a finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(vi) a charge for construction or relocation of facilities;

(vii) charges for the installation, repair, inspection, or servicing of equipment and wiring located on customer premises;

(viii) bad debt;

(ix) a charge added by a hotel, motel, or similar facility for telecommunications services used in placing calls for guests;

(x) charges paid by inserting coins in coin-operated telecommunications devices; and

(xi) charges for telecommunications services that have been prepaid by a prepaid calling card that enables the origination of calls by using an access number or authorization code.

~~(4)(9)(12)~~ (a) "Service address" means, except as provided in subsection (9)(b), (12)(B):

~~(a)(i) the location from where the retail telecommunications services originated or where the retail telecommunications services are received; or~~ OF THE TELECOMMUNICATIONS EQUIPMENT TO WHICH A CUSTOMER'S CALL IS CHARGED AND FROM WHICH THE CALL ORIGINATES OR TERMINATES, REGARDLESS OF THE LOCATION TO WHICH THE BILL FOR THE CALL IS SENT OR THE LOCATION FROM WHICH THE PAYMENT OF THE BILL IS RECEIVED;

~~(b)(ii) where there is not a defined location, the location in Montana where the statement of charges for retail telecommunications services is mailed~~ IF THE LOCATION IN SUBSECTION (12)(A)(i) IS NOT KNOWN, THE

ORINATION POINT OF THE SIGNAL OF THE TELECOMMUNICATIONS SERVICE FIRST IDENTIFIED BY EITHER THE SELLER'S TELECOMMUNICATIONS SYSTEM OR, IF THE SYSTEM USED TO TRANSPORT THE SIGNAL IS NOT THAT OF THE SELLER, IN INFORMATION RECEIVED BY THE SELLER FROM ITS SERVICE PROVIDER; OR

(III) IF THE LOCATION IN SUBSECTION (12)(A)(I) OR (12)(A)(II) IS NOT KNOWN, THE LOCATION OF THE CUSTOMER'S PLACE OF PRIMARY USE.

(b) For mobile telecommunications services, the term means the location in Montana of the customer's place of primary use.

(10)(13) "Serving carrier" means a facilities-based carrier providing mobile telecommunications services to a customer outside a home service provider's or reseller's licensed service area.

(5)(11)(14) "Telecommunications services provider" means a person providing retail telecommunications services."

**SECTION 2. SECTION 15-53-130, MCA, IS AMENDED TO READ:**

**"15-53-130. Imposition of retail telecommunications excise tax -- rate.** An excise tax of 3.75% is imposed on the sales price of retail telecommunications services. The Subject to [sections 3 and 4], the tax is imposed on the purchaser and must be collected by the telecommunications services provider."

**NEW SECTION. Section 3. Mobile telecommunications services.** (1) Mobile telecommunications services provided in this state to a customer for which the charges are billed by or for the customer's home service provider are considered to be provided by the customer's home service provider.

(2) All charges for mobile telecommunications services that are considered to be provided by the customer's home service provider may be subject to tax in this state if the customer's place of primary use is located within this state, regardless of where the mobile telecommunications services originate, terminate, or pass through.

(3) The definitions and provisions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 through 126, are incorporated into this section by reference.

(4) (a) If a customer believes that an amount of tax or assignment of place of primary use or taxing jurisdiction included on a bill is erroneous, the customer shall notify the home service provider in writing. The customer shall include in the written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction of the tax assignment, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires

to process the request. Within 60 days of receiving a notice, the home service provider shall review its records and the electronic database or enhanced zip code used to determine the customer's taxing jurisdiction. If the review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to 2 years. If the review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.

(b) The procedures set forth in subsection (4)(a) are the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction or seeking a refund of or other compensation for taxes erroneously collected by the home service provider, and a cause of action based upon a dispute arising from those taxes does not accrue, to the extent otherwise permitted by law, until a customer has reasonably exercised the rights and procedures set forth in this subsection (4).

**NEW SECTION. SECTION 4. TELECOMMUNICATIONS SERVICES OTHER THAN MOBILE TELECOMMUNICATIONS SERVICES.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE SALE OF A TELECOMMUNICATIONS SERVICE PAID FOR ON A CALL-BY-CALL BASIS IS TAXABLE IN THIS STATE IF THE SERVICE ADDRESS IS LOCATED WITHIN THE STATE.

(2) THE SALE OF A TELECOMMUNICATIONS SERVICE PAID FOR ON A POSTPAID CALLING BASIS IS TAXABLE IN THIS STATE IF THE ORIGINATION POINT OF THE TELECOMMUNICATIONS SIGNAL AS FIRST IDENTIFIED BY EITHER THE SELLER'S TELECOMMUNICATIONS SYSTEM OR, IF THE SYSTEM USED TO TRANSPORT THE SIGNAL IS NOT THAT OF THE SELLER, THE INFORMATION RECEIVED BY THE SELLER FROM ITS SERVICE PROVIDER IS WITHIN THE STATE.

(3) THE SALE OF A PRIVATE COMMUNICATIONS SERVICE IS TAXABLE IN THIS STATE IN THE FOLLOWING MANNER:

(A) ALL CHARGES RELATED TO A CUSTOMER CHANNEL TERMINATION POINT LOCATED WITHIN THE STATE ARE TAXABLE WITHIN THE STATE;

(B) ALL CHARGES FOR SERVICE WHERE ALL OF THE CUSTOMER CHANNEL TERMINATION POINTS ARE LOCATED ENTIRELY WITHIN THE STATE ARE TAXABLE WITHIN THE STATE;

(C) CHARGES FOR A SEGMENT OF A CHANNEL BETWEEN TWO TAXPAYER CHANNEL TERMINATION POINTS, ONE LOCATED INSIDE THE STATE AND ONE LOCATED OUTSIDE THE STATE, AND FOR WHICH THE SEGMENT IS SEPARATELY CHARGED ARE APPORTIONED 50% TO THIS STATE FOR TAXATION PURPOSES; AND

(D) CHARGES FOR SEGMENTS OF A CHANNEL LOCATED IN THIS STATE AND ONE OR MORE OTHER STATES AND FOR WHICH THE SEGMENTS ARE NOT SEPARATELY BILLED ARE APPORTIONED TO THIS STATE FOR TAXATION PURPOSES BASED ON THE PERCENTAGE DETERMINED BY DIVIDING THE NUMBER OF TAXPAYER CHANNEL TERMINATION POINTS IN THIS STATE

BY THE TOTAL NUMBER OF TAXPAYER CHANNEL TERMINATION POINTS.

(4) IN THE CASE OF A BUNDLED TRANSACTION OF TELECOMMUNICATIONS SERVICES, IF THE CHARGES ARE ATTRIBUTABLE TO SERVICES THAT ARE TAXABLE AND SERVICES THAT ARE NONTAXABLE, THE PORTION OF THE PRICE ATTRIBUTABLE TO THE NONTAXABLE SERVICES IS SUBJECT TO TAX UNLESS THE PROVIDER CAN REASONABLY IDENTIFY THE PORTION OF NONTAXABLE SERVICES FROM ITS BOOKS AND RECORDS KEPT IN THE REGULAR COURSE OF BUSINESS.

NEW SECTION. Section 5. Codification instruction. [~~Section 2~~] is [SECTIONS 3 AND 4] ARE intended to be codified as an integral part of Title 15, chapter 53, part 1, and the provisions of Title 15, chapter 53, part 1, apply to [~~section 2~~] [SECTIONS 3 AND 4].

NEW SECTION. Section 6. Effective date. [This act] is effective on ~~passage and approval~~ JULY 1, 2003.

NEW SECTION. Section 7. Applicability. [This act] applies to bills issued on or after the first day of the first month after [the effective date of this act].

NEW SECTION. Section 8. Contingent termination. The attorney general shall certify to the code commissioner if a court of competent jurisdiction enters a final judgment on the merits that is no longer subject to appeal and that, based on federal law, substantially limits or impairs the essential elements of 4 U.S.C. 116 through 126. Upon certification, [this act] is void as of the date judgment was entered.

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