

106TH CONGRESS
2D SESSION

H. R. 4391

To amend title 4 of the United States Code to establish nexus requirements for State and local taxation of mobile telecommunication services.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2000

Mr. HYDE (for himself, Mr. CONYERS, Mr. GEKAS, and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 4 of the United States Code to establish nexus requirements for State and local taxation of mobile telecommunication services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mobile Telecommuni-
5 cations Sourcing Act”.

1 **SEC. 2. AMENDMENTS TO TITLE 4 OF THE UNITED STATES**
2 **CODE.**

3 (a) AMENDMENT RELATING TO THE STATES.—Chap-
4 ter 4 of title 4 of the United States Code is amended by
5 adding at the end the following:

6 **“§ 117. Rules for determining State and local govern-**
7 **ment treatment of charges related to mo-**
8 **bile telecommunications services**

9 “(a) APPLICATION OF THIS SECTION THROUGH SEC-
10 TION 127.—This section through 127 of this title apply
11 to any tax, charge, or fee levied by a taxing jurisdiction
12 as a fixed charge for each customer or measured by gross
13 amounts charged to customers for mobile telecommuni-
14 cations services, regardless of whether such tax, charge,
15 or fee is imposed on the vendor or customer of the service
16 and regardless of the terminology used to describe the tax,
17 charge, or fee.

18 “(b) GENERAL EXCEPTIONS.—This section through
19 127 of this title do not apply to—

20 “(1) any tax, charge, or fee levied upon or
21 measured by the net income, capital stock, net
22 worth, or property value of the provider of mobile
23 telecommunications service;

24 “(2) any tax, charge, or fee that is applied to
25 an equitably apportioned amount that is not deter-
26 mined on a transactional basis;

1 “(3) any tax, charge, or fee that represents
2 compensation for a mobile telecommunications serv-
3 ice provider’s use of public rights of way or other
4 public property, provided that such tax, charge, or
5 fee is not levied by the taxing jurisdiction as a fixed
6 charge for each customer or measured by gross
7 amounts charged to customers for mobile tele-
8 communication services;

9 “(4) any generally applicable State-imposed
10 business and occupation tax that is applied to gross
11 receipts or gross proceeds, is the legal liability of the
12 carrier, and that statutorily allows the taxpayer
13 (carrier) to elect to use the sourcing method re-
14 quired in this section through 127 of this title;

15 “(5) any fee related to obligations under section
16 254 of the Communications Act of 1934; or

17 “(6) any tax, charge, or fee imposed by the
18 Federal Communications Commission.

19 “(c) SPECIFIC EXCEPTIONS.—This section through
20 127 of this title —

21 “(1) do not apply to the determination of the
22 taxing situs of prepaid telephone calling services;

23 “(2) do not affect the taxability of either the
24 initial sale of mobile telecommunications services or
25 subsequent resale of such services, whether as sales

1 of such services alone or as a part of a bundled
2 product, if the Internet Tax Freedom Act would pre-
3 clude a taxing jurisdiction from subjecting the
4 charges of the sale of such services to a tax, charge,
5 or fee, but this section provides no evidence of the
6 intent of Congress with respect to the applicability
7 of the Internet Tax Freedom Act to such charges;
8 and

9 “(3) do not apply to the determination of the
10 taxing situs of air-ground radiotelephone service as
11 defined in section 22.99 of title 47 of the Code of
12 Federal Regulations as in effect on June 1, 1999.

13 **“§ 118. Sourcing rules**

14 “(a) TREATMENT OF CHARGES FOR MOBILE TELE-
15 COMMUNICATIONS SERVICES.—Notwithstanding the law
16 of any State or political subdivision of any State, mobile
17 telecommunications services provided in a taxing jurisdic-
18 tion to a customer, the charges for which are billed by
19 or for the customer’s home service provider, shall be
20 deemed to be provided by the customer’s home service pro-
21 vider.

22 “(b) JURISDICTION.—All charges for mobile tele-
23 communications services that are deemed to be provided
24 by the customer’s home service provider under sections
25 117 through 127 of this title are authorized to be sub-

1 jected to tax, charge, or fee by the taxing jurisdictions
2 whose territorial limits encompass the customer’s place of
3 primary use, regardless of where the mobile telecommuni-
4 cation services originate, terminate, or pass through, and
5 no other taxing jurisdiction may impose taxes, charges, or
6 fees on charges for such mobile telecommunications serv-
7 ices.

8 **“§ 119. Limitations**

9 “Sections 117 through 127 of this title do not—

10 “(1) provide authority to a taxing jurisdiction
11 to impose a tax, charge, or fee that the laws of such
12 jurisdiction do not authorize such jurisdiction to im-
13 pose; or

14 “(2) modify, impair, supersede, or authorize the
15 modification, impairment, or supersession of the law
16 of any taxing jurisdiction pertaining to taxation ex-
17 cept as expressly provided in sections 117 through
18 127 of this title.

19 **“§ 120. Electronic databases for nationwide standard**
20 **numeric jurisdictional codes**

21 “(a) ELECTRONIC DATABASE.—

22 “(1) PROVISION OF DATABASE.—A State may
23 provide an electronic database to a home service pro-
24 vider or, if a State does not provide such an elec-
25 tronic database to home service providers, then the

1 designated database provider may provide an elec-
2 tronic database to a home service provider.

3 “(2) FORMAT.—(A) Such electronic database,
4 whether provided by the State or the designated
5 database provider, shall be provided in a format ap-
6 proved by the American National Standards Insti-
7 tute’s Accredited Standards Committee X12, that,
8 allowing for de minimis deviations, designates for
9 each street address in the State, including to the ex-
10 tent practicable, any multiple postal street addresses
11 applicable to one street location, the appropriate tax-
12 ing jurisdictions, and the appropriate code for each
13 taxing jurisdiction, for each level of taxing jurisdic-
14 tion, identified by one nationwide standard numeric
15 code.

16 “(B) Such electronic database shall also provide
17 the appropriate code for each street address with re-
18 spect to political subdivisions which are not taxing
19 jurisdictions when reasonably needed to determine
20 the proper taxing jurisdiction.

21 “(C) The nationwide standard numeric codes
22 shall contain the same number of numeric digits
23 with each digit or combination of digits referring to
24 the same level of taxing jurisdiction throughout the
25 United States using a format similar to FIPS 55–

1 3 or other appropriate standard approved by the
2 Federation of Tax Administrators and the
3 Multistate Tax Commission, or their successors.
4 Each address shall be provided in standard postal
5 format.

6 “(b) NOTICE; UPDATES.—A State or designated
7 database provider that provides or maintains an electronic
8 database described in subsection (a) shall provide notice
9 of the availability of the then current electronic database,
10 and any subsequent revisions thereof, by publication in the
11 manner normally employed for the publication of informa-
12 tional tax, charge, or fee notices to taxpayers in such
13 State.

14 “(c) USER HELD HARMLESS.—A home service pro-
15 vider using the data contained in an electronic database
16 described in subsection (a) shall be held harmless from
17 any tax, charge, or fee liability that otherwise would be
18 due solely as a result of any error or omission in such
19 database provided by a State or designated database pro-
20 vider. The home service provider shall reflect changes
21 made to such database during a calendar quarter not later
22 than 30 days after the end of such calendar quarter for
23 each State that issues notice of the availability of an elec-
24 tronic database reflecting such changes under subsection
25 (b).

1 **“§ 121. Procedure if no electronic database provided**

2 “(a) SAFE HARBOR.—If neither a State nor des-
3 igned database provider provides an electronic database
4 under section 120, a home service provider shall be held
5 harmless from any tax, charge, or fee liability in such
6 State that otherwise would be due solely as a result of
7 an assignment of a street address to an incorrect taxing
8 jurisdiction if, subject to section 122, the home service
9 provider employs an enhanced zip code to assign each
10 street address to a specific taxing jurisdiction for each
11 level of taxing jurisdiction and exercises due diligence at
12 each level of taxing jurisdiction to ensure that each such
13 street address is assigned to the correct taxing jurisdic-
14 tion. If an enhanced zip code overlaps boundaries of taxing
15 jurisdictions of the same level, the home service provider
16 must designate one specific jurisdiction within such en-
17 hanced zip code for use in taxing the activity for such en-
18 hanced zip code for each level of taxing jurisdiction. Any
19 enhanced zip code assignment changed in accordance with
20 section 122 is deemed to be in compliance with this sec-
21 tion. For purposes of this section, there is a rebuttable
22 presumption that a home service provider has exercised
23 due diligence if such home service provider demonstrates
24 that it has—

25 “(1) expended reasonable resources to imple-
26 ment and maintain an appropriately detailed elec-

1 tronic database of street address assignments to tax-
2 ing jurisdictions;

3 “(2) implemented and maintained reasonable
4 internal controls to promptly correct misassignments
5 of street addresses to taxing jurisdictions; and

6 “(3) used all reasonably obtainable and usable
7 data pertaining to municipal annexations,
8 incorporations, reorganizations and any other
9 changes in jurisdictional boundaries that materially
10 affect the accuracy of such database.

11 “(b) TERMINATION OF SAFE HARBOR.—Subsection
12 (a) applies to a home service provider that is in compliance
13 with the requirements of subsection (a), with respect to
14 a State for which an electronic database is not provided
15 under section 120 until the later of—

16 “(1) 18 months after the nationwide standard
17 numeric code described in section 120(a) has been
18 approved by the Federation of Tax Administrators
19 and the Multistate Tax Commission; or

20 “(2) 6 months after such State or a designated
21 database provider in such State provides such data-
22 base as prescribed in section 120(a).

1 **“§ 122. Correction of erroneous data for place of pri-**
2 **mary use**

3 “(a) IN GENERAL.—A taxing jurisdiction, or a State
4 on behalf of any taxing jurisdiction or taxing jurisdictions
5 within such State, may—

6 “(1) determine that the address used for pur-
7 poses of determining the taxing jurisdictions to
8 which taxes, charges, or fees for mobile tele-
9 communications services are remitted does not meet
10 the definition of place of primary use in section
11 124(3) and give binding notice to the home service
12 provider to change the place of primary use on a
13 prospective basis from the date of notice of deter-
14 mination if—

15 “(A) the taxing jurisdiction making such
16 determination is not a State and such taxing
17 jurisdiction obtains the consent of all affected
18 taxing jurisdictions within the State before giv-
19 ing such notice of determination; and

20 “(B) the customer is given an opportunity,
21 before receiving such notice of determination, to
22 demonstrate in accordance with applicable State
23 or local tax, charge, or fee administrative proce-
24 dures that the address is the customer’s place
25 of primary use;

1 “(2) determine that the assignment of a taxing
2 jurisdiction by a home service provider under section
3 121 does not reflect the correct taxing jurisdiction
4 and give binding notice to the home service provider
5 to change the assignment on a prospective basis
6 from the date of notice of determination if—

7 “(A) if the taxing jurisdiction making such
8 determination is not a State and such taxing
9 jurisdiction obtains the consent of all affected
10 taxing jurisdictions within the State before giving
11 such notice of determination; and

12 “(B) the home service provider is given an
13 opportunity to demonstrate in accordance with
14 applicable State or local tax, charge, or fee ad-
15 ministrative procedures that the assignment re-
16 flects the correct taxing jurisdiction.

17 **“§ 123. Determination of Place of Primary Use.**

18 “(a) PLACE OF PRIMARY USE.—A taxing jurisdiction
19 may require a home service provider to be responsible for
20 obtaining and maintaining the customer’s place of primary
21 use (as defined in section 125). Subject to section 122,
22 and if the home service provider’s reliance on information
23 provided by its customer is in good faith, a taxing jurisdic-
24 tion shall—

1 “(1) allow a home service provider to rely on
2 the applicable residential or business street address
3 supplied by the home service provider’s customer;
4 and

5 “(2) not hold a home service provider liable for
6 any additional taxes, charges, or fees based on a dif-
7 ferent determination of the place of primary use for
8 taxes, charges or fees that are customarily passed on
9 to the customer as a separate itemized charge.

10 “(b) ADDRESS UNDER EXISTING AGREEMENTS.—
11 Except as provided in section 122, a taxing jurisdiction
12 shall allow a home service provider to treat the address
13 used by the home service provider for tax purposes for
14 any customer under a service contract or agreement in ef-
15 fect 2 years after the date of enactment of the Mobile
16 Telecommunications Sourcing Act as that customer’s
17 place of primary use for the remaining term of such serv-
18 ice contract or agreement, excluding any extension or re-
19 newal of such service contract or agreement, for purposes
20 of determining the taxing jurisdictions to which taxes,
21 charges, or fees on charges for mobile telecommunications
22 services are remitted.

23 **“§ 124. Scope; special rules**

24 “(a) ACT DOES NOT SUPERSEDE CUSTOMER’S LI-
25 ABILITY TO TAXING JURISDICTION.—Nothing in sections

1 117 through 127 modifies, impairs, supersedes, or author-
2 izes the modification, impairment, or supersession of, any
3 law allowing a taxing jurisdiction to collect a tax, charge,
4 or fee from a customer that has failed to provide its place
5 of primary use.

6 “(b) ADDITIONAL TAXABLE CHARGES.—If a taxing
7 jurisdiction does not otherwise subject charges for mobile
8 telecommunications services to taxation and if these
9 charges are aggregated with and not separately stated
10 from charges that are subject to taxation, then the charges
11 for nontaxable mobile telecommunications services may be
12 subject to taxation unless the home service provider can
13 reasonably identify charges not subject to such tax,
14 charge, or fee from its books and records that are kept
15 in the regular course of business.

16 “(c) NONTAXABLE CHARGES.—If a taxing jurisdic-
17 tion does not subject charges for mobile telecommuni-
18 cations services to taxation, a customer may not rely upon
19 the nontaxability of charges for mobile telecommuni-
20 cations services unless the customer’s home service pro-
21 vider separately states the charges for nontaxable mobile
22 telecommunications services from taxable charges or the
23 home service provider elects, after receiving a written re-
24 quest from the customer in the form required by the pro-
25 vider, to provide verifiable data based upon the home serv-

1 ice provider's books and records that are kept in the reg-
2 ular course of business that reasonably identifies the non-
3 taxable charges.

4 **“§ 125. Definitions**

5 “In sections 117 through 127 of this title:

6 “(1) CHARGES FOR MOBILE TELECOMMUNI-
7 CATIONS SERVICES.—The term ‘charges for mobile
8 telecommunications services’ means any charge for,
9 or associated with, the provision of commercial mo-
10 bile radio service, as defined in section 20.3 of title
11 47 of the Code of Federal Regulations as in effect
12 on June 1, 1999, or any charge for, or associated
13 with, a service provided as an adjunct to a commer-
14 cial mobile radio service, that is billed to the cus-
15 tomer by or for the customer's home service provider
16 regardless of whether individual transmissions origi-
17 nate or terminate within the licensed service area of
18 the home service provider.

19 “(2) CUSTOMER.—

20 “(A) IN GENERAL.—The term ‘customer’
21 means—

22 “(i) the person or entity that con-
23 tracts with the home service provider for
24 mobile telecommunications services; or

1 “(ii) if the end user of mobile tele-
2 communications services is not the con-
3 tracting party, the end user of the mobile
4 telecommunications service, but this clause
5 applies only for the purpose of determining
6 the place of primary use.

7 “(B) The term ‘customer’ does not
8 include—

9 “(i) a reseller of mobile telecommuni-
10 cations service; or

11 “(ii) a serving carrier under an ar-
12 rangement to serve the customer outside
13 the home service provider’s licensed service
14 area.

15 “(3) DESIGNATED DATABASE PROVIDER.—The
16 term ‘designated database provider’ means a cor-
17 poration, association, or other entity representing all
18 the political subdivisions of a State that is—

19 “(A) responsible for providing an electronic
20 database prescribed in section 120(a) if the
21 State has not provided such electronic database;
22 and

23 “(B) approved by municipal and county as-
24 sociations or leagues of the State whose respon-
25 sibility it would otherwise be to provide such

1 database prescribed by sections 117 through
2 127 of this title.

3 “(4) ENHANCED ZIP CODE.—The term ‘en-
4 hanced zip code’ means a United States postal zip
5 code of 9 or more digits.

6 “(5) HOME SERVICE PROVIDER.—The term
7 ‘home service provider’ means the facilities-based
8 carrier or reseller with which the customer contracts
9 for the provision of mobile telecommunications serv-
10 ices.

11 “(6) LICENSED SERVICE AREA.—The term ‘li-
12 censed service area’ means the geographic area in
13 which the home service provider is authorized by law
14 or contract to provide commercial mobile radio serv-
15 ice to the customer.

16 “(7) MOBILE TELECOMMUNICATIONS SERV-
17 ICE.—The term ‘mobile telecommunications service’
18 means commercial mobile radio service, as defined in
19 section 20.3 of title 47 of the Code of Federal Regu-
20 lations as in effect on June 1, 1999.

21 “(8) PLACE OF PRIMARY USE.—The term ‘place
22 of primary use’ means the street address representa-
23 tive of where the customer’s use of the mobile tele-
24 communications service primarily occurs, which must
25 be—

1 “(A) the residential street address or the
2 primary business street address of the cus-
3 tomer; and

4 “(B) within the licensed service area of the
5 home service provider.

6 “(9) PREPAID TELEPHONE CALLING SERV-
7 ICES.—The term ‘prepaid telephone calling service’
8 means the right to purchase exclusively tele-
9 communications services that must be paid for in
10 advance, that enables the origination of calls using
11 an access number, authorization code, or both,
12 whether manually or electronically dialed, if the re-
13 maining amount of units of service that have been
14 prepaid is known by the provider of the prepaid
15 service on a continuous basis.

16 “(10) RESELLER.—The term ‘reseller’—

17 “(A) means a provider who purchases tele-
18 communications services from another tele-
19 communications service provider and then re-
20 sells, uses as a component part of, or integrates
21 the purchased services into a mobile tele-
22 communications service; and

23 “(B) does not include a serving carrier
24 with which a home service provider arranges for

1 the services to its customers outside the home
2 service provider’s licensed service area.

3 “(11) SERVING CARRIER.—The term ‘serving
4 carrier’ means a facilities-based carrier providing
5 mobile telecommunications service to a customer
6 outside a home service provider’s or reseller’s li-
7 censed service area.

8 “(12) TAXING JURISDICTION.—The term ‘tax-
9 ing jurisdiction’ means any of the several States, the
10 District of Columbia, or any territory or possession
11 of the United States, any municipality, city, county,
12 township, parish, transportation district, or assess-
13 ment jurisdiction, or any other political subdivision
14 within the territorial limits of the United States with
15 the authority to impose a tax, charge, or fee.

16 **“§ 126. Nonseverability**

17 “If a court of competent jurisdiction enters a final
18 judgment on the merits that—

19 “(1) is based on Federal law;

20 “(2) is no longer subject to appeal; and

21 “(3) substantially limits or impairs the essential
22 elements of sections 117 through 127 of this title;
23 then sections 117 through 127 of this title are invalid and
24 have no legal effect ab initio.

1 **“§ 127. No inference**

2 “(a) INTERNET TAX FREEDOM ACT.—Nothing in
3 sections 117 through this section of this title shall be con-
4 strued as bearing on Congressional intent in enacting the
5 Internet Tax Freedom Act or to modify or supersede the
6 operation of such Act.

7 “(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing
8 in sections 117 through this section of this title shall limit
9 or otherwise affect the implementation of the Tele-
10 communications Act of 1996 or the amendments made by
11 such Act.”.

12 (b) TECHNICAL AMENDMENT.—The table of sections
13 of chapter 4 of title 4, United States Code, is amended
14 by adding the following after the item relating to section
15 116:

“117. Rules for determining State and local government treatment of charges
related to mobile telecommunications services.

“118. Sourcing rules.

“119. Limitations.

“120. Electronic databases for nationwide standard numeric jurisdictional
codes.

“121. Procedure if no electronic database provided.

“122. Correction of erroneous data for place of primary use.

“123. Determination of place of primary use.

“124. Scope; special rules.

“125. Definitions.

“126. Nonseverability.

“127. No inference.”.

1 **SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENT.**

2 (a) EFFECTIVE DATE.—Except as provided in sub-
3 section (b), this Act and the amendment made by this Act
4 shall take effect on the date of the enactment of this Act.

5 (b) APPLICATION OF ACT.—The amendment made by
6 this Act shall apply only with respect to telecommuni-
7 cations services provided after the 1st day of the 1st
8 month beginning more than 2 years after the date of en-
9 actment of this Act.

○