

# Union Calendar No. 403

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4391

[Report No. 106-719]

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

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## 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

JULY 10, 2000

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

JULY 10, 2000

Additional sponsor: Mr. GOODLATTE

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 4, 2000]

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited as the “Mobile Telecommuni-*  
3 *cations Sourcing Act”.*

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

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

9 **“§ 116. Rules for determining State and local govern-**  
10 **ment treatment of charges related to mo-**  
11 **bile telecommunications services**

12       *“(a) APPLICATION OF THIS SECTION THROUGH SEC-*  
13 *TION 126.—This section through 126 of this title apply to*  
14 *any tax, charge, or fee levied by a taxing jurisdiction as*  
15 *a fixed charge for each customer or measured by gross*  
16 *amounts charged to customers for mobile telecommuni-*  
17 *cations services, regardless of whether such tax, charge, or*  
18 *fee is imposed on the vendor or customer of the service and*  
19 *regardless of the terminology used to describe the tax,*  
20 *charge, or fee.*

21       *“(b) GENERAL EXCEPTIONS.—This section through*  
22 *126 of this title do not apply to—*

23               *“(1) any tax, charge, or fee levied upon or meas-*  
24 *ured by the net income, capital stock, net worth, or*  
25 *property value of the provider of mobile telecommuni-*  
26 *cations service;*

1           “(2) any tax, charge, or fee that is applied to an  
2           equitably apportioned amount that is not determined  
3           on a transactional basis;

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

11          “(4) any generally applicable business and occu-  
12          pation tax that is imposed by a State, is applied to  
13          gross receipts or gross proceeds, is the legal liability  
14          of the home service provider, and that statutorily al-  
15          lows the home service provider to elect to use the  
16          sourcing method required in this section through 126  
17          of this title;

18          “(5) any fee related to obligations under section  
19          254 of the Communications Act of 1934; or

20          “(6) any tax, charge, or fee imposed by the Fed-  
21          eral Communications Commission.

22          “(c) *SPECIFIC EXCEPTIONS.*—This section through 126  
23          of this title —

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

1           “(2) do not affect the taxability of either the ini-  
2           tial sale of mobile telecommunications services or sub-  
3           sequent resale of such services, whether as sales of such  
4           services alone or as a part of a bundled product, if  
5           the Internet Tax Freedom Act would preclude a tax-  
6           ing jurisdiction from subjecting the charges of the sale  
7           of such services to a tax, charge, or fee, but this sec-  
8           tion provides no evidence of the intent of Congress  
9           with respect to the applicability of the Internet Tax  
10          Freedom Act to such charges; and

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

15       **“§ 117. Sourcing rules**

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

23           “(b) *JURISDICTION.*—All charges for mobile tele-  
24          communications services that are deemed to be provided by  
25          the customer’s home service provider under sections 116

1 *through 126 of this title are authorized to be subjected to*  
2 *tax, charge, or fee by the taxing jurisdictions whose terri-*  
3 *torial limits encompass the customer’s place of primary use,*  
4 *regardless of where the mobile telecommunication services*  
5 *originate, terminate, or pass through, and no other taxing*  
6 *jurisdiction may impose taxes, charges, or fees on charges*  
7 *for such mobile telecommunications services.*

8 **“§ 118. Limitations**

9 *“Sections 116 through 126 of this title do not—*

10 *“(1) provide authority to a taxing jurisdiction to*  
11 *impose a tax, charge, or fee that the laws of such ju-*  
12 *risdiction 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 116 through 126*  
18 *of this title.*

19 **“§ 119. 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 data-*  
5 *base provider, shall be provided in a format approved*  
6 *by the American National Standards Institute’s Ac-*  
7 *credited Standards Committee X12, that, allowing for*  
8 *de minimis deviations, designates for each street ad-*  
9 *dress in the State, including to the extent practicable,*  
10 *any multiple postal street addresses applicable to one*  
11 *street location, the appropriate taxing jurisdictions,*  
12 *and the appropriate code for each taxing jurisdiction,*  
13 *for each level of taxing jurisdiction, identified by one*  
14 *nationwide standard numeric code.*

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

20       “(C) *The nationwide standard numeric codes*  
21 *shall contain the same number of numeric digits with*  
22 *each digit or combination of digits referring to the*  
23 *same level of taxing jurisdiction throughout the*  
24 *United States using a format similar to FIPS 55–3*  
25 *or other appropriate standard approved by the Fed-*

1        *eration of Tax Administrators and the Multistate Tax*  
2        *Commission, or their successors. Each address shall be*  
3        *provided in standard postal format.*

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

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

22       **“§ 120. Procedure if no electronic database provided**

23       *“(a) SAFE HARBOR.—If neither a State nor des-*  
24       *ignated database provider provides an electronic database*  
25       *under section 119, a home service provider shall be held*

1 *harmless from any tax, charge, or fee liability in such State*  
2 *that otherwise would be due solely as a result of an assign-*  
3 *ment of a street address to an incorrect taxing jurisdiction*  
4 *if, subject to section 121, the home service provider employs*  
5 *an enhanced zip code to assign each street address to a spe-*  
6 *cific taxing jurisdiction for each level of taxing jurisdiction*  
7 *and exercises due diligence at each level of taxing jurisdic-*  
8 *tion to ensure that each such street address is assigned to*  
9 *the correct taxing jurisdiction. If an enhanced zip code over-*  
10 *laps boundaries of taxing jurisdictions of the same level,*  
11 *the home service provider must designate one specific juris-*  
12 *isdiction within such enhanced zip code for use in taxing the*  
13 *activity for such enhanced zip code for each level of taxing*  
14 *jurisdiction. Any enhanced zip code assignment changed in*  
15 *accordance with section 121 is deemed to be in compliance*  
16 *with this section. For purposes of this section, there is a*  
17 *rebuttable presumption that a home service provider has ex-*  
18 *ercised due diligence if such home service provider dem-*  
19 *onstrates that it has—*

20           “(1) expended reasonable resources to implement  
21           and maintain an appropriately detailed electronic  
22           database of street address assignments to taxing juris-  
23           dictions;



1           “(1) determine that the address used for purposes  
2 of determining the taxing jurisdictions to which taxes,  
3 charges, or fees for mobile telecommunications services  
4 are remitted does not meet the definition of place of  
5 primary use in section 124(8) and give binding no-  
6 tice to the home service provider to change the place  
7 of primary use on a prospective basis from the date  
8 of notice of determination if—

9           “(A) if the taxing jurisdiction making such  
10 determination is not a State, such taxing juris-  
11 diction obtains the consent of all affected taxing  
12 jurisdictions within the State before giving such  
13 notice of determination; and

14           “(B) before the taxing jurisdiction gives  
15 such notice of determination, the customer is  
16 given an opportunity to demonstrate in accord-  
17 ance with applicable State or local tax, charge,  
18 or fee administrative procedures that the address  
19 is the customer’s place of primary use;

20           “(2) determine that the assignment of a taxing  
21 jurisdiction by a home service provider under section  
22 120 does not reflect the correct taxing jurisdiction and  
23 give binding notice to the home service provider to  
24 change the assignment on a prospective basis from the  
25 date of notice of determination if—

1           “(A) if the taxing jurisdiction making such  
2           determination is not a State, such taxing juris-  
3           diction obtains the consent of all affected taxing  
4           jurisdictions within the State before giving such  
5           notice of determination; and

6           “(B) the home service provider is given an  
7           opportunity to demonstrate in accordance with  
8           applicable State or local tax, charge, or fee ad-  
9           ministrative procedures that the assignment re-  
10          flects the correct taxing jurisdiction.

11   **“§ 122. Determination of place of primary use**

12          “(a) *PLACE OF PRIMARY USE.*—A home service pro-  
13          vider shall be responsible for obtaining and maintaining  
14          the customer’s place of primary use (as defined in section  
15          124). Subject to section 121, and if the home service pro-  
16          vider’s reliance on information provided by its customer is  
17          in good faith, a taxing jurisdiction shall—

18                 “(1) allow a home service provider to rely on the  
19                 applicable residential or business street address sup-  
20                 plied by the home service provider’s customer; and

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

1       “(b) *ADDRESS UNDER EXISTING AGREEMENTS.*—*Ex-*  
2 *cept as provided in section 121, a taxing jurisdiction shall*  
3 *allow a home service provider to treat the address used by*  
4 *the home service provider for tax purposes for any customer*  
5 *under a service contract or agreement in effect 2 years after*  
6 *the date of enactment of the Mobile Telecommunications*  
7 *Sourcing Act as that customer’s place of primary use for*  
8 *the remaining term of such service contract or agreement,*  
9 *excluding any extension or renewal of such service contract*  
10 *or agreement, for purposes of determining the taxing juris-*  
11 *dictions to which taxes, charges, or fees on charges for mo-*  
12 *bile telecommunications services are remitted.*

13       “**§ 123. Scope; special rules**

14       “(a) *ACT DOES NOT SUPERSEDE CUSTOMER’S LIABIL-*  
15 *ITY TO TAXING JURISDICTION.*—*Nothing in sections 116*  
16 *through 126 modifies, impairs, supersedes, or authorizes the*  
17 *modification, impairment, or supersession of, any law al-*  
18 *lowing a taxing jurisdiction to collect a tax, charge, or fee*  
19 *from a customer that has failed to provide its place of pri-*  
20 *mary use.*

21       “(b) *ADDITIONAL TAXABLE CHARGES.*—*If a taxing ju-*  
22 *risdiction does not otherwise subject charges for mobile tele-*  
23 *communications services to taxation and if these charges*  
24 *are aggregated with and not separately stated from charges*  
25 *that are subject to taxation, then the charges for nontaxable*

1 *mobile telecommunications services may be subject to tax-*  
2 *ation unless the home service provider can reasonably iden-*  
3 *tify charges not subject to such tax, charge, or fee from its*  
4 *books and records that are kept in the regular course of busi-*  
5 *ness.*

6       “(c) *NONTAXABLE CHARGES.*—*If a taxing jurisdiction*  
7 *does not subject charges for mobile telecommunications serv-*  
8 *ices to taxation, a customer may not rely upon the nontax-*  
9 *ability of charges for mobile telecommunications services*  
10 *unless the customer’s home service provider separately states*  
11 *the charges for nontaxable mobile telecommunications serv-*  
12 *ices from taxable charges or the home service provider elects,*  
13 *after receiving a written request from the customer in the*  
14 *form required by the provider, to provide verifiable data*  
15 *based upon the home service provider’s books and records*  
16 *that are kept in the regular course of business that reason-*  
17 *ably identifies the nontaxable charges.*

18 **“§ 124. Definitions**

19       *“In sections 116 through 126 of this title:*

20               “(1) *CHARGES FOR MOBILE TELECOMMUNI-*  
21 *CATIONS SERVICES.*—*The term ‘charges for mobile*  
22 *telecommunications services’ means any charge for, or*  
23 *associated with, the provision of commercial mobile*  
24 *radio service, as defined in section 20.3 of title 47 of*  
25 *the Code of Federal Regulations as in effect on June*

1       1, 1999, or any charge for, or associated with, a serv-  
2       ice provided as an adjunct to a commercial mobile  
3       radio service, that is billed to the customer by or for  
4       the customer's home service provider regardless of  
5       whether individual transmissions originate or termi-  
6       nate within the licensed service area of the home serv-  
7       ice provider.

8               “(2) CUSTOMER.—

9                       “(A) IN GENERAL.—The term ‘customer’  
10                      means—

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

14                               “(ii) if the end user of mobile tele-  
15                               communications services is not the con-  
16                               tracting party, the end user of the mobile  
17                               telecommunications service, but this clause  
18                               applies only for the purpose of determining  
19                               the place of primary use.

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

21                               “(i) a reseller of mobile telecommuni-  
22                               cations service; or

23                               “(ii) a serving carrier under an ar-  
24                               rangement to serve the customer outside the

1           *home service provider’s licensed service*  
2           *area.*

3           “(3) *DESIGNATED DATABASE PROVIDER.*—*The*  
4           *term ‘designated database provider’ means a corpora-*  
5           *tion, association, or other entity representing all the*  
6           *political subdivisions of a State that is—*

7                   “(A) *responsible for providing an electronic*  
8                   *database prescribed in section 119(a) if the State*  
9                   *has not provided such electronic database; and*

10                   “(B) *approved by municipal and county as-*  
11                   *sociations or leagues of the State whose responsi-*  
12                   *bility it would otherwise be to provide such data-*  
13                   *base prescribed by sections 116 through 126 of*  
14                   *this title.*

15           “(4) *ENHANCED ZIP CODE.*—*The term ‘enhanced*  
16           *zip code’ means a United States postal zip code of 9*  
17           *or more digits.*

18           “(5) *HOME SERVICE PROVIDER.*—*The term*  
19           *‘home service provider’ means the facilities-based car-*  
20           *rier or reseller with which the customer contracts for*  
21           *the provision of mobile telecommunications services.*

22           “(6) *LICENSED SERVICE AREA.*—*The term ‘li-*  
23           *icensed service area’ means the geographic area in*  
24           *which the home service provider is authorized by law*

1        *or contract to provide commercial mobile radio serv-*  
2        *ice to the customer.*

3            “(7) *MOBILE TELECOMMUNICATIONS SERVICE.*—  
4        *The term ‘mobile telecommunications service’ means*  
5        *commercial mobile radio service, as defined in section*  
6        *20.3 of title 47 of the Code of Federal Regulations as*  
7        *in effect on June 1, 1999.*

8            “(8) *PLACE OF PRIMARY USE.*—*The term ‘place*  
9        *of primary use’ means the street address representa-*  
10       *tive of where the customer’s use of the mobile tele-*  
11       *communications service primarily occurs, which must*  
12       *be—*

13            “(A) *the residential street address or the*  
14        *primary business street address of the customer;*  
15        *and*

16            “(B) *within the licensed service area of the*  
17        *home service provider.*

18            “(9) *PREPAID TELEPHONE CALLING SERVICES.*—  
19        *The term ‘prepaid telephone calling service’ means the*  
20        *right to purchase exclusively telecommunications serv-*  
21        *ices that must be paid for in advance, that enables the*  
22        *origination of calls using an access number, author-*  
23        *ization code, or both, whether manually or electroni-*  
24        *cally dialed, if the remaining amount of units of serv-*

1        *ice that have been prepaid is known by the provider*  
2        *of the prepaid service on a continuous basis.*

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

4            *“(A) means a provider who purchases tele-*  
5            *communications services from another tele-*  
6            *communications service provider and then re-*  
7            *sells, uses as a component part of, or integrates*  
8            *the purchased services into a mobile tele-*  
9            *communications service; and*

10           *“(B) does not include a serving carrier with*  
11           *which a home service provider arranges for the*  
12           *services to its customers outside the home service*  
13           *provider’s licensed service area.*

14           *“(11) SERVING CARRIER.—The term ‘serving*  
15           *carrier’ means a facilities-based carrier providing*  
16           *mobile telecommunications service to a customer out-*  
17           *side a home service provider’s or reseller’s licensed*  
18           *service area.*

19           *“(12) TAXING JURISDICTION.—The term ‘taxing*  
20           *jurisdiction’ means any of the several States, the Dis-*  
21           *trict of Columbia, or any territory or possession of the*  
22           *United States, any municipality, city, county, town-*  
23           *ship, parish, transportation district, or assessment ju-*  
24           *risdiction, or any other political subdivision within*

1        *the territorial limits of the United States with the au-*  
2        *thority to impose a tax, charge, or fee.*

3        **“§ 125. Nonseverability**

4        *“If a court of competent jurisdiction enters a final*  
5        *judgment on the merits that—*

6                *“(1) is based on Federal law;*

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

8                *“(3) substantially limits or impairs the essential*  
9        *elements of sections 116 through 126 of this title;*

10        *then sections 116 through 126 of this title are invalid and*  
11        *have no legal effect as of the date of entry of such judgment.*

12        **“§ 126. No inference**

13                *“(a) INTERNET TAX FREEDOM ACT.—Nothing in sec-*  
14        *tions 116 through this section of this title shall be construed*  
15        *as bearing on Congressional intent in enacting the Internet*  
16        *Tax Freedom Act or to modify or supersede the operation*  
17        *of such Act.*

18                *“(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing*  
19        *in sections 116 through this section of this title shall limit*  
20        *or otherwise affect the implementation of the Telecommuni-*  
21        *cations Act of 1996 or the amendments made by such Act.”.*

22                *(b) TECHNICAL AMENDMENT.—The table of sections of*  
23        *chapter 4 of title 4, United States Code, is amended by add-*  
24        *ing the following after the item relating to section 115:*

*“116. Rules for determining State and local government treatment of charges re-*  
*lated to mobile telecommunications services.*

“117. Sourcing rules.

“118. Limitations.

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

“120. Procedure if no electronic database provided.

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

“122. Determination of place of primary use.

“123. Scope; special rules.

“124. Definitions.

“125. Nonseverability.

“126. 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 to customer bills issued after the*  
 7 *1st day of the 1st month beginning more than 2 years after*  
 8 *the date of enactment of this Act.*

Amend the title so as to read: “A bill to amend title  
 4 of the United States Code to establish sourcing require-  
 ments for State and local taxation of mobile tele-  
 communication services.”.

**Union Calendar No. 403**

106TH CONGRESS  
2D SESSION

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