

CHAPTER 92

TAXATION

HOUSE BILL 02-1208

BY REPRESENTATIVE(S) Stengel, Crane, Garcia, and Kester;
also SENATOR(S) Phillips.

AN ACT

**CONCERNING COMPLIANCE WITH FEDERAL LAW IN THE IMPOSITION OF A SALES TAX IN THE STATE
ON MOBILE TELECOMMUNICATIONS SERVICE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The United States congress enacted the "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, to establish sourcing requirements for state and local taxation of mobile telecommunications services.

(b) The federal law provides that taxes on mobile telecommunications services are to be collected and remitted to the jurisdiction where the customer's primary use of said services occurs, regardless of where the mobile telecommunications services originate, pass through, or terminate.

(c) By enacting legislation to implement and comply with the requirements of the "Mobile Telecommunications Sourcing Act", the general assembly recognizes the effect of the federal act on the state of Colorado and informs state and local government officials of the applicability of the federal law on the tax laws of the state and local governments.

SECTION 2. Part 10 of article 1 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

29-1-1002. Mobile telecommunications services - taxation by local governments - remedies. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(a) "ACT" MEANS THE FEDERAL "MOBILE TELECOMMUNICATIONS SOURCING ACT", 4 U.S.C. SECS. 116 TO 126, AS AMENDED.

(b) "CUSTOMER" MEANS CUSTOMER AS DEFINED IN SECTION 124 (2) OF THE ACT.

(c) "HOME SERVICE PROVIDER" MEANS HOME SERVICE PROVIDER AS DEFINED IN SECTION 124 (5) OF THE ACT.

(d) "LOCAL GOVERNMENT" MEANS ANY STATUTORY OR HOME RULE CITY AND COUNTY, COUNTY, CITY, OR TOWN, AND ANY POLITICAL SUBDIVISION OF THE STATE, INCLUDING, WITHOUT LIMITATION, ANY AUTHORITY, SPECIAL DISTRICT, OR SCHOOL DISTRICT.

(e) "MOBILE TELECOMMUNICATIONS SERVICE" MEANS MOBILE TELECOMMUNICATIONS SERVICE AS DEFINED IN SECTION 124 (7) OF THE ACT.

(f) "PLACE OF PRIMARY USE" MEANS THE PLACE OF PRIMARY USE AS DEFINED IN SECTION 124 (8) OF THE ACT.

(g) "TAXING JURISDICTION" MEANS TAXING JURISDICTION AS DEFINED IN SECTION 124 (12) OF THE ACT.

(2) (a) ON AND AFTER AUGUST 1, 2002, ANY LOCAL GOVERNMENT THAT IMPOSES A SALES TAX PURSUANT TO SECTION 39-26-104 (1) (c), C.R.S., ON A MOBILE TELECOMMUNICATIONS SERVICE SHALL IMPOSE SUCH TAX IN ACCORDANCE WITH THE PROVISIONS OF THE ACT.

(b) PURSUANT TO SECTION 117 (b) OF THE ACT, MOBILE TELECOMMUNICATIONS SERVICE TAXABLE BY A LOCAL GOVERNMENT ON OR AFTER AUGUST 1, 2002, MAY BE SUBJECT TO ANY SALES TAX OR OTHER CHARGE IMPOSED BY SAID LOCAL GOVERNMENT ON THE SERVICE ONLY IF THE CUSTOMER'S PLACE OF PRIMARY USE IS WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE LOCAL GOVERNMENT.

(3) (a) IF A CUSTOMER BELIEVES THAT A TAX, CHARGE, OR FEE ASSESSED BY A LOCAL GOVERNMENT IN THE CUSTOMER'S BILL FOR A MOBILE TELECOMMUNICATIONS SERVICE IS ERRONEOUS, OR THAT AN ASSIGNMENT OF PLACE OF PRIMARY USE OR TAXING JURISDICTION ON SAID BILL IS INCORRECT, THE CUSTOMER SHALL NOTIFY THE HOME SERVICE PROVIDER IN WRITING WITHIN TWO YEARS AFTER THE DATE THE BILL WAS ISSUED. THE NOTIFICATION FROM THE CUSTOMER SHALL INCLUDE THE STREET ADDRESS FOR THE CUSTOMER'S PLACE OF PRIMARY USE, THE ACCOUNT NAME AND NUMBER FOR WHICH THE CUSTOMER SEEKS A CORRECTION, A DESCRIPTION OF THE ALLEGED ERROR, AND ANY OTHER INFORMATION THAT THE HOME SERVICE PROVIDER MAY REQUIRE.

(b) NO LATER THAN SIXTY DAYS AFTER RECEIPT OF NOTICE FROM A CUSTOMER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), THE HOME SERVICE PROVIDER SHALL REVIEW THE INFORMATION SUBMITTED BY THE CUSTOMER AND ANY OTHER RELEVANT INFORMATION AND DOCUMENTATION TO DETERMINE WHETHER AN ERROR WAS MADE. IF THE HOME SERVICE PROVIDER DETERMINES THAT AN ERROR WAS MADE, THE HOME SERVICE PROVIDER SHALL REFUND OR CREDIT TO THE CUSTOMER

ANY TAX, FEE, OR CHARGE ERRONEOUSLY COLLECTED FROM THE CUSTOMER FOR A PERIOD NOT TO EXCEED TWO YEARS. IF THE HOME SERVICE PROVIDER DETERMINES THAT NO ERROR WAS MADE, THE HOME SERVICE PROVIDER SHALL PROVIDE A WRITTEN EXPLANATION OF ITS DETERMINATION TO THE CUSTOMER.

(c) ANY CUSTOMER THAT BELIEVES A TAX, CHARGE, OR FEE ASSESSED BY A LOCAL GOVERNMENT IN THE CUSTOMER'S BILL FOR MOBILE TELECOMMUNICATIONS SERVICES IS ERRONEOUS, OR THAT AN ASSIGNMENT OF PLACE OF PRIMARY USE OR TAXING JURISDICTION ON SAID BILL IS INCORRECT MAY FILE A CLAIM IN THE APPROPRIATE DISTRICT COURT ONLY AFTER COMPLYING WITH THE PROVISIONS OF THIS SUBSECTION (3).

SECTION 3. 29-2-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

29-2-105. Contents of sales tax ordinances and proposals. (1.5) (a) ALL SALES TAX ORDINANCES OR RESOLUTIONS ADOPTED BY A COUNTY, TOWN, OR CITY PRIOR TO, ON, OR AFTER AUGUST 1, 2002, THAT IMPOSE A SALES TAX PURSUANT TO SECTION 39-26-104 (1) (c), C.R.S., ON A MOBILE TELECOMMUNICATIONS SERVICE SHALL IMPOSE SUCH TAX IN ACCORDANCE WITH THE PROVISIONS OF THE ACT, AND, PURSUANT TO SECTION 117 (b) OF THE ACT, MOBILE TELECOMMUNICATIONS SERVICE TAXABLE BY THE COUNTY, TOWN, OR CITY ON OR AFTER AUGUST 1, 2002, MAY BE SUBJECT TO ANY SALES TAX OR OTHER CHARGE IMPOSED BY SAID ENTITY ON THE SERVICE ONLY IF THE CUSTOMER'S PLACE OF PRIMARY USE IS WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE ENTITY.

(b) AS USED IN THIS SUBSECTION (1.5), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "ACT" MEANS THE FEDERAL "MOBILE TELECOMMUNICATIONS SOURCING ACT", 4 U.S.C. SECS. 116 TO 126, AS AMENDED.

(II) "CUSTOMER" MEANS CUSTOMER AS DEFINED IN SECTION 124 (2) OF THE ACT.

(III) "MOBILE TELECOMMUNICATIONS SERVICE" MEANS MOBILE TELECOMMUNICATIONS SERVICE AS DEFINED IN SECTION 124 (7) OF THE ACT.

(IV) "PLACE OF PRIMARY USE" MEANS THE PLACE OF PRIMARY USE AS DEFINED IN SECTION 124 (8) OF THE ACT.

SECTION 4. 39-26-104 (1) (c), Colorado Revised Statutes, is amended to read:

39-26-104. Property and services taxed. (1) There is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:

(c) (I) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service. ON OR AFTER AUGUST 1, 2002, MOBILE TELECOMMUNICATIONS SERVICE SHALL BE SUBJECT TO THE TAX IMPOSED BY THIS SECTION ONLY IF THE SERVICE IS PROVIDED TO A CUSTOMER WHOSE PLACE OF PRIMARY USE IS WITHIN COLORADO AND THE SERVICE ORIGINATES AND TERMINATES WITHIN THE SAME STATE. IN ACCORDANCE WITH THE

"MOBILE TELECOMMUNICATIONS SOURCING ACT", 4 U.S.C. SECS. 116 TO 126, AS AMENDED, ON OR AFTER AUGUST 1, 2002, MOBILE TELECOMMUNICATIONS SERVICE PROVIDED TO A CUSTOMER WHOSE PLACE OF PRIMARY USE IS OUTSIDE THE BORDERS OF THE STATE OF COLORADO IS EXEMPT FROM THE TAX IMPOSED BY THIS SECTION.

(II) (A) IF A CUSTOMER BELIEVES THAT A TAX, CHARGE, OR FEE ASSESSED BY THE STATE IN THE CUSTOMER'S BILL FOR A MOBILE TELECOMMUNICATIONS SERVICE IS ERRONEOUS, OR THAT AN ASSIGNMENT OF PLACE OF PRIMARY USE OR TAXING JURISDICTION ON SAID BILL IS INCORRECT, THE CUSTOMER SHALL NOTIFY THE HOME SERVICE PROVIDER IN WRITING WITHIN TWO YEARS AFTER THE DATE THE BILL WAS ISSUED. THE NOTIFICATION FROM THE CUSTOMER SHALL INCLUDE THE STREET ADDRESS FOR THE CUSTOMER'S PLACE OF PRIMARY USE, THE ACCOUNT NAME AND NUMBER FOR WHICH THE CUSTOMER SEEKS A CORRECTION, A DESCRIPTION OF THE ALLEGED ERROR, AND ANY OTHER INFORMATION THAT THE HOME SERVICE PROVIDER MAY REQUIRE.

(B) NO LATER THAN SIXTY DAYS AFTER RECEIPT OF NOTICE FROM A CUSTOMER PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II), THE HOME SERVICE PROVIDER SHALL REVIEW THE INFORMATION SUBMITTED BY THE CUSTOMER AND ANY OTHER RELEVANT INFORMATION AND DOCUMENTATION TO DETERMINE WHETHER AN ERROR WAS MADE. IF THE HOME SERVICE PROVIDER DETERMINES THAT AN ERROR WAS MADE, THE HOME SERVICE PROVIDER SHALL REFUND OR CREDIT TO THE CUSTOMER ANY TAX, FEE, OR CHARGE ERRONEOUSLY COLLECTED FROM THE CUSTOMER FOR A PERIOD NOT TO EXCEED TWO YEARS. IF THE HOME SERVICE PROVIDER DETERMINES THAT NO ERROR WAS MADE, THE HOME SERVICE PROVIDER SHALL PROVIDE A WRITTEN EXPLANATION OF ITS DETERMINATION TO THE CUSTOMER.

(C) ANY CUSTOMER THAT BELIEVES A TAX, CHARGE, OR FEE ASSESSED BY THE STATE IN THE CUSTOMER'S BILL FOR MOBILE TELECOMMUNICATIONS SERVICES IS ERRONEOUS, OR THAT AN ASSIGNMENT OF PLACE OF PRIMARY USE OR TAXING JURISDICTION ON SAID BILL IS INCORRECT, MAY FILE A CLAIM IN THE APPROPRIATE DISTRICT COURT ONLY AFTER COMPLYING WITH THE PROVISIONS OF THIS SUBPARAGRAPH (II).

(III) AS USED IN THIS PARAGRAPH (c), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "ACT" MEANS THE FEDERAL "MOBILE TELECOMMUNICATIONS SOURCING ACT", 4 U.S.C. SECS. 116 TO 126, AS AMENDED.

(B) "CUSTOMER" MEANS CUSTOMER AS DEFINED IN SECTION 124 (2) OF THE ACT.

(C) "HOME SERVICE PROVIDER" MEANS HOME SERVICE PROVIDER AS DEFINED IN SECTION 124 (5) OF THE ACT.

(D) "MOBILE TELECOMMUNICATIONS SERVICE" MEANS MOBILE TELECOMMUNICATIONS SERVICE AS DEFINED IN SECTION 124 (7) OF THE ACT.

(E) "PLACE OF PRIMARY USE" MEANS THE PLACE OF PRIMARY USE AS DEFINED IN SECTION 124 (8) OF THE ACT.

(F) "TAXING JURISDICTION" MEANS TAXING JURISDICTION AS DEFINED IN SECTION

124 (12) OF THE ACT.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 12, 2002