

HOUSE BILL NO. 355

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 1/23/02

Referred: Community and Regional Affairs, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taxation of mobile telecommunications services by
2 municipalities; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 PURPOSE; FINDINGS; INTENT. The United States Congress has enacted the
7 Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 - 126 (P.L. 106-252), for the
8 purpose of establishing uniform nationwide sourcing rules for state and local taxation of
9 mobile telecommunications services. The legislature of the State of Alaska desires to adopt
10 implementing legislation governing taxation in the state. The legislature recognizes that the
11 federal act is intended to provide a clarification of sourcing rules that is revenue-neutral
12 among the states. A construction of this Act should reflect the legislature's intention to give
13 effect to the federal act.

14 * **Sec. 2.** AS 29.10.200 is amended by adding a new paragraph to read:

1 (62) AS 29.45.750 - 29.45.790 (taxation of mobile
2 telecommunications).

3 * **Sec. 3.** AS 29.45.650(a) is amended to read:

4 (a) Except as provided in AS 04.21.010(c), AS 29.45.750 - 29.45.790, and in
5 (f) and (h) of this section, a borough may levy and collect a sales tax on sales, rents,
6 and on services provided in the borough. The sales tax may apply to any or all of
7 these sources. Exemptions may be granted by ordinance.

8 * **Sec. 4.** AS 29.45.650(a) is amended to read:

9 (a) Except as provided in AS 04.21.010(c) [, AS 29.45.750 - 29.45.790,] and
10 in (f) and (h) of this section, a borough may levy and collect a sales tax on sales, rents,
11 and on services provided in the borough. The sales tax may apply to any or all of
12 these sources. Exemptions may be granted by ordinance.

13 * **Sec. 5.** AS 29.45 is amended by adding new sections to read:

14 **Article 5A. Mobile Telecommunications Sourcing Act.**

15 **Sec. 29.45.750. Sourcing rules for mobile telecommunications services.** (a)

16 Charges for mobile telecommunications services billed by or for the customer's home
17 service provider shall be considered to be provided by the customer's home service
18 provider.

19 (b) All charges for mobile telecommunications services that are considered to
20 be provided by the customer's home service provider under (a) of this section may be
21 subjected to tax, charge, or fee by the municipalities that encompass the customer's
22 place of primary use, regardless of where the mobile telecommunications services
23 originate, terminate, or pass through, and only those municipalities that encompass the
24 customer's place of primary use may impose taxes, charges, or fees on charges for
25 mobile telecommunications services considered to be provided by the customer's
26 home service provider.

27 **Sec. 29.45.755. Electronic databases for nationwide standard numeric**
28 **jurisdictional codes.** (a) A designated database provider may provide an electronic
29 database to a home service provider. The electronic database must be in a format
30 approved by the American National Standards Institute's Accredited Standards
31 Committee X12 that, allowing for minimal deviations, designates for each street

1 address in the state, including, to the extent practicable, multiple postal street
 2 addresses applicable to one street location, the appropriate municipality or
 3 municipalities. Each address in the database must be provided in standard postal
 4 format. The provider shall also provide the appropriate code for each municipality
 5 using a nationwide standard numeric code approved by the Federation of Tax
 6 Administrators and the Multistate Tax Commission.

7 (b) A designated database provider that provides or maintains an electronic
 8 database described in (a) of this section shall provide notice of the availability of the
 9 then current electronic database and any subsequent revisions of the database

10 (1) by publishing in a newspaper of general circulation in the
 11 municipality a copy of the notice once each week for a period of three successive
 12 weeks, with publication to occur not later than 45 days after the final adoption of the
 13 municipality's budget; or

14 (2) if there is not a newspaper of general circulation in the
 15 municipality, by posting a copy of the notice for at least 20 days in at least two public
 16 places in the municipality, with posting to occur not later than 45 days after the final
 17 adoption of the municipality's budget.

18 (c) A municipality shall hold harmless a home service provider using the data
 19 contained in an electronic database described in (a) of this section from a tax, charge,
 20 or fee liability that otherwise would be due solely as a result of an error or omission in
 21 the database provided by a designated database provider. The home service provider
 22 shall reflect changes made to the database during a calendar quarter not later than 30
 23 days after the end of the calendar quarter if the designated database provider has
 24 issued notice of the availability of an electronic database reflecting those changes.

25 **Sec. 29.45.760. Procedure if no electronic database provided.** (a) If an
 26 electronic database is not provided under AS 29.45.755, a municipality shall hold
 27 harmless a home service provider from a tax, charge, or fee liability in a municipality
 28 in this state that otherwise would be due solely as a result of an assignment of a street
 29 address to an incorrect taxing jurisdiction if, subject to AS 29.45.765, the home
 30 service provider employs an enhanced zip code to assign each street address to a
 31 specific municipality for each level of taxing jurisdiction to ensure that each street

1 address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps
 2 boundaries of taxing jurisdictions of the same level, the home service provider shall
 3 designate one specific jurisdiction inside that enhanced zip code for use in taxing the
 4 activity for that enhanced zip code for each level of taxing jurisdiction.

5 (b) An enhanced zip code assignment changed in accordance with
 6 AS 29.45.765 is considered to be in compliance with (a) of this section.

7 (c) For purposes of this section, there is a rebuttable presumption that a home
 8 service provider has exercised due diligence if the home service provider demonstrates
 9 that it has

10 (1) expended reasonable resources to implement and maintain an
 11 appropriately detailed electronic database of street address assignments to taxing
 12 jurisdictions;

13 (2) implemented and maintained reasonable internal controls to
 14 promptly correct misassignments of street addresses to taxing jurisdictions; and

15 (3) used all reasonably obtainable and usable data pertaining to
 16 municipal annexations, incorporations, reorganizations, and any other changes in
 17 jurisdictional boundaries that materially affect the accuracy of the database.

18 (d) The provisions of (a) - (c) of this section apply to a home service provider
 19 that is in compliance with the requirements of (a) - (c) of this section if an electronic
 20 database has not been provided under AS 29.45.765 until the later of

21 (1) 18 months after the nationwide standard numeric code described in
 22 AS 29.45.755 has been approved by the Federation of Tax Administrators and the
 23 Multistate Tax Commission; or

24 (2) six months after a designated database provider provides the
 25 database described in AS 29.45.755.

26 **Sec. 29.45.765. Correction of erroneous data for place of primary use.** (a)
 27 A municipality may determine that the address used for purposes of determining the
 28 taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications
 29 services are remitted does not meet the definition of place of primary use and give
 30 notice to the home service provider to change the place of primary use on a
 31 prospective basis from the date of notice of determination if

1 (1) the municipality has obtained the consent of all affected taxing
2 jurisdictions in the state before giving the notice of determination; and

3 (2) before the municipality gives the notice of determination, the
4 customer has an opportunity to demonstrate, in accordance with applicable municipal
5 tax, charge, or fee administrative procedures, that the address is the customer's place
6 of primary use.

7 (b) A municipality may determine that the assignment of a taxing jurisdiction
8 by a home service provider under AS 29.45.755 or 29.45.760 does not reflect the
9 correct taxing jurisdiction and give notice to the home service provider to change the
10 assignment on a prospective basis from the date of notice of determination if

11 (1) the municipality has obtained the consent of all affected taxing
12 jurisdictions in the state before giving the notice of determination; and

13 (2) the home service provider has an opportunity to demonstrate in
14 accordance with applicable municipal tax, charge, or fee administrative procedures
15 that the assignment reflects the correct taxing jurisdiction.

16 **Sec. 29.45.770. Determination of place of primary use.** (a) A home service
17 provider shall determine the customer's place of primary use. Subject to
18 AS 29.45.765, and if the home service provider's reliance on information provided by
19 the customer is in good faith, a municipality

20 (1) shall allow a home service provider to rely on the applicable
21 residential or business street address supplied by the home service provider's
22 customer; and

23 (2) may not hold a home service provider liable for additional taxes,
24 charges, or fees based on a different determination of the place of primary use for
25 taxes, charges, or fees that are customarily charged to or passed on to the customer as
26 a separate itemized charge.

27 (b) Except as provided in AS 29.45.765, a municipality shall allow a home
28 service provider to treat the address used by the home service provider for tax
29 purposes for a customer under a service contract or agreement in effect on August 1,
30 2002, as that customer's place of primary use for the remaining term of the service
31 contract or agreement for purposes of determining the municipalities to which taxes,

1 charges, or fees on charges for mobile telecommunications services are remitted.

2 **Sec. 29.45.775. Effect of customer's failure to provide the customer's place**
 3 **of primary use; effect of aggregation or segregation of charges.** (a) Nothing in
 4 AS 29.45.750 - 29.45.790 modifies, impairs, supersedes, or authorizes the
 5 modification, impairment, or supersession of a law allowing a municipality to collect a
 6 tax, charge, or fee from a customer that has failed to provide the customer's place of
 7 primary use.

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

14 (c) If a municipality does not otherwise subject charges for mobile
 15 telecommunications services to taxation, a customer may not rely on the nontaxability
 16 of charges for mobile telecommunications services unless the customer's home service
 17 provider

18 (1) separately states the charges for nontaxable mobile
 19 telecommunications services from taxable charges; or

20 (2) elects, after receiving a written request from the customer in the
 21 form required by the provider, to provide verifiable data based upon the home service
 22 provider's books and records that are kept in the regular course of business that
 23 reasonably identifies the nontaxable charges.

24 **Sec. 29.45.780. Customer procedures and remedies for correcting taxes,**
 25 **charges, fees, or assignment of place of primary use or taxing jurisdiction.** (a) If
 26 a customer believes that an amount of tax, charge, or fee or an assignment of place of
 27 primary use or taxing jurisdiction included on a billing is erroneous, the customer shall
 28 notify the home service provider in writing. The customer shall include in this written
 29 notification the street address for the customer's place of primary use, the account
 30 name and number for which the customer seeks a correction, a description of the error
 31 asserted by the customer, and any other information that the home service provider

1 reasonably requires to process the request.

2 (b) Within 60 days after receiving a notice under this section, the home service
3 provider shall review the records and the electronic database or enhanced zip code
4 used according to AS 29.45.755 and 29.45.760 to determine the customer's taxing
5 jurisdiction. If this review shows that the amount of tax, charge, or fee or assignment
6 of place of primary use or taxing jurisdiction is in error, the home service provider
7 shall correct the error and refund or credit the amount of tax, charge, or fee
8 erroneously collected from the customer for a period of up to two years. If this review
9 shows that the amount of tax, charge, or fee or assignment of place of primary use or
10 taxing jurisdiction is correct, the home service provider shall provide a written
11 explanation to the customer.

12 (c) The procedures in this section are the first course of remedy available to a
13 customer seeking correction of assignment of place of primary use or taxing
14 jurisdiction or a refund of or other compensation for taxes, charges, and fees
15 erroneously collected by the home service provider.

16 **Sec. 29.45.790. Definitions.** In AS 29.45.750 - 29.45.790,

17 (1) "charges for mobile telecommunications services" means a charge
18 that is billed to the customer by or for the customer's home service provider,
19 regardless of whether individual transmissions originate or terminate inside the
20 licensed service area of the home service provider, and the charge is for, or associated
21 with, the provision of commercial mobile radio service or is a charge for, or associated
22 with, a service provided as an adjunct to a commercial mobile radio service;

23 (2) "commercial mobile radio service" means a mobile service that is

24 (A) provided for profit, with the intent of receiving
25 compensation or monetary gain, is an interconnected service, and is available
26 to the public or to classes of eligible users as to be effectively available to a
27 substantial portion of the public; or

28 (B) the functional equivalent of a mobile service described in
29 (A) of this paragraph;

30 (3) "customer" means the person or entity that contracts with the home
31 service provider for mobile telecommunications services or, for the purpose of

1 determining the place of primary use only, the end user of the mobile
 2 telecommunications service if the end user of the mobile telecommunications services
 3 is not the contracting party; "customer" does not include a reseller of mobile
 4 telecommunications services or a serving carrier under an arrangement to serve the
 5 customer outside the home service provider's licensed service area;

6 (4) "designated database provider" means a corporation, association, or
 7 other entity representing all the political subdivisions of the state that is

8 (A) responsible for providing an electronic database prescribed
 9 in 4 U.S.C. 119(a); and

10 (B) approved by municipal associations or leagues of the state
 11 whose responsibility it would otherwise be to provide a database prescribed by
 12 4 U.S.C. 116 - 126;

13 (5) "enhanced zip code" means a United States postal zip code of nine
 14 or more digits;

15 (6) "home service provider" means the facilities-based carrier or
 16 reseller with which the customer contracts for the provision of mobile
 17 telecommunications services;

18 (7) "licensed service area" means the geographic area in which the
 19 home service provider is authorized by law or contract to provide commercial mobile
 20 radio service;

21 (8) "mobile telecommunications service" has the meaning given
 22 "mobile service" in 47 U.S.C. 153;

23 (9) "place of primary use" means the street address in the licensed
 24 service area of the home service provider where the customer's use of the mobile
 25 telecommunications service primarily occurs and that is the customer's residential
 26 street address or primary business street address;

27 (10) "reseller" means a provider who purchases telecommunications
 28 services from another telecommunications service provider and then resells, uses as a
 29 component part of, or integrates the purchased services into mobile
 30 telecommunications services; however, a serving carrier with which a home service
 31 provider arranges for the services to customers outside the home service provider's

1 licensed service area is not a "reseller";

2 (11) "serving carrier" means a facilities-based carrier providing mobile
3 telecommunications service to a customer outside a home service provider's or
4 reseller's licensed service area.

5 * **Sec. 6.** CONTINGENT REPEAL. If a court of competent jurisdiction enters a final
6 judgment on the merits that is based on federal law, is no longer subject to appeal, and
7 substantially limits or impairs the essential elements of 4 U.S.C. 116 - 126, AS 29.45.750,
8 29.45.755, 29.45.760, 29.45.765, 29.45.770, 29.45.775, 29.45.780, and 29.45.790, added by
9 sec. 5 of this Act, are repealed.

10 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 APPLICABILITY. This Act applies to charges on customer bills issued on or after
13 August 1, 2002.

14 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, the provisions of
17 this Act are not severable.

18 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 CONTINGENT EFFECT. Section 4 of this Act takes effect only if a court of
21 competent jurisdiction enters a final judgment on the merits that is based on federal law, is no
22 longer subject to appeal, and substantially limits or impairs the essential elements of 4 U.S.C.
23 116 - 126.

24 * **Sec. 10.** Except as provided in sec. 11 of this Act, this Act takes effect July 1, 2002.

25 * **Sec. 11.** If secs. 4 and 6 of this Act take effect, they take effect on the day after the last
26 day on which the judgment described in sec. 6 of this Act could have been appealed.