

HB

355

ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair
Representative Andrew Halcro Vice-Chair
Representative Pete Kott
Representative Kevin Meyer
Representative Norman Rokeberg
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HOUSE LABOR AND COMMERCE COMMITTEE

Sponsor Statement House Bill 355 Mobile Telecommunications Tax

In 2000, Congress passed the Mobile Telecommunications Sourcing Act (MTSA), which clarified how mobile telecommunication calls involving multiple jurisdictions should be assigned or "sourced" for tax purposes. Sourcing involves determining which jurisdiction will have the right to tax a telephone call that originates and terminates in different taxing jurisdictions. In the case of mobile telecommunications, the customer might live in one jurisdiction, have her bill sent to a second jurisdiction, make a call in a third jurisdiction, and complete the call in a fourth jurisdiction.

Without clear, national rules for determining what jurisdiction is permitted to tax the call, the possibility exists that the same call could be subject to taxation in multiple jurisdictions, or that a call might escape taxation all together. House Bill 355 conforms Alaska statutes to the federal mobile telecommunications sourcing act to allow for appropriate taxes and fees on wireless services.

States now have until August 1, 2002 to conform their laws applicable to the taxation of wireless telecommunications to the provisions in the federal law. States that fail to act by that time are preempted from imposing taxes on most calls made outside of the state where the customer's primary use occurs (so-called "roaming").

The MTSA does not impact the rate of taxes or fees that states and localities impose on wireless calls or the types of calls that are subject to such taxes. It only determines which jurisdiction has the authority to tax a wireless call. Each jurisdiction with legal taxing authority will continue to determine whether to tax such calls and at what rate.

House Bill 355 creates the concept that the customer has a "place of primary use," which is the jurisdiction with the right to tax wireless calls. For example, a resident of Anchorage that contracts for wireless telecommunications service for personal use would designate Anchorage as her place of primary use. If that person traveled to Seattle and placed a call from Seattle to Olympia during the trip, the state of Alaska and the city of Anchorage would have the authority to tax that call even though it did not originate in Alaska.

House Bill 355 prevents multiple taxation, achieves administrative simplicity and cost savings in the billing process, and avoids expensive audit litigation exposure when multiple states claim jurisdiction to tax the same call.

A M E N D M E N T

OFFERED IN THE HOUSE

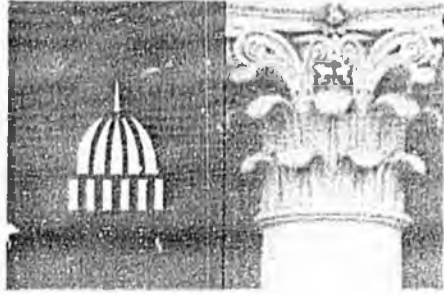
BY REPRESENTATIVE MURKOWSKI

TO: CSHB 355(), Draft Version "F"

1 Page 3, following line 12:

2 Insert a new subsection to read:

3 "(d) For purposes of this section, if a customer does not have a street address,
4 the home service provider may accept from the customer as the customer's place of
5 primary use an address that is not a street address if the address gives effect to the
6 intent of 4 U.S.C. 116 - 126 (Mobile Telecommunications Sourcing Act)."



LEGISBRIEF

State Conformity to the Mobile Telecommunications Sourcing Act

By *Graham Williams*

Under existing rules, it is difficult to determine which state has the authority to tax cell phone calls.

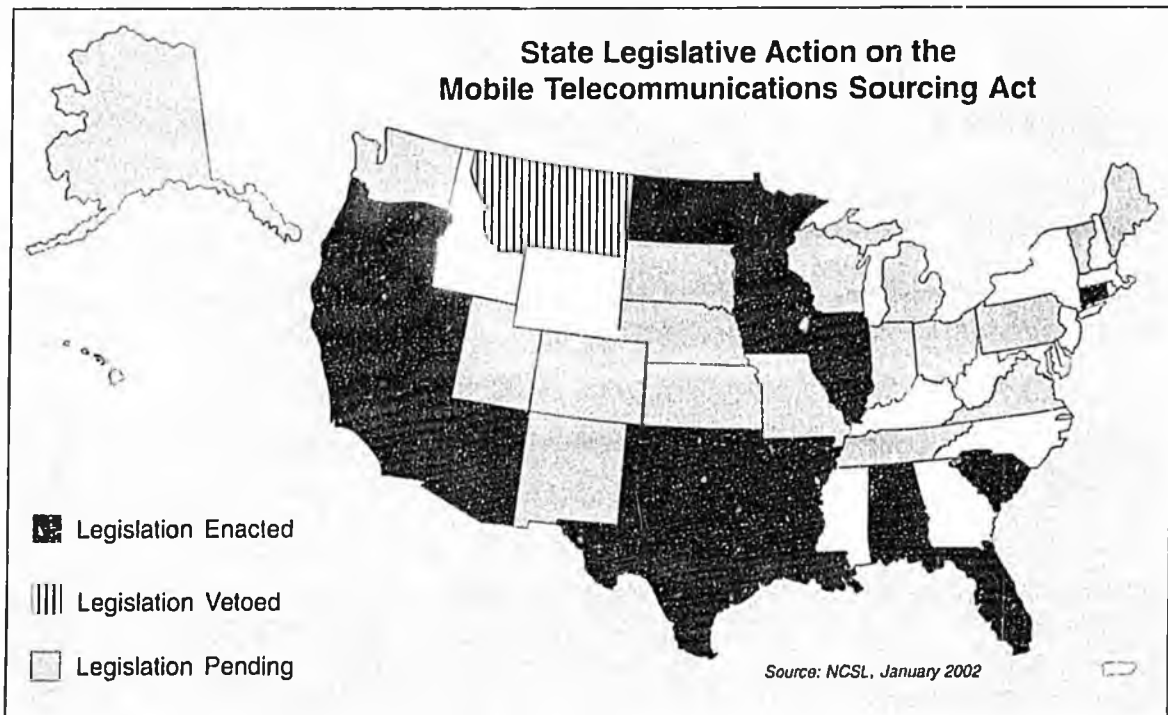
The changing nature of telecommunications is forcing policymakers at all levels to re-evaluate their tax codes. A perfect example of this new pressure is the rapid growth of wireless communication. As state telecommunications policy developed, it was relatively easy to determine which jurisdiction had the right to tax a particular call.

A cell phone customer from New York, however, can now call a friend in California while on a business trip to Florida. Under existing rules, it is difficult to determine which state has the authority to tax such a call. In some cases, more than one jurisdiction has claimed a tax on the same call, while other calls escape taxation altogether.

Congress passed the Mobile Telecommunications Sourcing Act in 2000.

Federal Action

To find a solution and avoid federal preemption, state and local groups joined the wireless industry to develop a compromise that would create a uniform rule for sourcing (matching the tax on a transaction with a jurisdiction), while maintaining revenue neutrality for the states. Congress passed the Mobile Telecommunications Sourcing Act (MTSA) in 2000, which was modeled on



that compromise. Most state laws on sourcing telecommunication taxes have been based on the 1989 Supreme Court case *Goldberg vs. Sweet*, which required a jurisdiction to have two out of three of the origination, termination and service addresses of a call to assert its tax. The act taxes wireless calls at the "place of primary use." This is identified by the consumer and can be either a residential or business address, wherever the phone is used most often.

Under such a system, the call made by the New York resident to a friend in California while visiting Florida would be subject only to the applicable tax at the place of primary use, presumably in New York. States applying the federal law will forgo revenue from taxes on calls made within their state by visitors, but will gain authority to tax calls made by residents while out-of-state, otherwise known as "roaming." All states will lose the ability to tax calls made within the state by nonresidents after Aug. 1, 2002. States that fail to conform to the federal act by Aug. 1 will not be able to make up for this lost revenue by taxing residents who make calls in other states until they conform with the federal sourcing requirements.

✓ **Requirements for State Conformity.** States can incorporate the necessary language and definitions by referring to the federal act (4 USC 116-126) or by making statutory amendments to incorporate the law's provisions. Either way, states must do three things to comply with the federal law:

1. States must include the "place of primary use" definition and source calls to the customer's home or office address.
2. States need to match the primary use jurisdiction to the proper tax. Under the MTSA, states can develop a database using geo-codes to pinpoint the jurisdiction and the applicable tax. The industry would use the state-provided information and be held harmless for errors. Another option would allow the industry to be held harmless for errors if using "due diligence" in applying proper tax rates based on the zip+4 of the address.
3. States must incorporate the act's bundling provisions. These allow providers to bundle taxable and non-taxable services on the bill without separately stating those charges. Providers can collect the money on the taxable charges, as long as the companies demonstrate through their books and records that the other items were exempt.

✓ **State Action**

To avoid federal preemption, states must act before Aug. 1, 2002. In 2001, 16 states enacted legislation to conform with the federal act, including Alabama, Arizona, Arkansas, California, Connecticut, Florida, Illinois, Iowa, Louisiana, Minnesota, Nevada, North Dakota, Oklahoma, Oregon, South Carolina and Texas. Nineteen additional states had introduced conforming legislation as of Feb. 5, 2002.

Contacts for More Information

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The act taxes wireless calls at the "place of primary use."

States must do three things to comply with the federal law.

To avoid federal preemption, states must act before Aug. 1, 2002.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB355(CRA)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Mobile Telecommunications Tax BRU Revenue Operations
 Component Tax Division
 Sponsor House Labor & Commerce
 Requester House Labor & Commerce Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See page 2.

Prepared by: Chuck Harlamert, Revenue Audit Supervisor
 Division Tax Division
 Approved by: Larry Persily, Deputy Commissioner
 Agency Department of Revenue

Phone 465-4773
 Date/Time 3/14/02 7:13 PM
 Date 3/14/2002

FISCAL NOTE

**STATE OF ALASKA
2002 LEGISLATIVE SESSION**

BILL NO. CSHB355(CRA)

ANALYSIS CONTINUATION

The federal Mobile Telecommunications Sourcing Act (P.L. 106-252) preempts existing state and local law by specifying the source of mobile telecommunications services for purposes of state and local sales, excise or other transaction taxes.

Under the act, mobile telecommunications services are sourced to a customer's place of primary use. State and local revenues are expected to be unchanged when states adopt legislation conforming to the federal act.

CSHB355(CRA) brings Alaska law governing municipal taxation into conformity with the Mobile Telecommunications Sourcing Act. In addition to the sourcing provisions of the federal act, this legislation also provides for procedures and remedies for correcting errors in the assignment of place of primary use.

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MEMORANDUM

February 26, 2002

SUBJECT: Taxation of Mobile Telecommunications Services
(HB 355 (Work Order No. 22-LS1208\C))

TO: Representative Lisa Murkowski
Attn: Amy Erickson

FROM: Kathryn L. Kurtz 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Describes the purpose of the act as implementing the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 - 126 (P.L. 106-252).

Section 2. Adds new statutory sections added by section 5 of the bill to the list of limitations on the powers of home rule municipalities.

Section 3. Clarifies that the new statutory sections added by section 5 of the bill limit the power of a municipality to levy and collect sales taxes.

Section 4. Removes the language added in section 3 according to the terms of the contingent repeal in section 6, if a court enters a judgment that substantially limits or impairs the effect of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 - 126.

Section 5. Adds a new article relating to the taxation of mobile telecommunications services, based on the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 - 126.

Sec. 29.45.750 creates a presumption that all mobile communications services are provided by the company ("home service provider") that bills for them; and provides that only the municipality (or municipalities, in the case of a city within a borough) where the customer lives or has their principal place of business may tax those services.

Sec. 29.45.755 anticipates construction of a statewide database by a "designated database provider," an entity representing all municipalities in the state, assigning each street address in the state to a municipality. It requires the designated database provider to provide notice of the availability of the data base. It provides that a municipality must "hold harmless" a home service provider that, because of an error in the database, fails to collect taxes due to the municipality.

Under Sec. 29.45.760, if no statewide database is provided, a municipality must "hold harmless" a home service provider that fails to collect taxes due to the municipality as a result of assigning a street address to the wrong municipality, if the home service provider used an enhanced zip code to assign the address to a municipality. Where an enhanced zip code overlaps more than one taxing jurisdiction of the same level, the home service provider may designate one jurisdiction as the taxing jurisdiction for that enhanced zip code. Creates a rebuttable presumption that a home service provider has exercised due diligence if it expends reasonable resources, maintains reasonable internal controls, and uses all reasonably obtainable usable data in developing a database of addresses and corresponding taxing jurisdictions.

Under Sec. 29.45.765, if a municipality determines that an address does not meet the definition of place of primary use, with the consent of all affected taxing jurisdictions and after giving the customer notice and an opportunity to be heard, the municipality may notify the home service provider to change the place of primary use. If a municipality finds that an assignment of an address to a taxing jurisdiction is incorrect, it may notify the home service provider to change the taxing jurisdiction after obtaining the consent of all affected taxing jurisdictions and giving the home service provider the opportunity to demonstrate that the assignment is correct.

Sec. 29.45.770 gives the home service provider the responsibility for determining a customer's primary place of use. Permits the home service provider to rely on the address provided by the customer. Prohibits a municipality from holding a home service provider liable for additional taxes based on a different determination of the place of primary use for taxes that are customarily passed on to the customer as a separate itemized charge. Permits the home service provider to use the address used by the provider for tax purposes under a contract in effect on August, 2002 for the remaining term of that contract for determining to which municipality to remit taxes.

Sec. 29.45.775. States that the bill does not affect any existing law permitting municipalities to collect taxes from customers who do not provide their place of primary use. Permits municipalities to tax otherwise nontaxable mobile telecommunications services if they are aggregated with taxable charges by a home service provider, unless the home service provider can distinguish the nontaxable charges. Prohibits a customer from relying on the nontaxability of charges for mobile telecommunications unless the customer's home service provider states the charges separately from taxable charges or provides verifiable data from its books identifying the nontaxable charges.

Representative Lisa Murkowski
February 26, 2002
Page 3

Sec. 29.45.780. Provides a process for customers to correct errors by the service provider relating to taxes on mobile telecommunications services on the customer's bill. Requires the customer to notify the home service provider of the problem in writing. Gives the home service provider 60 days to review its records, and either correct the error or provide a written explanation. Specifies that these procedures are the "first course of remedy" available to the customer.

Sec. 29.45.790. Defines terms.

Section 6. Repeals AS 29.45.750 - 29.45.790, the new sections added by the bill, if a court enters a judgment that substantially limits or impairs the effect of the federal Mobile Telecommunications Sourcing Act.

Section 7. Provides that the bill only applies to customer bills issued on or after August 1, 2002.

Section 8. Provides that the provisions of the act are not severable, so that if any provision of the act is invalidated, the whole act is invalidated.

Section 9. Makes section 4 of the bill, restoring AS 29.45.650(a) to the way it reads now, effective only if a court enters a judgment that substantially limits or impairs the effect of the federal Mobile Telecommunications Sourcing Act.

Section 10. Provides an effective date of July 1, 2002 for all but sections 4 and 5 of the bill.

Section 11. Provides that sections 4 and 6 of the bill, if they take effect, take effect on the day after the last day a judgment substantially limiting or impairing the federal Mobile Telecommunications Sourcing Act could have been appealed.

KLK:med
02-212.med

ALASKA STATE LEGISLATURE

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HOUSE LABOR AND COMMERCE COMMITTEE

Memorandum

Date: February 13, 2002

To: Representative Kevin Meyer
Representative Carl Morgan
C&RA Co-Chairs

From: Representative Lisa Murkowski 

Subject: Hearing Request

In 2000, Congress passed the Mobile Telecommunications Sourcing Act (MTSA), which clarified how mobile telecommunication calls involving multiple jurisdictions should be assigned or "sourced" for tax purposes. Sourcing involves determining which jurisdiction will have the right to tax a telephone call that originates and terminates in different taxing jurisdictions. House Bill 355 conforms Alaska statutes to the federal mobile telecommunications sourcing act to allow for appropriate taxes and fees on wireless services.

Attached you will find a copy of House Bill 355, sponsor statement, and forthcoming sectional analysis. Please schedule House Bill 355 when your committee schedule allows. We will require off-net teleconferencing, the names of which I will make available to you shortly. Thank you for your accommodation.

CS FOR HOUSE BILL NO. 355()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

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 (taxation of mobile telecommunications).

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

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

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

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

12 * Sec. 5. AS 29.45 is amended by adding a new section to read:

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

14 **Sec. 29.45.750. Mobile Telecommunications Sourcing Act.** (a) The
15 provisions of 4 U.S.C. 116 - 126 (Mobile Telecommunications Sourcing Act) are
16 incorporated in this chapter by reference and have effect as though fully set out in this
17 chapter.

18 (b) A municipality that levies and collects a sales tax on mobile
19 telecommunications services shall do so in accordance with the provisions of 4 U.S.C.
20 116 - 126 (Mobile Telecommunications Sourcing Act).

21 (c) The procedures and remedies for correcting a tax, charge, fee, or
22 assignment of place of primary use or taxing jurisdiction are as follows:

23 (1) if a customer believes that an amount of tax, charge, or fee or an
24 assignment of place of primary use or taxing jurisdiction included on a billing is
25 erroneous, the customer shall notify the home service provider; the customer shall
26 notify the home service provider of the street address for the customer's place of
27 primary use, the account name and number for which the customer seeks a correction,
28 a description of the error asserted by the customer, and any other information that the
29 home service provider reasonably requires to process the request;

30 (2) within 60 days after receiving a notice under this section, the home
31 service provider shall review the records and the electronic database or enhanced zip

1 code used according to 4 U.S.C. 116 - 126 to determine the customer's taxing
2 jurisdiction; if this review shows that the amount of tax, charge, or fee or assignment
3 of place of primary use or taxing jurisdiction is in error, the home service provider
4 shall correct the error and refund or credit the amount of tax, charge, or fee
5 erroneously collected from the customer for a period of up to two years; if this review
6 shows that the amount of tax, charge, or fee or assignment of place of primary use or
7 taxing jurisdiction is correct, the home service provider shall provide a written
8 explanation to the customer;

9 (3) the procedures in this subsection are the first course of remedy
10 available to a customer seeking correction of assignment of place of primary use or
11 taxing jurisdiction or a refund of or other compensation for taxes, charges, and fees
12 erroneously collected by the home service provider.

13 * Sec. 6. AS 29.10.200(62) and AS 29.45.750 are repealed.

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

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

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

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

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

24 CONTINGENT EFFECT. Sections 4 and 6 of this Act take effect only if a court of
25 competent jurisdiction whose decisions are binding in this state enters a final judgment on the
26 merits that is based on federal law, is no longer subject to appeal or petition for certiorari, and
27 substantially limits or impairs the essential elements of 4 U.S.C. 116 - 126.

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

29 * Sec. 11. If secs. 4 and 6 of this Act take effect, they take effect on the day after the last
30 day on which the judgment described in sec. 9 of this Act could have been appealed.