

**HB**

**355**

# ALASKA STATE LEGISLATURE

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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 has the right to tax a telephone call that originates and terminates in a different taxing jurisdiction. 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 which 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 have until August 1, 2002 to conform their laws applicable to the taxation of wireless telecommunications to the provisions in the federal law. States failing to act by August 1<sup>st</sup> will be preempted from imposing taxes on most calls made outside of the state where the customer's primary use occurs, so-called "roaming".

House Bill 355 creates the concept that the customer has a "place of primary use" (PPU), which means the residential or primary business street address where the customer's use primarily occurs. The PPU is the jurisdiction with the right to tax wireless calls. For example, a resident of Anchorage that contracts for wireless telecommunications service would designate Anchorage as her place of primary use. If she traveled to Seattle and placed a call from Seattle to Olympia during the trip, the state of Alaska and the city of Anchorage would still have the authority to tax that call even though it did not originate in Alaska.

House Bill 355 conforms Alaska statutes with the federal Mobile Telecommunications Sourcing Act and allows the state of Alaska to appropriately tax wireless telecommunications services. Additionally, House Bill 355 will prevent multiple taxation, achieve administrative simplicity and cost savings in the billing process, and will prevent expensive audit litigation exposure when multiple states claim jurisdiction to tax the same call.

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 355(CRA)  
(H) Publish Date: 3/15/02

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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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**

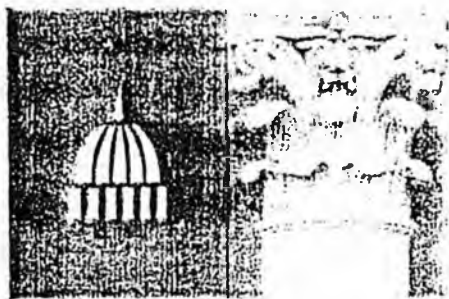
**BILL NO. CSHB 355(CRA) - FN#1**

**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.



National Conference of State Legislatures

# LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

MARCH 2002

VOL. 10, No. 14

## 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.*

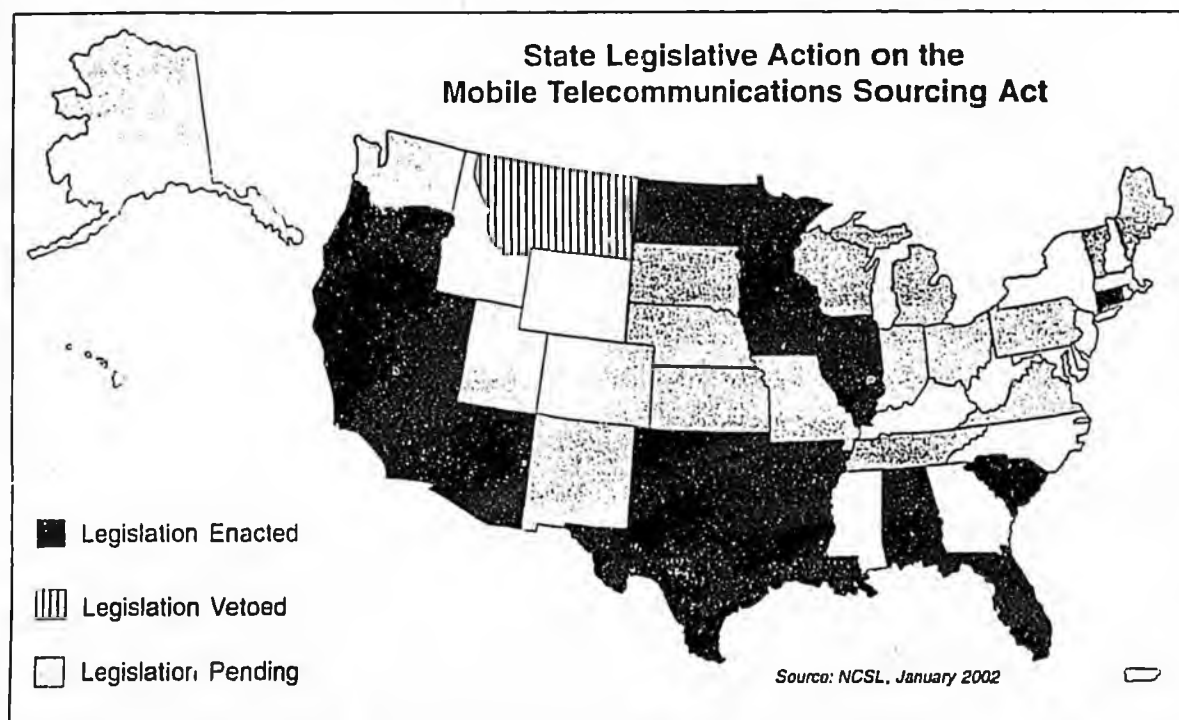
The changing nature of telecommunications is forcing policymakers at all levels to re-evaluate their tax codes. A perfect example of this new pressure is the rapid growth of wireless communication. As state telecommunications policy developed, it was relatively easy to determine which jurisdiction had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

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

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:

*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.

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

### Contacts for More Information

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"(7) MOBILE TELECOMMUNICATIONS SERVICE.—The term 'mobile telecommunications service' means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

"(8) PLACE OF PRIMARY USE.—The term 'place of primary use' means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be—

"(A) the residential street address or the primary business street address of the customer; and

"(B) within the licensed service area of the home service provider.

"(9) PREPAID TELEPHONE CALLING SERVICES.—The term 'prepaid telephone calling service' means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

"(10) RESELLER.—The term 'reseller'—

"(A) means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and

"(B) does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

"(11) SERVING CARRIER.—The term 'serving carrier' means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

"(12) TAXING JURISDICTION.—The term 'taxing jurisdiction' means any of the several States, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

#### § 25. Nonseverability

"If a court of competent jurisdiction enters a final judgment on the merits that—

"(1) is based on Federal law;

"(2) is no longer subject to appeal; and

"(3) substantially limits or impairs the essential elements of sections 116 through 126 of this title,

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

#### § 126. No inference

"(a) INTERNET TAX FREEDOM ACT.—Nothing in sections 116 through this section of this title shall be construed as bearing on Congressional intent in enacting the Internet Tax Freedom Act or to modify or supersede the operation of such Act.