



**House
Legislative
Analysis
Section**

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**MOBILE TELECOMMUNICATIONS:
SOURCING AND BUNDLING**

**Senate Bill 477 as passed by the Senate
Sponsor: Sen. Valde Garcia**

**Senate Bill 824 as passed by the Senate
Senate Bill 1248 as passed by the Senate
Sponsor: Sen. Joanne G. Emmons**

**House Committee: Tax Policy
Senate Committee: Finance**

First Analysis (5-23-02)

THE APPARENT PROBLEM:

Technological change often causes difficulties for tax laws. Mobile telecommunications are a case in point. States tax interstate telephone calls based on where the calls originate or terminate. With so-called cell phone calls, a Michigan resident can make a call on his or her own phone to Indiana from Florida. A new federal act, due to take effect in August of 2002, aims to address this question of interstate commerce. According to tax specialists, the federal law (the Mobile Telecommunications Sourcing Act) provides that interstate mobile telecommunications services are to be sourced to the place of the customer's primary use (a person's residence or business address). This means, a Michigan resident making the call to Indiana from Florida should be taxed on his or her Michigan bill. State tax law needs to be altered to conform with this federal legislation.

Other issues arise from modern telecommunications services. Some services are subject to tax, such as local and long distance telephone service. Some are not, such as Internet access and cable television. When a company "bundles" taxable and nontaxable services together on one bill, the law requires that the entire package be taxed. Legislation has been proposed that would allow bundled services to be "unbundled" for tax purposes, with the services within a package treated as if they stood alone, with taxable services taxed and nontaxable services exempt from tax.

THE CONTENT OF THE BILLS:

Senate Bill 477 would amend the Use Tax Act (MCL 205.93a) to permit a taxpayer (a service provider) to separate taxable and nontaxable intrastate and

interstate telecommunications and other services if the service provider can reasonably identify charges for services not subject to tax from its books and records kept in the regular course of business. Otherwise charges not subject to tax that were aggregated with and not separately stated from charges that were subject to tax would be subject to tax. The bill would also specify that a customer could not rely on the nontaxability of services unless the service provider stated the charges for nontaxable services separately from taxable services or unless the service provider, at the request of the customer, provided verifiable data based on the provider's books and records kept in the regular course of business reasonably identifying the nontaxable services.

Senate Bill 824 would amend the Use Tax Act (MCL 205.93 et al.) to provide that the use or consumption of mobile telecommunications services were subject to the tax in the same manner as tangible personal property regardless of where the services originated, terminated, or passed through.

Senate Bill 1248 would amend the General Sales Tax Act (MCL 205.54v) to update a reference so as to retain a current exemption for certain machinery and equipment used in the rendition of telecommunications services taxable under the Use Tax Act. Senate Bill 824, referred to earlier, would add a new section to the Use Tax Act to address mobile communications. Senate Bill 1248 would add to the General Sales Tax Act a reference to this new section so that equipment used to provide taxable services would be exempt.

Senate Bills 477, 824 and 1248 (5-23-02)

(The exemption applies to tangible personal property located on the premises of the subscriber and to central office equipment or wireless equipment, directly used or consumed in transmitting, receiving, or switching, or in the monitoring of switching of a two-way interactive communication.)

Mobile Telecommunications. For the purposes of applying the use tax to mobile telecommunications, Senate Bill 824 contains the following provisions. Mobile telecommunications services would be considered to be provided by the customer's home service provider if the customer's place of primary use was in Michigan. If the customer's place of primary use was outside the state, the services would not be subject to tax under the Use Tax Act. The home service provider would be responsible for obtaining and maintaining a record of the customer's place of primary use and could rely in good faith on information provided by the customer or could make use of the address used under a service contract or agreement in effect on August 1, 2002 for the remainder of the contract or agreement (but not counting an extension or renewal). Further, a provider could use a database from the Department of Treasury if the department chooses to create or provide one consistent with federal law. If no such database was available, the provider could use an enhanced zip code to determine the assignment of the customer's place of primary use. A customer who believed the amount of tax levied was incorrect or that the record of primary use was incorrect could notify the provider in writing and provide the proper information. The provider would have 60 days to review its records. If the record is in error, it would have to be corrected and a refund provided for erroneous collections (up to four years). If the provider determined the record to be correct, it would provide a written explanation of that determination. The bill also contains provisions regarding a determination by the department that a customer's place of primary use was incorrect. A provider would then be required to change its records. A customer could appeal such a determination. A departmental determination would not result in a provider being liable for taxes that would have been levied if the place of primary use had been correct. The corrected record would be used prospectively to calculate the tax.

Senate Bill 824 would also specify that, for an air-ground radiotelephone service, the tax would be imposed at the location of the origination of the service in Michigan as identified by the home service provider or information received by the home service provider from its servicing carrier.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the Senate Bills 824 and 1248 would have no impact on state revenues if adopted, but would result in an eventual loss of revenue to the state if not adopted (and the state failed to be consistent with federal law). Senate Bill 477 would not have a significant impact on state or local revenues, according to the agency. (HFA committee analysis dated 5-20-02)

ARGUMENTS:

For:

The bills, which are tie-barred, address two different issues raised by new telecommunications technology. One issue is how to tax mobile phone calls. Senate Bills 1248 and 824 would make state law conform to recent federal law aimed at clearing up this issue. Services would be taxed to the customer's place of primary use (a home or business address). A Michigan customer calling to Indiana from Ohio would be taxed in Michigan. (Without adoption of this bill, such calls would not be taxed in Michigan at all, say tax specialists.) A second issue is the tax treatment of so-called bundled telecommunications services. A provider might offer (and a customer might want) a group of different kinds of services on one bill, some of which are taxable and some not under the state use tax law. Senate Bill 477 provides a solution to this and allows nontaxable services to go untaxed under certain conditions even if contained in a package with taxable services. State law currently requires such bundled services to all be taxed.

POSITIONS:

The Department of Treasury supports the bills. (5-22-02)

AT&T supports Senate Bill 477 (5-22-02)

A representative of AT&T Wireless has indicated support for the bills. (5-22-02)

A representative from Cingular and Voicestream has indicated support for the bills. (5-22-02)

A representative of Sprint has indicated support for Senate Bill 824. (5-22-02)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.