

USE TAX ACT (EXCERPT)
Act 94 of 1937

205.93b Tax for use or consumption; mobile wireless services; customer's place of primary use; record; reliance upon exempt status for mobile wireless services; repeal of section; condition; air-ground radiotelephone service; bundled transaction; definitions.

Sec. 3b. (1) The use or consumption of mobile wireless services is subject to the tax levied under this act in the same manner as tangible personal property regardless of where the mobile wireless services originate, terminate, or pass through, subject to all of the following:

(a) Mobile wireless services provided to a customer, the charges for which are billed by or for the customer's home service provider, are considered to be provided by the customer's home service provider if the customer's place of primary use for the mobile wireless services is in this state. If the customer's place of primary use for mobile wireless services is outside of this state, the mobile wireless services are not subject to the tax levied under this act.

(b) A home service provider is responsible for obtaining and maintaining a record of the customer's place of primary use. Subject to subsection (2), in obtaining and maintaining a record of the customer's place of primary use, a home service provider may do all of the following:

(i) Rely in good faith on information provided by a customer as to the customer's place of primary use.

(ii) Treat the address used for a customer under a service contract or agreement in effect on August 1, 2002 as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement.

(c) Notwithstanding section 9 and subject to subsection (5), if the department chooses to create or provide a database that complies with the provisions of 4 USC 119, a home service provider shall use that database to determine the assignment of the customer's place of primary use to this state. If a database is not provided by the department, a home service provider may use an enhanced zip code to determine the assignment of the customer's place of primary use to this state. A home service provider that uses a database provided by the department is not liable for any tax that otherwise would be due solely as a result of an error or omission in that database. A home service provider that uses an enhanced zip code is not liable for any tax that otherwise would be due solely as a result of an assignment of a street address to another state if the home provider exercised due diligence to ensure that the appropriate street addresses are assigned to this state.

(d) If a customer believes that the amount of the tax levied under this act or that the home service provider's record of the customer's place of primary use is incorrect, the customer shall notify the home service provider in writing and provide all of the following information:

(i) The street address of the customer's place of primary use.

(ii) The account name and number for which the customer requests the correction.

(iii) A description of the error asserted by the customer.

(iv) Any other information that the home service provider reasonably requires to process the request.

(e) Not later than 60 days after the home service provider receives a request under subdivision (d) or subsection (5)(b), the home service provider shall review its record of the customer's place of primary use and the customer's enhanced zip code to determine the correct amount of the tax levied under this act. If the home service provider determines that the tax levied under this act or its record of the customer's place of primary use is incorrect, the home service provider shall correct the error and refund or credit any tax erroneously collected from the customer. A refund under this subdivision shall not exceed a period of 4 years. If the home service provider determines that the tax levied under this act and the customer's place of primary use are correct, the home service provider shall provide a written explanation of that determination to the customer. The procedures prescribed in this subdivision and in subdivision (d) are the first course of remedy available to a customer requesting a correction of the provider's record of place of primary use or a refund of taxes erroneously collected by the home service provider.

(2) If the department makes a final determination that the home service provider's record of a customer's place of primary use is incorrect, the home service provider shall change its records to reflect that final determination. The corrected record of a customer's place of primary use shall be used to calculate the tax levied under this act prospectively, from the date of the department's final determination. The department shall not make a final determination under this subsection before the department has notified the customer that the department has found that the home service provider's record of the customer's place of primary use is incorrect and the customer has been afforded an opportunity to appeal that finding. An appeal to the department shall be conducted according to the provision of section 22 of 1941 PA 122, MCL 205.22.

(3) Notwithstanding section 8 and subject to section 5, if the department makes a final determination under subsection (2) that a customer's place of primary use is incorrect, a home service provider is not liable for any

taxes that would have been levied under this act if the customer's place of primary use had been correct.

(4) If charges for mobile wireless services and other billed services not subject to the tax levied under this act are aggregated with and not separately stated from charges for mobile wireless services that are subject to the tax levied under this act, the nontaxable mobile wireless services and other billed services are subject to the tax levied under this act unless the home service provider can reasonably identify billings for services not subject to the tax levied under this act from its books and records kept in the regular course of business.

(5) If charges for mobile wireless services and other billed services not subject to the tax levied under this act are aggregated with and not separately stated from charges for mobile wireless services that are subject to the tax levied under this act, a customer may not rely upon the exempt status for those mobile wireless services and other billed services unless 1 or more of the following conditions are satisfied:

(a) The customer's home service provider separately states the charges for mobile wireless services that are exempt and other exempt billed services from taxable mobile wireless services.

(b) The home service provider elects, after receiving a written request from the customer in the form required by the home service provider, to identify the exempt mobile wireless services and other exempt billed services by reference to the home service provider's books and records kept in the regular course of business.

(6) This section is repealed as of the date of entry of a final judgment by a court of competent jurisdiction that substantially limits or impairs the essential elements of sections 116 to 126 of title 4 of the United States Code, 4 USC 116 to 126, and that final judgment is no longer subject to appeal.

(7) For an air-ground radiotelephone service, the tax under this act is imposed at the location of the origination of the air-ground radiotelephone service in this state as identified by the home service provider or information received by the home service provider from its servicing carrier.

(8) All of the following apply in the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming:

(a) If the purchase price is attributable to products that are taxable and products that are nontaxable, the portion of the purchase price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards that portion from its books and records kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(b) If the purchase price is attributable to products that are subject to tax at different tax rates, the total purchase price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the purchase price attributable to the products subject to tax at the lower rate from its books and records kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(c) The provisions of this subsection shall apply unless otherwise provided by federal law.

(9) As used in this section:

(a) "Air-ground radiotelephone service" means that term as defined in 47 CFR part 22.

(b) "Commercial mobile radio service" means that term as defined in 47 CFR 20.3.

(c) "Charge", "charges", or "charge for mobile wireless services" means any charge for, or associated with, the provision of commercial mobile radio service, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to a customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(d) "Customer" means 1 of the following, but does not include a reseller or a serving carrier:

(i) The person who contracts with the home service provider for mobile wireless services.

(ii) If the end user of mobile wireless services is not the contracting party, then the end user of the mobile wireless service. This subparagraph applies only for the purpose of determining the place of primary use.

(e) "Enhanced zip code" means a United States postal zip code of 9 or more digits.

(f) "Home service provider" means the facilities-based carrier or reseller that enters into a contract with a customer for mobile wireless services.

(g) "Licensed service area" means the geographic area in which a home service provider is authorized by law or contract to provide commercial mobile radio services to its customers.

(h) "Mobile wireless services" means a telecommunications service that is transmitted, conveyed, or routed, regardless of the technology used, whereby the origination or termination points of the transmission, conveyance, or routing are not fixed, including, but not limited to, telecommunications services that are provided by a commercial mobile radio service provider.

(i) "Place of primary use" means the residential street address or the primary business street address within the licensed service area of the home service provider at which a customer primarily uses mobile wireless services. For mobile wireless services, place of primary use shall be within the licensed service area of the

home service provider.

(j) "Prepaid mobile wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which shall be paid for in advance and that is sold in predetermined units or dollars that decline with use in a known amount.

(k) "Reseller" means a telecommunications services provider who purchases telecommunications services from another telecommunications services provider and then resells the telecommunications services, uses the telecommunications services as a component part of a mobile wireless service, or integrates the telecommunications services into a mobile wireless service. Reseller does not include a serving carrier.

(l) "Serving carrier" means a facilities-based telecommunications services provider that contracts with a home service provider for mobile wireless services to a customer outside of the home service provider's or reseller's licensed service area.

(m) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, including a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether that service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include any of the following:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information.

(ii) Installation or maintenance of wiring or equipment on a customer's premises.

(iii) Tangible personal property.

(iv) Advertising, including, but not limited to, directory advertising.

(v) Billing and collection services provided to third parties.

(vi) Internet access service.

(vii) Radio and television audio and video programming services, including, but not limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3, regardless of the medium, including the furnishing of transmission, conveyance, and routing of those services by the programming service provider.

(viii) Ancillary services.

(ix) Answering services, if the primary purpose of the transaction is the answering service rather than message transmission.

(x) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones.

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