



Ninety-Seventh Legislature - Second Session - 2002
Committee Statement
LB 947

Hearing Date: January 23, 2002

Committee On: Revenue

Introducer(s): (Wickersham)

Title: Change taxation provisions relating to mobile telecommunications service

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7 Yes Senators Coordsen, Dierks, Janssen, Landis, Raikes, Redfield and Wickersham

0 No

0 Present, not voting

1 Absent Senator Hartnett

Proponents:

Senator William R. Wickersham
Scott Mackey

Representing:

Introducer
AllTel, AT&T Wireless Services, Cingular Wireless, Nextel, Sprint, Verizon Wireless, VoiceStream, and Western Wireless

Opponents:

None

Representing:

Neutral:

None

Summary of purpose and/or changes:

LB 947 is to bring Nebraska sales and use tax law into compliance with the federal Mobile Telecommunications Sourcing Act. Essentially, that act requires states to change their sales tax sourcing provisions by August 1, 2002, so that cell phone and other mobile calls are taxed at the “place of primary use” of the contract holder. Place of primary use is the residential or business address of the customer.

Section 1 provides that for mobile telecommunications service for any billing period ending on or after August 1, 2002, such service is deemed to be provided by the customer's home service provider, that is, the company that the customer contracts for service with. Also, any taxes are to be levied only by jurisdictions which contain within their borders the customer's place of primary use.

The Tax Commissioner may provide or contract for a tax assignment data base that would be available to the telecommunications companies. If the data base is not made available, the companies may rely on enhanced zip code. Either way, the provider is to be held harmless for errors if it relied on the data base or used due diligence in assignment based on the enhanced zip code.

If there is no separation of taxable and non-taxable telecommunications services on the bill, all the service is to be considered taxable unless the provider can reasonably separate non-taxable charges based on records that are kept in the regular course of business. This bundling provision is contained in the federal statute. Ordinarily, unwillingness to separately state non-taxable charges will always result in the entire transaction being considered taxable.

The definitions are contained in subsection 4. "Customer" and "home service provider" are defined as the parties that contract with each other for mobile telecommunications services. "Place of primary use" is initially defined to be the place where the customer primarily uses the service, but the definition then goes on to state that the place of primary use must be the home or business street address of the customer and must be within the service territory of the home service provider. This rather awkward definition is also written as provided by the federal act. "Tax" is defined to include the sales tax and the other usage charges like those for 911 and TDD.

Section 2 provides that if any court of competent jurisdiction enters a final judgment on the merits that impairs the essential elements of the federal Mobile Telecommunication Sourcing Act that is based on federal law, all provisions of this act are to be considered invalid and the now current law is to then be restored.

Section 3 would amend section 13-326 (county sales tax) to remove mobile telecommunications from the usual sourcing rules and provide that such services are taxable at the place of primary use if the call is intrastate within *any* state. Currently, to be taxable, a call must both originate and terminate in Nebraska and be billed to an address in the jurisdiction. Section 5 makes these same changes in section 77-2702.07 for the Nebraska sales tax and section 6 makes these same changes in section 77-27,147 for the city sales tax.

Section 4 would amend section 77-2701 to incorporate the new sections 1 & 2 into the revenue code of Nebraska.

Section 7 would repeal the original sections.

Explanation of amendments, if any:

The Committee amendments strike section 2 that would have provided for inseverability of the act, and correct a cross-reference to the definition of telecommunications company.

Senator William R. Wickersham, Chairperson