

ENROLLMENT(S)

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 12-100

"Commercial Mobile Telecommunication Service Tax Clarification Amendment Act of 1998"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 12-425, on first and second readings, December 4, 1997 and January 6, 1998, respectively. Following the signature of the Mayor on January 27, 1998, pursuant to Section 404(e) of "the Act", and was assigned Act No. 12-276, and published in the March 20, 1998, edition of the D.C. Register (Vol. 45 page1533) and transmitted to Congress on March 2, 1998 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 12-100, effective April 30, 1998.



LINDA W. CROPP
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

Mar. 2,3,4,5,6,9,10,11,12,13,16,17,18,19,20,23,24,25,26
27,30,31

Apr. 1,21,22,23,24,27,28,29

AN ACT

D.C. ACT 12-276

*Codification
District of
Columbia
Code
1998 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 1998

To amend section 47-1508 of the District of Columbia Code to exempt personal property, excluding office equipment and office furniture, located in the District and owned by wireless telecommunication companies and toll telecommunication companies, from the Personal Property tax, sections 47-2001 and 2201 of the District of Columbia Code to remove the phrases cellular mobile telecommunication services, specialized mobile radio services, paging services, and dispatch services from the definition of "retail sale" and "sale at retail" under the Gross Sales tax provision, section 47-2005 of the District of Columbia Code to exempt sales of personal property, excluding office equipment and office furniture, purchased by wireless telecommunication companies and toll telecommunication companies from the Gross Sales tax, sections 47-3901 through 3907 of the District of Columbia Code to impose a tax on commercial mobile service companies for the privilege of providing commercial mobile telecommunication service in the District, and section 47-3918 of the District of Columbia Code to clarify the definition reference.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Commercial Mobile Telecommunication Service Tax Clarification Amendment Act of 1998".

Sec. 2. Title 47 of the District of Columbia Code is amended as follows:

(a) Section 47-1508(a)(3) is amended as follows:

Section
47-1508

(1) Subparagraph (B) is amended by inserting the word "toll" before the word "telecommunication" each time it appears and by striking the phrase "§ 47-3901(5)" and inserting the phrase "§ 47-3901(10)" in its place.

(2) A new subparagraph (D) is added to read as follows:

"(D) Beginning on May 1, 1997, the personal property of a wireless telecommunication company, as defined in § 47-3901(12), irrespective of whether the property is used or consumed in furnishing a service the charges from which are subject to Chapter 39 of

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this title. For purposes of this subparagraph, the term "personal property" shall not include office equipment or office furniture."

(b) Section 47-2001(n)(1)(P)(i) is amended by striking the phrase "cellular mobile telecommunication services, specialized mobile radio services, paging services, dispatch services,".

Section
47-2001

(c) Section 47-2005(5) is amended as follows:

Section
47-2005

(1) Subparagraph (B) is amended by inserting the word "toll" before the word "telecommunication", by striking the phrase "§ 47-3901(5)" and inserting the phrase "§ 47-3901(10)" in its place, and by striking the semicolon and inserting a period in its place.

(2) A new subparagraph (C) is added to read as follows:

"(C) Beginning on May 1, 1997, sales of personal property purchased by a wireless telecommunication company, as defined in § 47-3901(12), irrespective of whether the property is used or consumed in furnishing a service the charges from which are subject to Chapter 39 of this title. For purposes of this subparagraph, the term "personal property" shall not include office equipment or office furniture;"

(d) Section 47-2201(a)(1)(M)(i) is amended by striking the phrase "cellular mobile telecommunication services, specialized mobile radio services, paging services, dispatch services,".

Section
47-2201

(e) Sections 47-3901, 47-3902, 47-3903, 47-3904, 47-3905, 47-3906, and 47-3907 are amended to read as follows:

"§ 47-3901. Definitions.

Section
47-3901

"For the purposes of this chapter, the term:

"(1) "Billing address" means the physical location where the bill of the subscriber of the telecommunication service is mailed. If a bill for wireless telecommunication service is mailed to a subscriber by electronic mail such as E-mail or through the Internet to a web site for District-based wireless telecommunication service, "billing address" means the location in the District where the subscriber receives the bill by electronic mail or through the Internet.

"(2) "Commercial mobile service" means, but is not limited to:

"(A) Cellular mobile telecommunication services, digital services, specialized mobile radio services, paging services, dispatch communication services, or any service involving the transmission or reception of messages or information by means of a wireless telecommunication service and related features (e.g., voice mail, activation fees, etc.) for which there is:

"(i) A charge that varies in amount with the distance or elapsed transmission time of each individual communication; or

"(ii) An activation charge or recurring charge that is in an amount that entitles a subscriber to commercial mobile service; and

"(B) Radio communication service provided to a subscriber for a fee and

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which is carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, including both 1-way and 2-way radio communication services; mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private 1-way or 2-way land mobile radio communications by eligible users over designated areas of operation; or any service for which a license is required in a personal communications service.

"(C) "Commercial mobile service" does not include equipment sales, rental, maintenance, repair, or charges associated with wireless telecommunication equipment.

"(3) "District" means the District of Columbia.

"(4) "District-based wireless telecommunication service" means commercial mobile service where the primary use is in the District. A commercial mobile service provider shall remit the tax to the District based on any reasonable method, including, without limitation, the subscriber's billing address, service address, or telephone number within the District.

"(5) "Gross charge" means all charges and fees paid for the act or privilege of originating or receiving in the District, toll telecommunication service or District-based wireless telecommunication service, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature and shall be determined, without any deduction on account of the cost of the telecommunication service, the cost of materials used, labor or service costs, or any other expenses.

"(6) "Mayor" means the Mayor of the District of Columbia.

"(7) "Person" means an individual, firm, partnership, society, club, association, joint-stock company, domestic or foreign corporation, estate, receiver, trustee, assignee, referee, or a fiduciary or other representative, whether or not appointed by a court, or any combination of individuals acting as a unit.

"(8) "Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sound of all kinds.

"(9) "Subscriber" means the ultimate consumer of District-based wireless telecommunication services regardless of whether the person has executed a written contract for wireless telecommunication services.

"(10) "Toll telecommunication company" means, but is not limited to, each person or lessee of a person who provides for the transmission or reception, within the District, of any form of toll telecommunication service for a consideration.

"(11) "Toll telecommunication service" means the transmission or reception of any sound, vision, or speech communication for which there is a toll charge that varies in amount with the distance or elapsed transmission time of each individual communication or the transmission or reception of any sound, vision, or speech communication that entitles a person, upon the payment of a periodic charge that is determined as a flat amount or upon the basis of a total elapsed transmission time, to an unlimited number of communications to or from all or a

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substantial portion of persons who have telephone or radiotelephone stations in a specified area outside the local telephone system area in which the station that provides the service is located.

"(12) "Wireless telecommunication company" means any person providing commercial mobile services, including a person or lessee of a person who provides for, or resells, the transmission or reception of any form of commercial mobile services for a fee directly to the public or such classes of eligible users as to be effectively available to the public.

"(13) "Wireless telecommunication equipment" means personal tangible property used by a subscriber to transmit or receive District-based wireless telecommunication services.

"§ 47-3902. Imposition of tax.

Section
47-3902

"(a) Beginning on March 1, 1989, a tax is imposed on all toll telecommunication companies for the privilege of providing toll telecommunication service in the District. After May 31, 1994, the rate shall be 10% of the monthly gross charges from the sale of toll telecommunication service that originates or terminates in the District, and for which a charge is made to a service address located in the District, regardless of where the charge is billed or paid.

"(b) Beginning May 1, 1997, a tax is imposed on all wireless telecommunication companies for the privilege of providing commercial mobile service in the District. The rate shall be 10% of the monthly gross charges from the sale of District-based wireless telecommunication services that originate from, or are received in, the District for which an elapsed time, distance charge, or monthly recurring charge is made to District-based wireless telecommunication services. The tax under the wireless telecommunication service tax provisions of this chapter may be separately stated as a line item on the subscriber's bill.

"§ 47-3903. Deductions.

Section
47-3903

"(a) A deduction may be taken from gross charges for amounts represented by accounts found to be worthless and actually charged off for income or franchise tax purposes, provided, that:

"(1) The tax on the amounts has been previously paid to the District;

"(2) Any amounts deducted from gross charges at the time of or after the date of write-off which are subsequently collected have been included in the first return filed after the gross charges are collected and taxes have been paid on the collected amounts; and

"(3) The amounts have not been deducted after the payment of the tax on the amounts for periods which are closed by the statute of limitations.

"(b) Gross charges subject to the tax imposed pursuant to the wireless telecommunication service tax provisions of this chapter shall not include amounts determined to be fraudulent nor shall it include indemnification between carriers intended to cover the cost of fraudulent communication activity.

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"§ 47-3904. Exemptions.

"(a) Gross charges from the sale, by any toll or wireless telecommunication company, of toll telecommunication or District-based wireless telecommunication service for resale to any other toll or wireless telecommunication company or public utility subject to tax under this chapter or § 47-2501 shall be exempt from taxation under this chapter.

Section
47-3904

"(b) Gross charges from the sale, by any public utility of utility service for resale to a toll telecommunication or wireless telecommunication company subject to tax under this chapter shall be exempt from taxation under § 47-2501.

"§ 47-3905. Returns and payment of tax.

"(a) Each toll telecommunication company shall be subject to the following filing and payment requirements:

Section
47-3905

"(1) On or before the 20th day of each calendar month, each toll telecommunication company subject to tax under this chapter shall file a return with the Mayor that reports the amount of its monthly gross charges for the preceding calendar month from the sale of toll telecommunication services that originate or terminate in the District and for which a charge is made to a service address located in the District, regardless of where the charge is billed or paid.

"(2) For each calendar month beginning March 1, 1989, each toll telecommunication company shall pay the tax imposed by this chapter before the 21st day of the succeeding calendar month. The return for each calendar month shall be filed at the time payment is made or on the 20th day of the succeeding calendar month, whichever is earlier.

"(3) The form of the return shall be prescribed by the Mayor and the return shall contain information that the Mayor considers necessary for the proper administration of the tax.

"(b) Each wireless telecommunication company shall be subject to the following filing and payment requirements:

"(1) On or before the 20th day of each calendar month, each wireless telecommunication company subject to tax under this chapter shall file a return with the Mayor that reports the amount of its monthly gross charges for the preceding calendar month from the sale of District-based wireless telecommunication service.

"(2) For each calendar month beginning May 1, 1997, each wireless telecommunication company shall pay the tax before the 21st day of the succeeding calendar month. The return for each calendar month shall be filed at the time payment is made or on the 20th day of the succeeding calendar month, whichever is earlier.

"(3) The form of the return shall be prescribed by the Mayor and the return shall contain information that the Mayor considers necessary for the proper administration of the tax.

"§ 47-3906. Alternate method of reporting.

"(a) A taxpayer subject to the provisions of § 47-3902 may be allowed an alternate

Section
47-3906

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method of reporting its monthly gross charges subject to the tax under this chapter upon showing to the satisfaction of the Mayor, within 90 days from the effective date of this act or 30 days from the first day a toll or wireless telecommunication company begins offering a new toll or wireless telecommunication service in the District, that it does not have the capability to identify the gross charges from the sale of District-based wireless telecommunication, or it is unable to identify the jurisdiction of origination or termination of a particular toll telecommunication service.

"(b) The showing shall be made by a petition to the Mayor which shall include the factual basis for the inability of the taxpayer to identify the charges, with supporting documentation, and an alternate method of reporting the charges that the taxpayer believes is reasonable and equitable.

"(c) The Mayor may employ a reasonable and equitable alternate method for reporting the gross charges of the taxpayer based on information submitted pursuant to this chapter or based on any other information made available to the Mayor.

"§ 47-3907. Credit.

Section
47-3907

"(a) To prevent actual multi-state taxation of the sale of toll or wireless telecommunication service, the taxpayer, upon proof that it has paid a properly due excise, sales, use, or gross receipts tax in another jurisdiction on a sale that is subject to taxation under this chapter, shall be allowed a credit against the tax for the amount paid, but in no event shall the credit exceed the tax imposed under this chapter.

"(b) A taxpayer may be allowed an alternate method for reporting the credit upon showing to the satisfaction of the Mayor that it does not have the capability through reasonable measures to determine the credit. The showing may be made by a petition to the Mayor which includes the factual basis for the inability to determine the credit through reasonable measures, and an alternate method of reporting the credit that the taxpayer believes is reasonable and equitable."

(f) Section 47-3918(b) is amended by striking the phrase "§ 47-3901(4)" and inserting the phrase "§ 47-3901(7)" in its place.

Section
47-3918

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233 (c)(3)).

Sec. 4. Applicability.

(a) The tax imposed on wireless telecommunication companies shall apply as of May 1, 1997.

Note, Section
47-1508

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(b) Returns or payments due from wireless telecommunication companies for the period beginning May 1, 1997, though the effective date of this act not previously filed or paid shall be due by the 45th day after the effective date of this act.

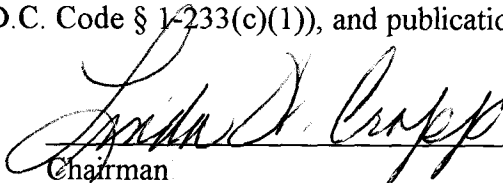
**Note, Section
47-1508**

(c) Beginning in FY 1999, the amount of tax imposed by this act, shall not be calculated as gross revenue to which the tax is then applied.

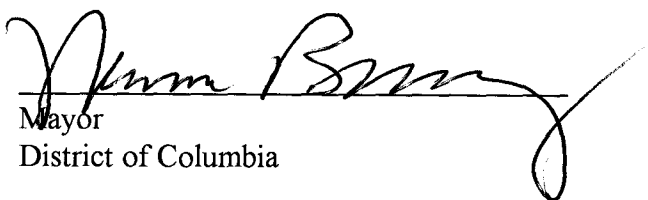
**Note, Sections
47-1508,
47-3902**

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: January 27, 1998



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

B12-425

Docket No. _____

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 12-4-97

VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED, BRAZIL VOTED NO

ABSENT _____

ALL PRESENT

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Dixon					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Chavous					Patterson									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Deyle J. Ford
Secretary to the Council

January 12, 1998
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 1-6-98

VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT _____

ALL PRESENT

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote

AB - Absent

NV - Present not voting

CERTIFICATION RECORD

Deyle J. Ford
Secretary to the Council

January 12, 1998
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT _____

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date