

AN ACT

*Codification  
District of  
Columbia  
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 39 of Title 47 of the District of Columbia Official Code to conform District of Columbia law to the Mobile Telecommunications Sourcing Act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Mobile Telecommunications Sourcing Conformity Act of 2002".

Sec. 2. Chapter 39 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding the section designation "47-3922. Special rules for mobile telecommunications services." at the end.

(b) Section 47-3901 is amended to read as follows:

"§ 47-3901. Definitions.

"For the purposes of this chapter, the term:

"(1) "Customer" means the person or entity that contracts with the home service provider for District-based wireless telecommunication service; provided, that for the purposes of determining the place of primary use, if the end user of the District-based wireless telecommunication service is not the contracting party, the term "customer" shall include the end user of the District-based wireless telecommunication service. The term "customer" shall not include a reseller of District-based wireless telecommunication service or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

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

"(3) "District-based wireless telecommunication service" means mobile telecommunications service provided to a customer whose place of primary use is in the District.

"(4) "Enhanced zip code" shall have the same meaning as set forth in 4 U.S.C. § 124(4)."

"(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 determined without any deduction on

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§ 47-3901

account of the cost of the telecommunication service, the cost of materials used, labor or service costs, or any other expenses.

"(6) "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications service.

"(7) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide mobile telecommunications service to the customer.

"(8) "Mobile telecommunications service" means commercial mobile radio service, as defined in section 47 C.F.R. § 20.3, as in effect on June 1, 1999. The term "mobile telecommunications service" shall not include equipment sales, rental, maintenance, repair, or charges associated with wireless telecommunication equipment.

"(9) "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.

"(10) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which place shall be the residential street address or the primary business street address of the customer and shall be within the licensed service area of the home service provider.

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

"(12) "Reseller" 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 telecommunication service. The term "reseller" shall not include a serving carrier with which the home service provider arranges for the purchased services to its customers outside the home service provider's licensed service area.

"(13) "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.

"(14) "Toll telecommunication company" includes 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.

"(15) "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 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.

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

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

(c) Section 47-3902 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "Beginning on March 1, 1989, a tax is imposed on all telecommunication companies for the privilege of providing toll telecommunication service in the District. After May 31, 1994, the" and inserting the phrase "A tax shall be imposed on all toll telecommunications companies for the privilege of providing toll telecommunication service in the District. The" in its place.

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§ 47-3902

(2) Subsection (b) is amended to read as follows:

"(b)(1) A tax shall be imposed on all wireless telecommunication companies for the privilege of providing mobile telecommunications service to a customer with a place of primary use within the District. The rate shall be 10% of the monthly gross charges from the sale of District-based wireless telecommunication services and the tax shall be imposed and administered according to the provisions of § 47-3922. The tax under the mobile telecommunications service tax provisions of this chapter may be separately stated as a line item on the customer's bill.

"(2) A mobile telecommunications service provider shall remit the tax to the District if the customer's place of primary use is within the District."

(d) A new section 47-3922 is added to read as follows:

"§ 47-3922. Special rules for mobile telecommunications services.

"(a) Mobile telecommunications service provided to a customer and billed by or for the customer's home service provider shall be deemed to be provided by the home service provider at the customer's place of primary use. Subject to the exceptions in 4 U.S.C. §§ 116(b) and (c), charges for mobile telecommunications service shall be subject to the tax imposed by this chapter if the customer's place of primary use is within the District, regardless of where the mobile telecommunications services originate, terminate, or pass through. No charges for mobile telecommunications service shall be taxable under this chapter if the customer's place of primary use is outside the District.

New  
§ 47-3922

"(b) If otherwise taxable and nontaxable charges for mobile telecommunications service are aggregated, the charges for nontaxable mobile telecommunications service shall be subject to taxation unless the home service provider can reasonably identify charges not subject to taxation from its books and records that are kept in the regular course of business. A customer shall not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile

telecommunications services from taxable charges or the home service provider elects, after receiving written notice from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

"(c) The Mayor may provide, or designate a database provider to provide, a home service provider with an electronic database that meets the requirements of 4 U.S.C. § 119. If a database is provided and maintained in accordance with 4 U.S.C. §§ 119 and 121, a home service provider shall be held harmless from any tax, charge, or fee liability for errors or omissions due solely to reliance on the data contained in the database. If no electronic database is provided by the Mayor or a designated database provider, a home service provider may use an enhanced zip code to assign each street address to a specific taxing jurisdiction and, if employed and maintained in accordance with 4 U.S.C. §§ 120 and 121, the home service provider shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction.

"(d)(1) A home service provider shall obtain and maintain a customer's place of primary use. Subject to 4 U.S.C. § 121, if the home service provider's reliance on information provided by its customer is in good faith, the home service provider:

"(A) May rely on the applicable residential or business street address provided by the home service provider's customer; and

"(B) Shall not be liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.

"(2) The Mayor may correct the place of primary use or correct the assignment of a taxing jurisdiction by a home service provider in accordance with 4 U.S.C. § 121.

"(3) Except as provided in paragraphs (1) and (2) of this subsection, a home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on or before July 28, 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, for purposes of determining the taxing jurisdiction to which taxes, charges, or fees on charges for mobile telecommunications service should be remitted.

"(e) If a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a bill under the provisions of this section is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within 60 days of receiving a notice under this section, the home service provider shall review its records to determine the customer's taxing jurisdiction. If

this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period not to exceed 2 years. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer. The procedures in this subsection shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes, charges, or fees erroneously collected by the home service provider, and no cause of action based upon a dispute arising from such taxes, charges, or fees shall accrue until a customer has exhausted the remedies set forth in this subsection.

"(f) The Mayor shall issue regulations to implement the provisions of this section and § 47-3902(b). The proposed rules shall be submitted to the Council for a 90-day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 90-day review period, the proposed rules shall be deemed approved."

**Sec. 3. Applicability.**

This act shall apply to charges for mobile telecommunications services reflected on customer bills issued after August 1, 2002.

**Sec. 4. 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. Official Code § 1-206.02(c)(3)).

**Note,**  
§ 47-3901,  
§ 47-3902,  
§ 47-3922

**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), 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. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia