

Communications Services Tax Working Group

materials submitted during October 31 meeting

Streamlined Sales and Use Tax Agreement

Section 330: Bundled Transactions

1 D. If a state levies sales and use tax on a specified digital product and provides an exemption for an item
2 within the definition of such specified digital product pursuant to Section 332 (H) of this Agreement, such
3 exemption must be noted in the taxability matrix.

4 E. Each state that provides for a sales tax holiday pursuant to Section 322 of this Agreement shall, in a format
5 approved by the Governing Board, give notice in the taxability matrix of the products for which a tax
6 exemption is provided.

7 F. For purposes of this section, the term "transferred electronically" means obtained by the purchaser by
8 means other than tangible storage media.

9 *Compiler's note: On September 5, 2008 subsection (F) was repealed. This amendment became effective upon its*
10 *adoption.*

12 **Section 329: EFFECTIVE DATE FOR RATE CHANGES**

13 Each member state shall provide that the effective date of rate changes for services covering a
14 period starting before and ending after the statutory effective date shall be as follows:

15 A. For a rate increase, the new rate shall apply to the first billing period starting on or after the
16 effective date.

17 B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

19 **Section 330: BUNDLED TRANSACTIONS**

20 A. A member state shall adopt and utilize to determine tax treatment, the core definition
21 for a "bundled transaction" in Appendix C, Part I of the Library of Definitions in the
22 Agreement.

23 B. Member states are not restricted in their tax treatment of bundled transactions except
24 as otherwise provided in the Agreement. Member states are not restricted in their
25 ability to treat some bundled transactions differently from other bundled transactions.

26 C. In the case of a bundled transaction that includes any of the following:
27 telecommunication service, ancillary service, internet access, or audio or video
28 programming service:

29 I. If the price is attributable to products that are taxable and products that are
30 nontaxable, the portion of the price attributable to the nontaxable products may be
31 subject to tax unless the provider can identify by reasonable and verifiable standards

1 such portion from its books and records that are kept in the regular course of business
2 for other purposes, including, but not limited to, non-tax purposes.

3 2. If the price is attributable to products that are subject to tax at different tax rates, the
4 total price may be treated as attributable to the products subject to tax at the highest
5 tax rate unless the provider can identify by reasonable and verifiable standards the
6 portion of the price attributable to the products subject to tax at the lower rate from its
7 books and records that are kept in the regular course of business for other purposes,
8 including, but not limited to, non-tax purposes.

9 3. The provisions of this section shall apply unless otherwise provided by federal law.

10 D. In the case of a transaction that includes an “optional computer software maintenance
11 contract” for prewritten computer software and the state otherwise has not
12 specifically imposed tax on the retail sale of computer software maintenance
13 contracts, the following provisions apply:

14 1. If an optional computer software maintenance contract only obligates the vendor
15 to provide upgrades and updates, it will be characterized as a sale of prewritten
16 computer software.

17 2. If an optional computer software maintenance contract only obligates the vendor
18 to provide support services, it will be characterized as a sale of services and a
19 state may use any of the methods provided under subsection (D)(3) to determine
20 the taxable and nontaxable or exempt portions.

21 3. If an optional computer software maintenance contract is a bundled transaction in
22 which both taxable and nontaxable or exempt products that are not separately
23 itemized on the invoice or similar billing document, then states shall elect one of
24 the following tax treatments:

25 a. The contract shall be characterized as all taxable;

26 b. The contract shall be characterized as all taxable unless the seller can
27 demonstrate, using a reasonable method as of the time of sale, the portion
28 of the contract that is for nontaxable or exempt products;

29 c. The contract shall be characterized as all nontaxable or exempt; or

1 d. The contract shall be characterized as twenty, thirty, forty or fifty percent
2 taxable or eighty, seventy, sixty and fifty percent nontaxable or exempt
3 respectively, as selected by each member state.

4 4. With respect to states that elect the method described in subparagraph 3(b):

5 a. Such states may prescribe the use of such reasonable methods as it deems
6 appropriate, and

7 b. The method selected by the seller shall be binding on the purchaser.

8 *Compiler's note: On April 16, 2005 Section 330 was added. Member States shall comply with the provisions of this*
9 *Section no later than January 1, 2008.*

10 *Compiler's note: On December 6, 2008 Section 330 D was added. This provision became effective upon its*
11 *adoption.*

12
13 **Section 331: RELIEF FROM CERTAIN LIABILITY FOR PURCHASERS**

14
15 A. A member state shall relieve a purchaser from liability for penalty to that member state
16 and its local jurisdictions for having failed to pay the correct amount of sales or use tax in
17 the following circumstances:

18 1. A purchaser's seller or CSP relied on erroneous data provided by that member
19 state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability
20 matrix completed by that member state pursuant to Section 328; or

21 2. A purchaser holding a direct pay permit relied on erroneous data provided by that
22 member state on tax rates, boundaries, taxing jurisdiction assignments, or in the
23 taxability matrix completed by that member state pursuant to Section 328.

24 3. A purchaser relied on erroneous data provided by that member state in the
25 taxability matrix completed by that member state pursuant to Section 328.

26 4. A purchaser using databases pursuant to subsections (F), (G) and (H) of Section
27 305 relied on erroneous data provided by that member state on tax rates,
28 boundaries, or taxing jurisdiction assignments. After providing adequate notice as
29 determined by the governing board, a member state that provides an address-
30 based database for assigning taxing jurisdictions pursuant to Section 305,
31 subsection (G) or (H) may cease providing liability relief for errors resulting from

Florida Definition of “Sales Price”
Section 202.11(13), Florida Statutes

Select Year: 2012 ▼ Go

The 2012 Florida Statutes

Title XIV
TAXATION AND
FINANCE

Chapter 202
COMMUNICATIONS SERVICES TAX
SIMPLIFICATION LAW

View Entire
Chapter

202.11 Definitions.—As used in this chapter, the term:

(1) “Communications services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such 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 such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services.
- (b) Installation or maintenance of wiring or equipment on a customer’s premises.
- (c) The sale or rental of tangible personal property.
- (d) The sale of advertising, including, but not limited to, directory advertising.
- (e) Bad check charges.
- (f) Late payment charges.
- (g) Billing and collection services.
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

(2) “Dealer” means a person registered with the department as a provider of communications services in this state.

(3) “Department” means the Department of Revenue.

(4) “Direct-to-home satellite service” has the meaning ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

(5) “Information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term does not include video service.

(6) “Internet access service” has the same meaning as ascribed to the term “Internet access” by s. 1105(5) of the Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by Pub. L. No. 110-108.

(7) “Mobile communications service” means commercial mobile radio service, as defined in 47 C.F.R. s. 20.3 as in effect on June 1, 1999. The term does not include air-ground radiotelephone service as defined in 47 C.F.R. s. 22.99 as in effect on June 1, 1999.

(8) “Person” has the meaning ascribed in s. 212.02.

(9) "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount.

(10) "Purchaser" means the person paying for or obligated to pay for communications services.

(11) "Retail sale" means the sale of communications services for any purpose other than for resale or for use as a component part of or for integration into communications services to be resold in the ordinary course of business. However, any sale for resale must comply with s. 202.16(2) and the rules adopted thereunder.

(12) "Sale" means the provision of communications services for a consideration.

¹(13) "Sales price" means the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service, not described in paragraph (a), which is part of the sale and for which the charge is not separately itemized on a customer's bill or separately allocated under subparagraph (b)8. The sales price of communications services may not be reduced by any separately identified components of the charge which constitute expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.

(a) The sales price of communications services includes, whether or not separately stated, charges for any of the following:

1. The connection, movement, change, or termination of communications services.
2. The detailed billing of communications services.
3. The sale of directory listings in connection with a communications service.
4. Central office and custom calling features.
5. Voice mail and other messaging service.
6. Directory assistance.
7. The service of sending or receiving a document commonly referred to as a facsimile or "fax,"

except when performed during the course of providing professional or advertising services.

(b) The sales price of communications services does not include charges for any of the following:

1. An excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including, but not limited to, a tax imposed under this chapter or chapter 203 which is permitted or required to be added to the sales price of such service, if the tax is stated separately.
2. A fee or assessment levied by the United States or any state or local government, including, but not limited to, regulatory fees and emergency telephone surcharges, which must be added to the price of the service if the fee or assessment is separately stated.
3. Communications services paid for by inserting coins into coin-operated communications devices available to the public.
4. The sale or recharge of a prepaid calling arrangement.
5. The provision of air-to-ground communications services, defined as a radio service provided to a purchaser while on board an aircraft.
6. A dealer's internal use of communications services in connection with its business of providing communications services.

7. Charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services.

8. Charges for goods or services that are not subject to tax under this chapter, including Internet access services but excluding any item described in paragraph (a), that are not separately itemized on a customer's bill, but that can be reasonably identified from the selling dealer's books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state.

(14) "Service address" means:

(a) Except as otherwise provided in this section:

1. The location of the communications equipment from which communications services originate or at which communications services are received by the customer;

2. In the case of a communications service paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card, and in the case of third-number and calling-card calls, the term "service address" means the address of the central office, as determined by the area code and the first three digits of the seven-digit originating telephone number; or

3. If the location of the equipment described in subparagraph 1. is not known and subparagraph 2. is inapplicable, the term "service address" means the location of the customer's primary use of the communications service. For purposes of this subparagraph, the location of the customer's primary use of a communications service is the residential street address or the business street address of the customer.

(b) In the case of video services and direct-to-home satellite services, the location where the customer receives the services in this state.

(c) In the case of mobile communications services, the customer's place of primary use.

(15) "Unbundled network element" means a network element, as defined in 47 U.S.C. s. 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. s. 251(c)(3).

(16) "Private communications service" means a communications service that entitles the subscriber or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(17)(a) "Customer" means:

1. The person or entity that contracts with the home service provider for mobile communications services; or

2. If the end user of mobile communications services is not the contracting party, the end user of the mobile communications service. This subparagraph only applies for the purpose of determining the place of primary use.

(b) "Customer" does not include:

1. A reseller of mobile communications services; or

2. A serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

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

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

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

(21) "Place of primary use" means the street address representative of where the customer's use of the mobile communications service primarily occurs, which must be:

- (a) The residential street address or the primary business street address of the customer; and
- (b) Within the licensed service area of the home service provider.

(22)(a) "Reseller" means a provider who purchases communications services from another communications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile communications service.

(b) "Reseller" does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(23) "Serving carrier" means a facilities-based carrier providing mobile communications service to a customer outside a home service provider's or reseller's licensed service area.

(24) "Video service" means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

History.—ss. 2, 58, ch. 2000-260; ss. 2, 38, ch. 2001-140; s. 1, ch. 2003-254; ss. 1, 14, ch. 2005-187; s. 6, ch. 2005-280; s. 3, ch. 2007-29; s. 2, ch. 2012-70.

¹Note.—Section 11, ch. 2012-70, provides that:

"The following changes made in this act are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the general effective date of this act:

"(1) The changes made in section 2 of this act to subsection (13) of s. 202.11, Florida Statutes.

"(2) The changes made in section 6 of this act to s. 202.22, Florida Statutes."



PUBLIC LAW 106-252—JULY 28, 2000

MOBILE TELECOMMUNICATIONS
SOURCING ACT

Public Law 106-252
106th Congress

An Act

July 28, 2000
[H.R. 4391]

To amend title 4 of the United States Code to establish sourcing requirements for State and local taxation of mobile telecommunication services.

Mobile Tele-
communications
Sourcing Act.
4 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mobile Telecommunications Sourcing Act”.

SEC. 2. AMENDMENTS TO TITLE 4 OF THE UNITED STATES CODE.

(a) **AMENDMENT RELATING TO THE STATES.**—Chapter 4 of title 4 of the United States Code is amended by adding at the end the following:

“§ 116. Rules for determining State and local government treatment of charges related to mobile telecommunications services

“(a) **APPLICATION OF THIS SECTION THROUGH SECTION 126.**—This section through 126 of this title apply to any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.

“(b) **GENERAL EXCEPTIONS.**—This section through 126 of this title do not apply to—

“(1) any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service;

“(2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis;

“(3) any tax, charge, or fee that represents compensation for a mobile telecommunications service provider’s use of public rights of way or other public property, provided that such tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication services;

“(4) any generally applicable business and occupation tax that is imposed by a State, is applied to gross receipts or gross proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect

to use the sourcing method required in this section through 126 of this title;

“(5) any fee related to obligations under section 254 of the Communications Act of 1934; or

“(6) any tax, charge, or fee imposed by the Federal Communications Commission.

“(c) SPECIFIC EXCEPTIONS.—This section through 126 of this title—

“(1) do not apply to the determination of the taxing situs of prepaid telephone calling services;

“(2) do not affect the taxability of either the initial sale of mobile telecommunications services or subsequent resale of such services, whether as sales of such services alone or as a part of a bundled product, if the Internet Tax Freedom Act would preclude a taxing jurisdiction from subjecting the charges of the sale of such services to a tax, charge, or fee, but this section provides no evidence of the intent of Congress with respect to the applicability of the Internet Tax Freedom Act to such charges; and

“(3) do not apply to the determination of the taxing situs of air-ground radiotelephone service as defined in section 22.99 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

“§ 117. Sourcing rules

“(a) TREATMENT OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.—Notwithstanding the law of any State or political subdivision of any State, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer’s home service provider, shall be deemed to be provided by the customer’s home service provider.

“(b) JURISDICTION.—All charges for mobile telecommunications services that are deemed to be provided by the customer’s home service provider under sections 116 through 126 of this title are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer’s place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

“§ 118. Limitations

“Sections 116 through 126 of this title do not—

“(1) provide authority to a taxing jurisdiction to impose a tax, charge, or fee that the laws of such jurisdiction do not authorize such jurisdiction to impose; or

“(2) modify, impair, supersede, or authorize the modification, impairment, or supersession of the law of any taxing jurisdiction pertaining to taxation except as expressly provided in sections 116 through 126 of this title.

“§ 119. Electronic databases for nationwide standard numeric jurisdictional codes

“(a) ELECTRONIC DATABASE.—

“(1) PROVISION OF DATABASE.—A State may provide an electronic database to a home service provider or, if a State

does not provide such an electronic database to home service providers, then the designated database provider may provide an electronic database to a home service provider.

“(2) **FORMAT.**—(A) Such electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institute’s Accredited Standards Committee X12, that, allowing for de minimis deviations, designates for each street address in the State, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code.

“(B) Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions which are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.

“(C) The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission, or their successors. Each address shall be provided in standard postal format.

“(b) **NOTICE; UPDATES.**—A State or designated database provider that provides or maintains an electronic database described in subsection (a) shall provide notice of the availability of the then current electronic database, and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in such State.

“(c) **USER HELD HARMLESS.**—A home service provider using the data contained in an electronic database described in subsection (a) shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by a State or designated database provider. The home service provider shall reflect changes made to such database during a calendar quarter not later than 30 days after the end of such calendar quarter for each State that issues notice of the availability of an electronic database reflecting such changes under subsection (b).

Deadline.

“§ 120. Procedure if no electronic database provided

“(a) **SAFE HARBOR.**—If neither a State nor designated database provider provides an electronic database under section 119, a home service provider shall be held harmless from any tax, charge, or fee liability in such State that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to section 121, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider

must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 121 is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if such home service provider demonstrates that it has—

“(1) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

“(2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

“(3) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

“(b) **TERMINATION OF SAFE HARBOR.**—Subsection (a) applies to a home service provider that is in compliance with the requirements of subsection (a), with respect to a State for which an electronic database is not provided under section 119 until the later of—

Applicability.

“(1) 18 months after the nationwide standard numeric code described in section 119(a) has been approved by the Federation of Tax Administrators and the Multistate Tax Commission;

Deadline.

or
“(2) 6 months after such State or a designated database provider in such State provides such database as prescribed in section 119(a).

“§ 121. Correction of erroneous data for place of primary use

“(a) **IN GENERAL.**—A taxing jurisdiction, or a State on behalf of any taxing jurisdiction or taxing jurisdictions within such State, may—

“(1) determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use in section 124(8) and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination if—

“(A) if the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

“(B) before the taxing jurisdiction gives such notice of determination, the customer is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the address is the customer’s place of primary use;

“(2) determine that the assignment of a taxing jurisdiction by a home service provider under section 120 does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if—

“(A) if the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

“(B) the home service provider is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

“§ 122. Determination of place of primary use

“(a) PLACE OF PRIMARY USE.—A home service provider shall be responsible for obtaining and maintaining the customer’s place of primary use (as defined in section 124). Subject to section 121, and if the home service provider’s reliance on information provided by its customer is in good faith, a taxing jurisdiction shall—

“(1) allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider’s customer; and

“(2) not hold a home service provider 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.

Effective date.

“(b) ADDRESS UNDER EXISTING AGREEMENTS.—Except as provided in section 121, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect 2 years after the date of the enactment of the Mobile Telecommunications Sourcing Act as that customer’s place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

“§ 123. Scope; special rules

“(a) ACT DOES NOT SUPERSEDE CUSTOMER’S LIABILITY TO TAXING JURISDICTION.—Nothing in sections 116 through 126 modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of, any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

“(b) ADDITIONAL TAXABLE CHARGES.—If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to such tax, charge, or fee from its books and records that are kept in the regular course of business.

“(c) NONTAXABLE CHARGES.—If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may 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 a written request 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.

“§ 124. Definitions

“In sections 116 through 126 of this title:

“(1) CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.—The term ‘charges for mobile telecommunications services’ means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the 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.

“(2) CUSTOMER.—

“(A) IN GENERAL.—The term ‘customer’ means—

“(i) the person or entity that contracts with the home service provider for mobile telecommunications services; or

“(ii) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service, but this clause applies only for the purpose of determining the place of primary use.

“(B) The term ‘customer’ does not include—

“(i) a reseller of mobile telecommunications service;

or

“(ii) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

“(3) DESIGNATED DATABASE PROVIDER.—The term ‘designated database provider’ means a corporation, association, or other entity representing all the political subdivisions of a State that is—

“(A) responsible for providing an electronic database prescribed in section 119(a) if the State has not provided such electronic database; and

“(B) approved by municipal and county associations or leagues of the State whose responsibility it would otherwise be to provide such database prescribed by sections 116 through 126 of this title.

“(4) ENHANCED ZIP CODE.—The term ‘enhanced zip code’ means a United States postal zip code of 9 or more digits.

“(5) HOME SERVICE PROVIDER.—The term ‘home service provider’ means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

“(6) LICENSED SERVICE AREA.—The term ‘licensed service area’ means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

“(7) MOBILE TELECOMMUNICATIONS SERVICE.—The term ‘mobile telecommunications service’ means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

“(8) PLACE OF PRIMARY USE.—The term ‘place of primary use’ means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, which must be—

“(A) the residential street address or the primary business street address of the customer; and

“(B) within the licensed service area of the home service provider.

“(9) PREPAID TELEPHONE CALLING SERVICES.—The term ‘prepaid telephone calling service’ means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

“(10) RESELLER.—The term ‘reseller’—

“(A) 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 telecommunications service; and

“(B) does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

“(11) SERVING CARRIER.—The term ‘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.

“(12) TAXING JURISDICTION.—The term ‘taxing jurisdiction’ means any of the several States, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

“§ 125. Nonseverability

“If a court of competent jurisdiction enters a final judgment on the merits that—

“(1) is based on Federal law;

“(2) is no longer subject to appeal; and

“(3) substantially limits or impairs the essential elements of sections 116 through 126 of this title,
then sections 116 through 126 of this title are invalid and have no legal effect as of the date of entry of such judgment.

“§ 126. No inference

“(a) INTERNET TAX FREEDOM ACT.—Nothing in sections 116 through this section of this title shall be construed as bearing on Congressional intent in enacting the Internet Tax Freedom Act or to modify or supersede the operation of such Act.

“(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing in sections 116 through this section of this title shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 or the amendments made by such Act.”

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 4 of title 4, United States Code, is amended by adding the following after the item relating to section 115:

“116. Rules for determining State and local government treatment of charges related to mobile telecommunications services.

“117. Sourcing rules.

“118. Limitations.

“119. Electronic databases for nationwide standard numeric jurisdictional codes.

“120. Procedure if no electronic database provided.

“121. Correction of erroneous data for place of primary use.

“122. Determination of place of primary use.

“123. Scope; special rules.

“124. Definitions.

“125. Nonseverability.

“126. No inference.”

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENT.

4 USC 116 note.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendment made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF ACT.—The amendment made by this Act shall apply only to customer bills issued after the first day of the first month beginning more than 2 years after the date of the enactment of this Act.

Approved July 28, 2000.

LEGISLATIVE HISTORY—H.R. 4391 (S. 1755):

HOUSE REPORTS: No. 106-719 (Comm. on the Judiciary).

SENATE REPORTS: No. 106-326 accompanying S. 1755 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 146 (2000):

July 11, considered and passed House.

July 14, considered and passed Senate.



Communications Services Tax Working Group

October 31, 2012

White Board Notes

Holistic Replacement Options

End-user policy analysis

Neutral fiscal impact for all parties - define neutrality. absence of prepaid, unused capacity

Revisit/include definitions that are easily acceptable/clear

Simplify audit/administration issues

local government distribution

technical/legal issues (PECO)

create sales tax working group for technical issues

maintain ability to evolve future and current bonding ability

tax policy

Bonding issues

Revenue flexibility
Replacement Revenue

Replicate exclusions/exceptions in G
(CST)

Fix CST under Grant

Partial Replacement

Holistic Replacement

Structure
Reznick 3

Fox 2

Rosenzweig 3

Kittick 3

Dudley

Smith 3

Lindsey 3

Total

23

2

2

2

2

| | | | | | |

Communications Services Tax Working Group

Submitted by:

Davin Suggs

U.S. Census Bureau: Local Government Revenues - 2009-10

Dollar amounts are in thousands.

Source: U.S. Census Bureau, 2010 Annual Surveys of State and Local Government Finances.

| Description | United States Total | | Alabama | | Arkansas | | Florida | | Georgia | | Louisiana | | Mississippi | | North Carolina | | South Carolina | | Tennessee | |
|--------------------------------------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|
| | Local government amount ¹ | % |
| Revenue ¹ | 1,631,203,571 | | 20,645,997 | | 9,346,908 | | 94,611,594 | | 43,027,926 | | 21,487,622 | | 12,263,693 | | 40,808,260 | | 18,805,922 | | 31,025,092 | |
| General revenue ¹ | 1,435,878,592 | 88.03% | 17,276,665 | 83.68% | 8,466,802 | 83.68% | 83,603,678 | 88.58% | 37,472,611 | 87.09% | 19,995,412 | 93.06% | 11,410,276 | 93.04% | 36,044,456 | 88.33% | 17,344,191 | 92.23% | 21,328,101 | 68.74% |
| Utility revenue | 130,585,246 | 8.01% | 2,811,912 | 13.62% | 843,775 | 9.03% | 9,744,077 | 10.30% | 4,563,490 | 10.65% | 1,113,732 | 5.18% | 853,417 | 6.96% | 3,935,215 | 9.64% | 1,457,209 | 7.75% | 8,675,277 | 27.66% |
| Insurance trust revenue ² | 63,445,708 | 3.89% | 557,520 | 2.70% | 14,332 | 0.15% | 1,063,840 | 1.12% | 971,325 | 2.26% | 378,479 | 1.76% | 0 | 0.00% | 47,080 | 0.12% | 4,522 | 0.02% | 1,021,714 | 3.29% |

¹ Duplicative intergovernmental transactions are excluded.

² The total of "net earnings" is a calculated statistic (the item code in the data file is X08), and thus can be positive or negative.

Net earnings is the sum of earnings on investments plus gains on investments minus losses on investments.

The change made in 2002 for asset valuation from book to market value in accordance with Statement 34 of the

Governmental Accounting Standards Board is reflected in the calculated statistics.

Abbreviations and symbols: (X) not applicable

n.e.c. = "not elsewhere classified"

Tabulated on September 21, 2012.

U.S. Census Bureau: Local Government Revenues - 2009-10

Dollar amounts are in thousands.

Source: U.S. Census Bureau, 2010 Annual Surveys of State and Local Government Finances.

| Description | United States Total | | Alabama | | Arkansas | | Florida | | Georgia | | Louisiana | | Mississippi | | North Carolina | | South Carolina | | Tennessee | |
|--|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|--------------------------------------|--------|
| | Local government amount ¹ | % |
| General revenue ¹ | 1,435,878,592 | | 17,276,665 | | 8,488,802 | | 83,803,678 | | 37,472,611 | | 19,995,412 | | 11,410,276 | | 36,044,456 | | 17,344,191 | | 21,328,101 | |
| Intergovernmental revenue ¹ | 544,231,765 | 37.90% | 6,979,139 | 40.40% | 5,069,977 | 59.73% | 21,912,280 | 26.15% | 11,933,039 | 31.84% | 7,959,343 | 39.81% | 5,030,373 | 44.09% | 14,389,336 | 39.92% | 5,437,754 | 31.35% | 7,214,899 | 33.89% |
| General revenue from own sources | 891,646,827 | 62.10% | 10,297,526 | 59.60% | 3,418,824 | 40.27% | 61,891,398 | 73.85% | 25,539,572 | 68.16% | 12,036,068 | 60.19% | 6,379,903 | 55.91% | 21,655,119 | 60.08% | 11,906,437 | 68.65% | 14,113,203 | 66.17% |

¹Duplicative intergovernmental transactions are excluded.

²The total of "net earnings" is a calculated statistic (the item code in the data file is X05), and thus can be positive or negative.

Net earnings is the sum of earnings on investments plus gains on investments minus losses on investments.

The change made in 2002 for asset valuation from book to market value in accordance with Statement 34 of the

Governmental Accounting Standards Board is reflected in the calculated statistics.

Abbreviations and symbols: (X) not applicable

n.s.c. = "not elsewhere classified"

Tabulated on September 21, 2012.

U.S. Census Bureau: Local Government Revenues - 2009-10

Dollar amounts are in thousands.

Source: U.S. Census Bureau, 2010 Annual Surveys of State and Local Government Finances.

| Description | United States Total | | | | Alabama | | | | Arkansas | | | | Florida | | | | Georgia | | | | Louisiana | | | | Mississippi | | | | North Carolina | | | | South Carolina | | | | Tennessee | | | | | |
|---|--------------------------------------|---|--------------------------------------|---|--------------------------------------|---|--------------------------------------|---|--------------------------------------|------------------|--------------------------------------|---|--------------------------------------|---|--------------------------------------|---|--------------------------------------|---|--------------------------------------|-------------------|--------------------------------------|---|--------------------------------------|---|--------------------------------------|---|--------------------------------------|---|--------------------------------------|-------------------|--------------------------------------|---|----------------|-------------------|--|--|-----------|-------------------|--|--|--|--|
| | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | Local government amount ¹ | 4 | | | | | | | | | | |
| General revenue from own sources | 891,646,827 | | | | 10,297,526 | | | | | 3,418,824 | | | | | 25,539,572 | | | | | 12,036,068 | | | | | 6,379,903 | | | | | 21,855,119 | | | | 11,906,437 | | | | 14,113,203 | | | | |
| Taxes: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Property | 568,644,464 | | | | 5,099,334 | | | | | 1,933,735 | | | | | 15,330,619 | | | | | 7,393,434 | | | | | 2,702,503 | | | | | 11,191,089 | | | | 5,847,513 | | | | 7,729,999 | | | | |
| General sales | 427,115,829 | | | | 2,253,429 | | | | | 810,154 | | | | | 10,508,478 | | | | | 3,332,063 | | | | | 2,505,583 | | | | | 8,871,123 | | | | 4,707,466 | | | | 5,031,001 | | | | |
| Motor fuel | 89,062,884 | | | | 1,069,911 | | | | | 1,091,705 | | | | | 4,472,564 | | | | | 3,870,928 | | | | | 110,747 | | | | | 2,337,455 | | | | 594,705 | | | | 2,330,485 | | | | |
| Alcoholic beverage | 26,706,480 | | | | 284,802 | | | | | 174,124 | | | | | 1,001,128 | | | | | 3,557,728 | | | | | 110,747 | | | | | 2,095,648 | | | | 317,032 | | | | 1,888,334 | | | | |
| Tobacco products | 1,292,097 | | | | 49 | | | | | 81,714 | | | | | 0 | | | | | 313,200 | | | | | 6,680 | | | | | 241,807 | | | | 207,672 | | | | 432,150 | | | | |
| Public utilities | 435,955 | | | | 34,096 | | | | | 3,770 | | | | | 127,572 | | | | | 3,266 | | | | | 56,843 | | | | | 56,843 | | | | 0 | | | 153,565 | | | | | |
| Other selective sales | 13,755,816 | | | | 21,983 | | | | | 135,454 | | | | | 357,424 | | | | | 189,570 | | | | | 0 | | | | | 0 | | | 60,382 | | | | 90,317 | | | | | |
| Individual income | 10,699,183 | | | | 98,788 | | | | | 34,852 | | | | | 516,133 | | | | | 120,374 | | | | | 56,685 | | | | | 182,964 | | | | 147,290 | | | | 188,268 | | | | |
| Corporate income | 24,343,849 | | | | 0 | | | | | 0 | | | | | 0 | | | | | 0 | | | | | 0 | | | | | 0 | | | 0 | | | | 0 | | | | | |
| Motor vehicle license | 6,120,533 | | | | 22,189 | | | | | 0 | | | | | 0 | | | | | 4,306 | | | | | 0 | | | | | 37,939 | | | | 59,295 | | | | 152,386 | | | | |
| Other taxes | 1,628,103 | | | | 645,946 | | | | | 31,876 | | | | | 0 | | | | | 186,137 | | | | | 86,173 | | | | | 244,571 | | | | 556,048 | | | | 216,126 | | | | |
| Charges and miscellaneous general revenue | 323,002,363 | | | | 5,196,192 | | | | | 1,465,089 | | | | | 10,208,953 | | | | | 4,642,635 | | | | | 3,677,400 | | | | | 10,464,031 | | | | 6,068,924 | | | | 6,363,204 | | | | |
| Current charges | 239,784,345 | | | | 4,191,967 | | | | | 963,747 | | | | | 7,716,792 | | | | | 3,456,668 | | | | | 3,215,852 | | | | | 6,311,402 | | | | 4,991,750 | | | | 4,916,246 | | | | |
| Education | 27,321,918 | | | | 331,961 | | | | | 145,767 | | | | | 513,612 | | | | | 67,656 | | | | | 470,402 | | | | | 795,284 | | | | 246,160 | | | | 435,346 | | | | |
| Institutions of higher education | 12,994,294 | | | | 0 | | | | | 0 | | | | | 14,635 | | | | | 0 | | | | | 0 | | | | | 475,297 | | | | 0 | | | 0 | | | | | |
| School lunch sales (gross) | 5,574,468 | | | | 131,228 | | | | | 55,219 | | | | | 210,108 | | | | | 50,824 | | | | | 57,318 | | | | | 235,185 | | | | 90,763 | | | | 130,188 | | | | |
| Hospitals | 67,659,617 | | | | 7,040 | | | | | 135,146 | | | | | 3,797,589 | | | | | 1,885,667 | | | | | 2,120,387 | | | | | 4,671,956 | | | | 3,388,065 | | | | 2,406,503 | | | | |
| Highways | 5,185,055 | | | | 0 | | | | | 302 | | | | | 20 | | | | | 9,139 | | | | | 1,257 | | | | | 480 | | | | 42,605 | | | | 1,031 | | | | |
| Air transportation (airports) | 16,659,528 | | | | 94,338 | | | | | 56,473 | | | | | 646,456 | | | | | 130,852 | | | | | 49,514 | | | | | 350,718 | | | | 97,310 | | | | 276,280 | | | | |
| Parking facilities | 3,223,576 | | | | 10,401 | | | | | 2,190 | | | | | 4,070 | | | | | 70,520 | | | | | 21,707 | | | | | 27,849 | | | | 38,440 | | | | 6,160 | | | | |
| Sea and inland port facilities | 2,837,914 | | | | 0 | | | | | 0 | | | | | 0 | | | | | 956 | | | | | 0 | | | | | 73 | | | | 4,761 | | | | 3,865 | | | | |
| Natural resources | 1,853,378 | | | | 109,045 | | | | | 28,270 | | | | | 117,114 | | | | | 110,465 | | | | | 23,101 | | | | | 119,773 | | | | 67,788 | | | | 73,834 | | | | |
| Parks and recreation | 7,868,053 | | | | 54,533 | | | | | 27,701 | | | | | 71,123 | | | | | 57,013 | | | | | 33,775 | | | | | 78,567 | | | | 28,998 | | | | 146,037 | | | | |
| Housing and community development | 42,888,836 | | | | 427,811 | | | | | 255,324 | | | | | 1,023,844 | | | | | 364,529 | | | | | 190,100 | | | | | 1,170,942 | | | | 612,455 | | | | 663,693 | | | | |
| Sewerage | 15,296,261 | | | | 161,516 | | | | | 146,733 | | | | | 507,938 | | | | | 182,881 | | | | | 142,709 | | | | | 487,502 | | | | 182,777 | | | | 195,362 | | | | |
| Solid waste management | 43,654,295 | | | | 313,269 | | | | | 161,465 | | | | | 1,034,826 | | | | | 470,192 | | | | | 162,680 | | | | | 808,278 | | | | 282,491 | | | | 703,514 | | | | |
| Other charges | 83,216,018 | | | | 1,006,225 | | | | | 521,342 | | | | | 2,492,167 | | | | | 1,185,967 | | | | | 461,549 | | | | | 1,952,628 | | | | 1,067,474 | | | | 1,466,958 | | | | |
| Interest earnings | 26,152,777 | | | | 231,180 | | | | | 199,667 | | | | | 820,919 | | | | | 494,446 | | | | | 160,051 | | | | | 541,554 | | | | 417,862 | | | | 673,902 | | | | |
| Special assessments | 7,143,416 | | | | 52,086 | | | | | 23,566 | | | | | 63,874 | | | | | 8,634 | | | | | 5,880 | | | | | 15,873 | | | | 52,917 | | | | 179,732 | | | | |
| Sale of property | 2,256,148 | | | | 64,976 | | | | | 95,719 | | | | | 26,568 | | | | | 18,665 | | | | | 35,738 | | | | | 21,626 | | | | 12,848 | | | | 46,745 | | | | |
| Other general revenue | 47,665,677 | | | | 657,984 | | | | | 288,024 | | | | | 1,560,800 | | | | | 664,212 | | | | | 259,880 | | | | | 1,373,605 | | | | 593,447 | | | | 666,579 | | | | |

¹ Duplicative intergovernmental transactions are excluded.

² The total of "net earnings" in the item code in the state file is X06, and this can be positive or negative. Net earnings is the sum of earnings on investments plus gains on investments minus losses on investments. The change made in 2002 for asset valuation from book to market value is accordance with Statement 34 of the Governmental Accounting Standards Board is reflected in the calculated statistics.

Abbreviations and symbols: (X) not applicable
n.e.c. = "not elsewhere classified"

Tabulated on September 21, 2012.