

CHAPTER NO. 719

SENATE BILL NO. 2812

By Rochelle

Substituted for: House Bill No. 3013

By Kisber

AN ACT To amend Tennessee Code Annotated, Section 7-86-108 and Title 67, Chapter 6, relative to telecommunications.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-102(24)(F)(iii), is amended by deleting such item in its entirety and substituting instead the following:

(iii)(a) The furnishing, for a consideration, of either intrastate or interstate telecommunication services. Except as otherwise provided in subitem (b), only those charges for interstate telecommunication which are originated or received in this state and which are billed or charged to a service address in Tennessee shall be included in the tax base;

(b) Subject to the provisions of 4 U.S.C. Section 116 (c), charges for mobile telecommunications services that are subject to taxation under item (iii)(a) of this paragraph shall be deemed to have originated or been received in Tennessee and to be billed or charged to a service address in this state if the customer's place of primary use is located in Tennessee, regardless of where such service actually originates or terminates, and no charges for mobile telecommunications services shall be subject to tax if the customer's place of primary use is not located in Tennessee.

SECTION 2. Tennessee Code Annotated, Section 67-6-102, is further amended by adding the following new subsection and by renumbering the current subsections:

(20) "Mobile telecommunications service" means commercial mobile radio service, as defined in 47 CFR §20.3 as in effect on June 1, 1999.

SECTION 3. Tennessee Code Annotated, Section 67-6-102, is further amended by adding the following new subsection to be appropriately designated:

() For the purposes of taxation of charges for mobile telecommunications services subject to the sourcing rules of 4 U.S.C. 116 *et seq.*, the following definitions apply:

(A) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in 47 CFR §20.3 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.

(B) "Customer" for purposes of taxation of mobile telecommunications service 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.

(iii) "Customer" does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

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

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

(E) "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.

(F) "Place of primary use" for purposes of taxation of mobile telecommunications services means the street address representative of where the customer's use of the mobile telecommunication primarily occurs, which must be:

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

(ii) within the licensed service area of the home service provider.

(G) "Reseller" for purposes of taxation of mobile telecommunications services means:

(i) 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

(ii) 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.

(H) "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 areas.

SECTION 4. Tennessee Code Annotated, Section 67-6-102, subsection (27), is amended by deleting the words "mobile telephones, paging systems," in the second sentence.

SECTION 5. Tennessee Code Annotated, Section 67-6-702(a)(4), is amended by deleting the words "or telephone services" and the words "or service" from the first sentence and by deleting the second sentence in its entirety.

SECTION 6. Tennessee Code Annotated, Section 67-6-501, is amended by adding the following new subsection:

A home service provider's liability for sales taxes due on mobile telecommunications services shall be determined in accordance with the provisions of 4 U.S.C. Sections 116 through 126. The home service provider's responsibility for determining the place of primary use of the mobile telecommunications services shall be controlled by federal law.

SECTION 7. Tennessee Code Annotated, Section 7-86-108(a)(1)(B)(i), is amended in the third (3rd) sentence of the second (2nd) paragraph by deleting the words "principal wireless service address (or billing address if wireless service address is not known)" and substituting instead the language "place of primary use as defined in Section 67-6-102".

SECTION 8. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following section:

(a) The Commissioner of Revenue may provide a home service provider with an electronic database that meets the requirements of 4 U.S.C. Section 119. If such database is provided by the commissioner, a home service provider shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any errors or omissions in such database, subject to the provisions of 4 U.S.C. Sections 119 and 4 U.S.C. 121. If no database is provided by the commissioner, a home service provider may use an enhanced zip code and shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of its reliance on such enhanced zip code, subject to the provisions of 4 U.S.C. Sections 120 and 4 U.S.C. 121.

(b) Taxable mobile telecommunications services that are aggregated with and not separately stated from mobile telecommunications services not subject to taxation shall be subject to the provisions of 4 U.S.C. Section 123 (b) and (c).

(c)(i) In the case of mobile telecommunications services subject to the federal sourcing rules, 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 billing 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 sixty (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 of up to two (2) years; provided, however, that this determination is not binding on the Department of Revenue. 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.

(ii) The procedures in this section 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 reasonably exercised the rights and procedures set forth in this section.

(iii) The procedures set forth in this section shall apply to taxes levied under Title 67, Chapter 6 and to charges levied under Section 7-86-108, and to any other subsequent taxes, fees, or charges levied on charges for mobile telecommunications services subject to federal sourcing rules under 4 U.S.C. Section 116 *et seq.*

(iv) The provisions of this section shall not be construed to impose any duty or obligation upon the Department of Revenue or any other state agency to promulgate rules or take any other administrative action and shall not be construed to provide for any cause of action or other remedy against the Department of Revenue beyond those provided in Section 67-1-1801 *et seq.*

SECTION 9. Tennessee Code Annotated, Section 67-6-702(g), is amended by designating the current language as subdivision (1) and adding the following as a new subdivision:

(2) Notwithstanding any other provisions of this chapter, local tax with respect to intrastate telecommunications services, which are subject to state tax, shall be imposed at the rate of two and one-half percent (2.5%).

SECTION 10. Tennessee Code Annotated, Section 67-6-710, is amended by adding the following as a new subsection:

() Proceeds of the taxes provided for in § 67-6-702(g) shall be distributed as follows:

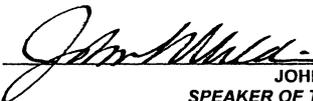
(1) Fifty percent (50%) shall be distributed as provided in § 67-6-710(e); and

(2) Fifty percent (50%) shall be distributed to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to § 67-6-712.

SECTION 11. If a court of competent jurisdiction enters a final judgment on the merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of 4 U.S.C. Sections 116 through 126 adopted by this act, then Sections 1 through 4 and Sections 6 through 8 of this act are declared to be invalid and have no legal effect as of the date of entry of such judgment. Further, as of the date of entry of such judgment, all provisions and amendments enacted by Sections 1 through 4 and Sections 6 through 8 of this act shall automatically be repealed and the law in effect immediately prior to the effective date of this act shall become effective without further action by the General Assembly. This section shall not apply to Sections 5, 9 and 10 of this act.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 17, 2002



JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this day of 2002

DON SUNDQUIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had Senate Bill No. 2812 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.