

## **BILL ANALYSIS**

Senate Research Center  
77R11511 E

C.S.S.B. 1497  
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Finance  
4/9/2001  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

The legislature finds that the United States Congress has enacted the Mobile Telecommunications Sourcing Act for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications services. The legislature recognizes that the federal act is intended to provide a clarification of sourcing rules that is revenue-neutral. C.S.S.B. 1497 implements the Mobile Telecommunications Sourcing Act.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 151C, Tax Code, by adding Section 151.061, as follows:

Sec. 151.061. SOURCING OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES. (a) Defines “home service provider,” “place of primary use,” and “electronic database.”

(b) Provides that this section applies to state and local sales and use taxes administered and computed under this title or Title 3 and to which this title or Title 3 applies, including this chapter.

(c) Provides that the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116-126) governs the sourcing of charges for mobile telecommunications services. Requires that in accordance with that Act certain requirements be met.

(d) Requires a customer, if the customer believes that an amount of tax or assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, to notify the home service provider in writing. Requires the customer to include in writing certain items.

(e) Requires the home service provider, not later than the 60th day after the date the home service provider receives a request under Subsection (d), to review the provider’s records and the electronic database or enhanced zip code to determine the correct amount of the tax imposed of the assignment of the customer’s place of primary use or taxing jurisdiction, as appropriate. Provides that if the home service provider determines that the amount of tax imposed or the assignment of place of primary use or taxing jurisdiction is incorrect, the home service provider correct the error and refund or credit any amount of tax erroneously collected from the customer. Requires the home service provider to correct the error and refund the amount of tax erroneously collected from the customer for a period of up to four years. Requires the home service provider, if the home service provider determines that the amount of tax imposed or the assignment of place of primary use or taxing jurisdiction is correct, to

provide a written explanation to the customer.

(f) Provides that the procedures prescribed by Subsections (d) and (e) are the first course of remedy available to a customer requesting a correction of assignment of place of primary use or of taxing jurisdiction or a refund of or other compensation for taxes erroneously collected by the home service provider.

(g) Authorizes the state to provide an electronic database, described in Subsection (a)(3), to a home service provider or, if the state does not provide such an electronic database to home service providers, the designated database provider may provide an electronic database to a home service provider.

(h) Requires the state or the designated database provider that provides or maintains an electronic database described in Subsection (a)(3) to provide notice of the availability of the then current electronic database, and any subsequent revisions thereof, by publication in the manner normally employed by the state.

(i) Requires a home service provider using the data contained in an electronic database described in Subsection (a)(3) to be held harmless from any tax, charge, or fee liability that otherwise would be due to solely as a result of any error or omission in such database provided by the state or designated database provider. Requires the home service provider to reflect changes made to such database during a calendar quarter not later than 30 days after the end of such calendar quarter.

(j) Requires that if neither the state nor the designated database provider provides an electronic database as described in Subsection (a)(3), a home service provider is to be held harmless from any tax, charge, or fee liability in the 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 Subsection (n), 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. Requires that if an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider is to 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. Provides that any enhanced zip code assignment changed in accordance with Subsection (n) is deemed to be in compliance with this section. Provides that 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 undertaken certain requirements.

(k) Provides that Subsection (j) applies to a home service provider that is in compliance with the requirements of Subsection (j), if an electronic database as defined in Subsection (a)(3) is not provided until the later of certain dates.

(l) Requires a home service provider to be responsible for obtaining and maintaining the customer's place of primary use as defined in Subsection (a)(2). Requires the taxing jurisdiction, subject to Subsection (n), and if the home service provider's reliance on information provided by its customer is in good faith, to meet certain requirements.

(m) Requires a taxing jurisdiction, except as provided in Subsection (n), to 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 two years after the date of the enactment of the Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116-126) as that customer's place of primary use for the remaining

term of such service contract or agreement, for purposes of determining the taxing jurisdiction to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

(n) Authorizes the state to determine certain requirements.

(o)(1) Provides that 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.

(2) Prohibits a customer, if a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, from relying 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.

SECTION 2. Amends Section 321.203(g), Tax Code, to provide, that the sale of mobile telecommunications services is consummated in accordance with the provisions of Section 151.061.

SECTION 3. Amends Section 323.203(g), Tax Code, to provide, that the sale of mobile telecommunications services is consummated in accordance with the provisions of Section 151.061.

SECTION 4. Amends Chapter 771D, Health and Safety Code, by adding Section 771.0735, as follows:

Sec. 771.0735. **SOURCING OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.** Provides that the Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116-126) governs the sourcing of charges for mobile telecommunications services. Requires that in accordance with that Act certain requirements be met.

SECTION 5. Effective date: August 1, 2002. Makes application of this Act prospective.

### **SUMMARY OF COMMITTEE CHANGES**

Amends As Filed S.B. 1497 to provide implementation of the federal Mobile Telecommunications Sourcing Act (4 U.S.C. 116-126).

The Substitute amends Chapter 151C, Tax Code, by adding Section 151.061, whereas the original amended Chapter 151A, Tax Code, by adding Section 151.01025.

The Substitute Amends Section 321.203(g), Tax Code, and Chapter 771D, Health and Safety Code, which were not amended in the original.

The Substitute takes effect August 1, 2002, whereas the proposed effective date in the original was September 1, 2001.