

## CHAPTER 18

### CHAPTER 18, LAWS 2002

#### AN ACT

RELATING TO TAXATION; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 TO CONFORM TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

#### "ADDITIONAL DEFINITIONS.--

A. As used in the Gross Receipts and Compensating Tax Act, "gross receipts" includes the receipts of a home service provider from providing mobile telecommunications services to customers whose place of primary use is in New Mexico if:

(1) the services originate and terminate in the same state, regardless of where the mobile telecommunications services originate, terminate or pass through; and

(2) the charges for such services are billed by or for a customer's home service provider and are deemed provided by such home service provider.

B. For the purposes of this section, "home service provider", "mobile telecommunications services", "customer" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act."

Section 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"EXEMPTION--GROSS RECEIPTS TAX--SALE OF CERTAIN TELECOMMUNICATIONS SERVICES.--Exempted from the gross receipts tax are receipts of a home service provider from providing mobile telecommunications services to persons whose place of primary use is outside New Mexico, regardless of where the mobile telecommunications services originate, terminate or pass through. For the purposes of this section, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act."

Section 3. Section 7-9-5 NMSA 1978 (being Laws 1966, Chapter 47, Section 5) is amended to read:

"7-9-5. PRESUMPTION OF TAXABILITY.--

A. To prevent evasion of the gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax. Any person engaged solely in transactions specifically exempt under the provisions of the Gross Receipts and Compensating Tax Act shall not be required to register or file a return under that act.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, then the charges for nontaxable mobile telecommunications services shall be subject to gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business. For the purposes of this subsection, "charges for mobile telecommunications services", "home service provider" and "mobile telecommunications services" have the meanings given in the federal Mobile Telecommunications Sourcing Act."

Section 4. Section 7-9C-2 NMSA 1978 (being Laws 1992, Chapter 50, Section 2 and also Laws 1992, Chapter 67, Section 2, as amended) is amended to read:

"7-9C-2. DEFINITIONS.--As used in the Interstate Telecommunications Gross Receipts Tax Act:

A. "charges for mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "engaging in interstate telecommunications business" means carrying on or causing to be carried on the business of providing interstate telecommunications service;

D. "home service provider" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

E. "interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing:

(1) interstate telecommunications services, other than mobile telecommunications services, that either originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico, regardless of

where the bill for such services is actually delivered [~~but~~  
~~excludes~~]; and

(2) mobile telecommunications services that originate in one state and terminate in any location outside that state, whether within or outside the United States, to a customer with a place of primary use in New Mexico. "Interstate telecommunications gross receipts" excludes mobile telecommunications services provided to a customer with a place of primary use outside of New Mexico, cash discounts allowed and taken and interstate telecommunications gross receipts tax payable for the reporting period. Also excluded from "interstate telecommunications gross receipts" are any gross receipts or sales taxes imposed by any Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

F. "interstate telecommunications service" means the service of originating or receiving in New Mexico interstate and international telephone and telegraph service, including but not limited to the transmission of voice, messages and data by way of electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite or similar facilities;

G. "mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other entity; the United States or any agency or instrumentality of the United States; or the state of New Mexico or any political subdivision of the state;

I. "place of primary use" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

J. "private communications service" means a dedicated service for a single customer that entitles the customer to exclusive or priority use of a communications channel or group of channels between a location within New Mexico and one or more specified locations outside New Mexico; and

K. "wide-area telephone service" means a telephone service that entitles the subscriber, upon payment

of a flat rate charge dependent on the total duration of all such calls and the geographic area selected by the subscriber, to either make or receive a large volume of telephonic communications to or from persons located in specified geographical areas."

Section 5. Section 7-9C-4 NMSA 1978 (being Laws 1992, Chapter 50, Section 4 and also Laws 1992, Chapter 67, Section 4) is amended to read:

"7-9C-4. PRESUMPTION OF TAXABILITY.--

A. To prevent evasion of the interstate telecommunications gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in interstate telecommunications business are subject to the interstate telecommunications gross receipts tax.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, then the charges for nontaxable mobile telecommunications services shall be subject to interstate telecommunications gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business."

Section 6. Section 63-9D-9.2 NMSA 1978 (being Laws 2001, Chapter 110, Section 13) is amended to read:

"63-9D-9.2. IMPOSITION OF SURCHARGE--LIABILITY OF USER FOR SURCHARGE--COLLECTION--UNCOLLECTED AMOUNTS.--

A. There is imposed a wireless enhanced 911 surcharge in the amount of fifty-one cents (\$.51) that shall commence with the first billing period of each subscriber on or following ninety days after July 1, 2001.

B. Commercial mobile radio service providers shall be required to bill and collect the wireless enhanced 911 surcharge from their subscribers whose places of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, are in New Mexico. The wireless enhanced 911 surcharge required to be collected by the commercial mobile radio service provider shall be added to and stated clearly and separately in the billings to the subscriber. The wireless enhanced 911 surcharge collected by the commercial mobile radio service provider shall not be considered revenue of the commercial mobile radio service provider.

C. A billed subscriber is liable for payment of the wireless enhanced 911 surcharge until it has been paid

to the commercial mobile radio service provider.

D. A commercial mobile radio service provider has no obligation to take legal action to enforce the collection of the wireless enhanced 911 surcharge. An action may be brought by or on behalf of the department. A commercial mobile radio service provider, upon request and not more than once a year, shall provide the department a list of the wireless enhanced 911 surcharge amounts uncollected along with the names and addresses of subscribers who carry a balance that can be determined by the commercial mobile radio service provider to be the nonpayment of the wireless enhanced 911 surcharge. The commercial mobile radio service provider shall not be held liable for uncollected wireless enhanced 911 surcharge amounts."

Section 7. Section 63-9F-11 NMSA 1978 (being Laws 1993, Chapter 54, Section 11, as amended) is amended to read:

"63-9F-11. IMPOSITION OF SURCHARGE.--

A. A telecommunications relay service surcharge of thirty-three hundredths of one percent is imposed on the gross amount paid by customers for:

(1) intrastate telephone services, other than mobile telecommunications services, provided in this state; and

(2) intrastate mobile telecommunications services that originate and terminate in the same state, regardless of where the mobile telecommunications services originate, terminate or pass through, provided by home service providers to customers whose place of primary use is in New Mexico.

The surcharge shall be included on the monthly bill of each customer of a local exchange company or other telecommunications company providing intrastate telephone services or intrastate mobile telecommunications services and paid at the time of payment of the monthly bill. Receipts from selling a service to any other telecommunications company or provider for resale shall not be subject to the surcharge. The customer shall be liable for the payment of this surcharge to the local exchange company or other telecommunications company providing intrastate telephone services to the customer. For the purposes of this subsection, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

B. Every telecommunications company providing

intrastate telephone services shall be responsible for assessing, collecting and remitting the telecommunications relay service surcharge to the taxation and revenue department. The amount of the telecommunications relay service surcharge collected by a telecommunications company shall be remitted monthly to the taxation and revenue department, on or before the twenty-fifth of the month following collection, which shall administer and enforce the collection of the surcharge pursuant to the provisions of the Tax Administration Act.

C. The taxation and revenue department shall remit to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted pursuant to the provisions of Subsection D of this section. Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the month in which the surcharge is collected.

D. The taxation and revenue department may deduct an amount not to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the general fund each month.

E. The general services department shall report to the revenue stabilization and tax policy committee annually by September 30 the following information with respect to the prior fiscal year:

- (1) the amount and source of revenue received by the telecommunications access fund;
- (2) the amount and category of expenditures from the fund; and
- (3) the balance of the fund on that June 30."

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is August 1, 2002.