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HOUSE BILL 299

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Donald L. Whitaker

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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:

"[NEW MATERIAL] 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

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1 telecommunications services originate, terminate or pass
2 through; and

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

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

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

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

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

24 "7-9-5. PRESUMPTION OF TAXABILITY.--

25 A. To prevent evasion of the gross receipts tax

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1 and to aid in its administration, it is presumed that all
2 receipts of a person engaging in business are subject to the
3 gross receipts tax. Any person engaged solely in transactions
4 specifically exempt under the provisions of the Gross Receipts
5 and Compensating Tax Act shall not be required to register or
6 file a return under ~~[this]~~ that act.

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

19 Section 4. Section 7-9C-2 NMSA 1978 (being Laws 1992,
20 Chapter 50, Section 2 and also Laws 1992, Chapter 67, Section
21 2, as amended) is amended to read:

22 "7-9C-2. DEFINITIONS.--As used in the Interstate
23 Telecommunications Gross Receipts Tax Act:

24 A. "charges for mobile telecommunications
25 services" has the meaning given in the federal Mobile

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1 Telecommunications Sourcing Act;

2 [A-] B. "department" means the taxation and
3 revenue department, the secretary of taxation and revenue or
4 any employee of the department exercising authority lawfully
5 delegated to that employee by the secretary;

6 [B-] C. "engaging in interstate telecommunications
7 business" means carrying on or causing to be carried on the
8 business of providing interstate telecommunications service;

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

11 [C-] E. "interstate telecommunications gross
12 receipts" means the total amount of money or the value of
13 other consideration received from providing:

14 (1) interstate telecommunications services,
15 other than mobile telecommunications services, that either
16 originate or terminate in New Mexico and are charged to a
17 telephone number or account in New Mexico, regardless of where
18 the bill for such services is actually delivered [~~but~~
19 ~~excludes~~]; and

20 (2) mobile telecommunications services that
21 originate in one state and terminate in any other state to a
22 customer with a place of primary use in New Mexico.

23 "Interstate telecommunications gross receipts" excludes mobile
24 telecommunications services provided to a customer with a
25 place of primary use outside of New Mexico, cash discounts

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1 allowed and taken and interstate telecommunications gross
2 receipts tax payable for the reporting period. Also excluded
3 from "interstate telecommunications gross receipts" are any
4 gross receipts or sales taxes imposed by any Indian nation,
5 tribe or pueblo; provided that the tax is approved, if
6 approval is required by federal law or regulation, by the
7 secretary of the interior of the United States; and provided
8 further that the gross receipts or sales tax imposed by the
9 Indian nation, tribe or pueblo provides a reciprocal exclusion
10 for gross receipts, sales or gross receipts-based excise taxes
11 imposed by the state or its political subdivisions;

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

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

22 ~~[E.]~~ H. "person" means any individual, estate,
23 trust, receiver, cooperative association, club, corporation,
24 company, firm, partnership, limited liability company, joint
25 venture, syndicate or other entity; the United States or any

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1 agency or instrumentality of the United States; or the state
2 of New Mexico or any political subdivision of the state;

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

5 [~~F-~~] J. "private communications service" means a
6 dedicated service for a single customer that entitles the
7 customer to exclusive or priority use of a communications
8 channel or group of channels between a location within New
9 Mexico and one or more specified locations outside New Mexico;
10 and

11 [~~G-~~] K. "wide-area telephone service" means a
12 telephone service that entitles the subscriber, upon payment
13 of a flat rate charge dependent on the total duration of all
14 such calls and the geographic area selected by the subscriber,
15 to either make or receive a large volume of telephonic
16 communications to or from persons located in specified
17 geographical areas. "

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

21 "7-9C-4. PRESUMPTION OF TAXABILITY. --

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

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1 to the interstate telecommunications gross receipts tax.

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

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

13 "63-9D-9.2. IMPOSITION OF SURCHARGE--LIABILITY OF USER
14 FOR SURCHARGE--COLLECTION--UNCOLLECTED AMOUNTS.--

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

19 B. Commercial mobile radio service providers shall
20 be required to bill and collect the wireless enhanced 911
21 surcharge from their subscribers whose [~~billing addresses~~]
22 places of primary use, as defined in the federal Mobile
23 Telecommunications Sourcing Act, are in New Mexico. The
24 wireless enhanced 911 surcharge required to be collected by
25 the commercial mobile radio service provider shall be added to

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1 and stated clearly and separately in the billings to the
2 subscriber. The wireless enhanced 911 surcharge collected by
3 the commercial mobile radio service provider shall not be
4 considered revenue of the commercial mobile radio service
5 provider.

6 C. A billed subscriber is liable for payment of
7 the wireless enhanced 911 surcharge until it has been paid to
8 the commercial mobile radio service provider.

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

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

24 "63-9F-11. IMPOSITION OF SURCHARGE. --

25 A. A telecommunications relay service surcharge of

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1 thirty-three [~~one~~] hundredths of one percent is imposed on the
2 gross amount paid by customers for:

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

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

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

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1 B. Every telecommunications company providing
2 intrastate telephone services shall be responsible for
3 assessing, collecting and remitting the telecommunications
4 relay service surcharge to the taxation and revenue
5 department. The amount of the telecommunications relay
6 service surcharge collected by a telecommunications company
7 shall be remitted monthly to the taxation and revenue
8 department, on or before the twenty-fifth of the month
9 following collection, which shall administer and enforce the
10 collection of the surcharge pursuant to the provisions of the
11 Tax Administration Act.

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

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

25 E. The general services department shall report to

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1 the revenue stabilization and tax policy committee annually by
2 September 30 the following information with respect to the
3 prior fiscal year:

4 (1) the amount and source of revenue received
5 by the telecommunications access fund;

6 (2) the amount and category of expenditures
7 from the fund; and

8 (3) the balance of the fund on that June 30."

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

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