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**SFA**



BILL ANALYSIS

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Senate Bill 477 (as enrolled)  
Senate Bill 824 (as enrolled)  
Senate Bill 1248 (as enrolled)  
Sponsor: Senator Valde Garcia (S.B. 477)  
Senator Joanne G. Emmons (S.. 824 & 1248)  
Senate Committee: Finance  
House Committee: Tax Policy

**PUBLIC ACT 455 of 2002**  
**PUBLIC ACT 456 of 2002**  
**PUBLIC ACT 452 of 2002**

Date Completed: 1-14-03

### **CONTENT**

**Senate Bill 477 amended the Use Tax Act to allow a taxpayer to separate taxable and nontaxable telecommunications and other services in the application of the use tax.**

**tax the purchase of machinery and equipment taxable under Section 3b of the Use Tax Act.**

The three bills were tie-barred to each other. A more detailed description of Senate Bill 477 and 824 follows.

**Senate Bill 824 added Section 3b to the Use Tax Act to do the following:**

#### **Senate Bill 477**

- **Provide that mobile telecommunications services are subject to the tax if a customer's place of primary use of the services is in this State, regardless of where the services originate, terminate, or pass through.**
- **Require home service providers to maintain a record of a customer's place of primary use.**
- **Require home service providers to use a particular database, or an enhanced zip code, to determine the assignment to this State of a customer's place of primary use.**
- **Establish procedures for a provider to follow when a customer requests a correction of the amount of tax levied or of the provider's record of the customer's place of primary use.**
- **Provide for the taxation of mobile telecommunication services and other billed services not subject to the tax, if the charges for these services are aggregated with the charges for taxable mobile telecommunication services.**

Under the Use Tax Act, the use or consumption of intrastate telephone services is taxable in the same manner as tangible personal property is taxed. The manner of taxing tangible personal property also applies to the consumption or use of interstate telephone communications services that either originate or terminate in this State and for which the charge is billed to a Michigan service address or phone number by a provider within or outside this State. Under the bill, these provisions apply *except* as provided in Section 3b of the Act (added by Senate Bill 824).

Senate Bill 477 specifies that, if charges for intrastate or interstate telecommunications services and other billed services not subject to the use tax are aggregated with, and not stated separately from, charges for telecommunications services that are subject to the tax, then the nontaxable telecommunications services and other nontaxable billed services are subject to the tax unless the service provider can reasonably identify, from its books and records kept in the regular course of business, charges for nontaxable telecommunication services.

**Senate Bill 1248 amended the General Sales Tax Act to exempt from the sales**

Further, if charges for nontaxable telecommunications and other services are aggregated with, and not stated separately from, taxable telecommunications services, a customer may not rely upon the nontaxability of those telecommunications and other billed services unless the customer's service provider separately states the nontaxable and taxable services, or the service provider elects (after receiving a written request from the customer) to provide verifiable data, based upon the provider's books and records kept in the regular course of business, that reasonably identify the nontaxable services.

#### **Senate Bill 824**

Under the bill, the use or consumption of mobile telecommunications services is subject to the use tax in the same manner as tangible personal property is subject to the tax, regardless of where the services originate, terminate, or pass through, as provided below.

The bill specifies that mobile telecommunications services provided to a customer, the charges for which are billed by or for the customer's home service provider, are considered to be provided by that home service provider if the customer's place of primary use for the services is in this State. If the customer's place of primary use is outside the State, the services are not subject to the use tax. (Under the bill, a "home service provider" is a facilities-based carrier or reseller that enters into a contract with a customer for mobile telecommunications services. "Place of primary use" means the residential street address or the primary business street address within the licensed service area of a home service provider at which a customer primarily uses mobile telecommunications services. "Mobile telecommunications services" are commercial mobile radio services that originate and terminate in the same state or originate in one state and terminate in another state; the term does not include prepaid mobile telecommunications services or air-ground radiotelephone service. A "customer" is a person who contracts with a home service provider for mobile telecommunications services. For the sole purpose of determining the place of primary use, a customer is the end user of the services, if the end user is not the contracting party. A customer does not include a reseller

or a serving carrier. A "reseller" is a telecommunications services provider who purchases services from another provider and then resells them, uses the services as a component of a mobile telecommunications service, or integrates the services into a mobile telecommunications service. A "serving carrier" is a facilities-based telecommunications services provider that contracts with a home service provider for mobile telecommunications services to a customer outside of the home service provider's or reseller's licensed service area.)

Further, under the bill, a home service provider is responsible for obtaining and maintaining a record of the customer's place of primary use. In doing so, the provider may rely in good faith on information provided by a customer as to the customer's place of primary use, and may treat the address used for a customer under a service contract or agreement in effect on August 1, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the contract or agreement.

The bill provides that if the Department of Treasury chooses to create or provide a database that complies with the provisions of Federal law 4 USC 119, a home service provider must use that database to determine the assignment of the customer's place of primary use to the State. (That Federal law allows a state to provide an electronic database to a home service provider. If the state does not do so, then a designated database provider may provide the database to a home service provider.) If the Department does not provide a database, a home service provider may use an enhanced zip code to determine the assignment of the customer's place of primary use to the State. A provider that uses a database provided by the Department is not liable for any tax that otherwise would be due solely as a result of an error or omission in that database. A provider that uses an enhanced zip code is not liable for any tax that otherwise would be due solely as a result of an assignment of a street address to another state if the provider exercised due diligence to ensure that the appropriate street addresses are assigned to this State.

If a customer believes that the amount of the use tax levied, or the home service provider's record of the customer's place of primary use, is incorrect, the customer must notify the provider in writing and give the street address of the customer's place of primary use; the name and number of the account for which the customer requests the correction; a description of the error asserted by the customer; and any other information that the provider reasonably requires to process the request.

Within 60 days after receiving the customer's request, the home service provider must review its records of the customer's place of primary use and enhanced zip code to determine the correct amount of use tax. If the provider determines that the tax or its record is incorrect, the provider must correct the error and refund or credit any tax erroneously collected from the customer. A refund may not exceed a period of four years. If the provider determines that the tax and the customer's place of primary use are correct, the provider must give the customer a written explanation of that determination. The bill states that these procedures are the first course of remedy available to a customer requesting a correction of the provider's record of place of primary use or a refund of taxes erroneously collected by the provider.

If the Department of Treasury makes a final determination that a home service provider's record of a customer's place of primary use is incorrect, the provider must change its records to reflect that final determination. The corrected record must be used to calculate the tax prospectively, from the date of the final determination. The Department may not make a final determination before it has notified the customer that it has found that the provider's record is incorrect, and the customer has been afforded an opportunity to appeal that finding. An appeal to the Department must be conducted according to Section 22 of the revenue Act (which allows a taxpayer aggrieved by an assessment, decision, or order of the Department to appeal the contested portion to the tax tribunal).

If the Department makes a final determination that a customer's place of primary use is incorrect, the provider is not liable for any taxes that would have been levied if the customer's place of primary use had been

correct. This provision is subject to Section 5, and applies notwithstanding Section 8, of the Use Tax Act. (Section 8 allows the State Treasurer to authorize a person to assume the obligation of self-accruing, and remitting directly to the Department, use tax due on purchases or leases, under certain conditions. Section 5 requires the seller of tangible personal property to collect the tax from the consumer.)

If charges for mobile telecommunications services and other billed services not subject to the tax are aggregated with, and not separately stated from, charges for mobile telecommunications services that are subject to the tax, the nontaxable services and other billed services are subject to the tax unless the home service provider can reasonably identify billings for services not subject to the tax from its books and records kept in the regular course of business. Also, in this situation, a customer may not rely upon the exempt status for those telecommunications and other billed services unless one or both of the following conditions are satisfied:

- The customer's provider states the charges for exempt services separately from taxable services.
- The provider elects, after receiving a written request from the customer, to identify the exempt mobile telecommunications services and other exempt billed services by reference to the provider's books and records kept in the regular course of business. (The provider then is subject to the requirements that apply when a customer believes that the amount of the tax levied, or the provider's record of the customer's place of primary use, is incorrect.)

In addition, the bill provides that, for an air-ground radiotelephone service, the use tax is imposed at the location of the origination of the service in this State, as identified by a home service provider or information received by the provider from its servicing carrier. ("Air-ground radiotelephone service" means the term as defined in Federal regulations, i.e., a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.)

The bill specifies that the use tax does not

apply to the use or consumption of mobile telecommunications services by means of a prepaid telephone calling card, a prepaid authorization number for telephone use, or a charge for Internet access; or to the purchase of machinery and equipment for use or consumption in the rendition of any combination of services taxable under the bill.

Section 3b of the Act, added by the bill, will be repealed as of the date of entry of a final judgment (that is no longer subject to appeal) of a court that substantially limits or impairs the essential elements of Federal law 4 USC 116 to 126 (which provides for the regulation of taxes, charges, and fees imposed on vendors and customers of mobile telecommunications services).

MCL 205.93a (S.B. 477)  
205.93 et al. (S.B. 824)  
205.54u (S.B. 1248)

Legislative Analyst: George Towne

## **FISCAL IMPACT**

### **Senate Bill 477**

State Government. It does not appear that the bill will have any fiscal impact at this time; however, the bill will help avert potential problems in determining accurate tax liabilities in the not-too-distant future as telecommunication companies move toward offering multiple products for one set charge.

Local Government. The bill will have no impact on local governments.

### **Senate Bills 824 & 1248**

The bills will have no net fiscal impact on State or local government. The provisions in these bills will bring Michigan into conformity with the Federal Mobile Telecommunications Sourcing Act, which requires states to adhere to a uniform rule for taxing telecommunications. Under these new rules, Michigan must tax all calls made by telecommunications customers whose place of primary use is in this State. Michigan no longer will be allowed to tax calls made in Michigan by nonresidents, but it will tax calls made outside this State by Michigan residents.

Fiscal Analyst: Jay Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.