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SFA**BILL ANALYSIS**

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Senate Bill 824 (as introduced 11-8-01)
Senate Bill 1248 (as introduced 4-23-02)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 4-23-02

CONTENT

Senate Bill 824 would amend the Use Tax Act to apply the tax to mobile telecommunications services that were considered to be provided by a customer's "home service provider", regardless of where the services originated or terminated; and to specify that services provided in Michigan to a customer, and billed by the customer's home service provider, would be considered to be provided by that home service provider. Senate Bill 1248 would amend the General Sales Tax Act to exempt from the sales tax machinery and equipment taxable under Senate Bill 824.

Senate Bill 824 would take effect on August 1, 2002. Senate Bill 1248 is tie-barred to Senate Bill 824 and Senate Bill 477 (which, as passed the Senate, would amend the Use Tax Act to allow a taxpayer to separate taxable and nontaxable telecommunications and other services in the application of the use tax).

Senate Bill 824

Currently, the Use Tax Act applies the tax to the use or consumption of certain services (in the same manner as it taxes the use or consumption of tangible personal property), including intrastate telephone, telegraph, wire, and other similar communications, plus local and long distance telephone service that both originates and terminates in Michigan. The bill would extend the use tax to "mobile telecommunications services with the sourcing of charges made according to provisions" in the bill.

("Mobile telecommunications service" would mean commercial mobile radio service, as defined in Federal regulations in effect on June 1, 1999. Under 47 CFR 20.3, "commercial mobile radio service" means a mobile service that is provided for profit, an interconnected service, and available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public; or the functional equivalent of such a mobile service.)

The bill provides that all charges for mobile telecommunications services that were considered to be provided by a customer's home service provider would be subject to the use tax, regardless of where the mobile telecommunications services originated, terminated, or passed through. A customer whose place of primary use was outside the State would not be subject to the tax.

The bill specifies that mobile telecommunications services provided in Michigan to a customer, the charges for which were billed by or for the customer's home service provider, would be considered to be provided by the customer's home service provider. (A "customer" would be a person who contracted with the home service provider for mobile telecommunications services or the end user of those services if the end user were not the contracting party, but only for purposes of determining the "place of primary use". A customer would 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. A "home service provider" would be the facilities based carrier or reseller with which the customer contracted for mobile telecommunications service. The "place of primary use" would be the street address representative of where the customer's use of the mobile telecommunications service primarily occurred. That location would have to be the residential street address or the primary business street address of the customer that was within the licensed service area of the home service provider.)

If a customer believed that the amount of tax or an assignment of place of primary use or taxing jurisdiction included billing were erroneous, the customer would have to notify the home service provider in writing. The notice would have to include the customer's street address for the customer's place of primary use; the account name and number for which the customer requested the correction; a description of the error asserted by the customer; and any other information that the home service provider reasonably required to process the request.

By the 60th day after the date the home service provider received the request, the provider would have to review its records and the electronic database or enhanced zip code to determine the correct amount of the tax imposed, or the assignment of the customer's place of primary use or taxing jurisdiction, as appropriate. If the provider determined that the amount of tax imposed or the assignment of place of primary use or taxing jurisdiction was incorrect, the provider would have to correct the error and refund or credit any amount of tax erroneously collected from the customer, for a period of up to four years. If the provider determined that the amount of tax imposed or the assignment of place of primary use or taxing jurisdiction was correct, the provider would have to give a written explanation to the customer. These procedures would be the first course of remedy available to a customer.

A home service provider would be responsible for obtaining and maintaining the customer's place of primary use. If the provider's reliance on information supplied by its customers were in good faith, a taxing jurisdiction would have to allow the provider to rely on the applicable residential or business street address supplied by the provider's customer, and not hold the provider liable for any additional taxes based on a different determination of the place of primary use for taxes customarily passed on to the customer as a separate itemized charge.

A home service provider could treat the address it used for tax purposes for any customer under a service contract or agreement, in effect two years after July 28, 2000, as that customer's place of primary use for the remaining term of the contract or agreement, excluding any extension or renewal, for purposes of determining the taxing jurisdictions to which the taxes for mobile telecommunications services were remitted.

The Department of Treasury could determine that the address used for purposes of determining if the tax was due for mobile telecommunications services did not meet the definition of "place of primary use", and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination. Before the State gave a notice, the customer would have to be given an opportunity to demonstrate in accordance with applicable State administrative procedures that the address was the customer's place of primary use. The State also could determine that the assignment of a taxing jurisdiction by a home service provider did not reflect the correct taxing jurisdiction and give binding notice to the provider to change the assignment on a prospective basis from the date of notice of determination. The provider would have to be given an opportunity to demonstrate, in accordance with applicable State administrative procedures, that the assignment reflected the correct taxing jurisdiction.

The Department could request that the home service provider aggregate and separate charges

not subject to the use tax on its customer billings, and in its books and records kept in the regular course of business, to avoid taxation of nontaxable charges.

Senate Bill 1248

The General Sales Tax Act exempts from the tax the purchase of certain machinery and equipment that is used in transmitting, receiving, or switching two-way interactive communication, and whose use or consumption is subject to the use tax. The bill would extend this exemption to machinery and equipment taxable under Section 3b of the Use Tax Act, proposed by Senate Bill 824.

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

Legislative Analyst: George Towne

FISCAL IMPACT

The bills would have no net fiscal impact on State or local government. The provisions in these bills would bring Michigan in 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 would tax all calls made by telecommunications customers whose primary place of use is Michigan. Michigan no longer would be allowed to tax calls made in Michigan by nonresidents, but it would tax calls made outside of Michigan by Michigan residents. States have until August 1, 2002, to adopt these new rules. If these new rules are not adopted by this date, Michigan would realize a loss in revenue because under Federal law it would not be able to tax calls made outside of Michigan 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.