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Telecommunications Transaction Tax Administration Project—Proposal III, Local Imposition, Local Administration

**MTC Sales and Use Tax Subcommittee
Draft 2/18/11—For Discussion Purposes Only**

I. Scope of State-Level Administration of Local Transaction Taxes on Communications Services

The administrative requirements of this chapter shall apply to each type of local transaction tax on communications services within a local taxing jurisdiction. Nothing in this chapter shall be construed to require that the administrative requirements for one type of local transaction tax on communications services be identical to those applicable to any other type of local transaction tax on communications services. To the extent a tax is imposed on any communication service, the base must be uniform among localities. Nothing in this chapter shall be construed to require any local taxing jurisdiction to exempt, or to impose a tax on any communications service, or to adopt any particular type of local transaction tax on communications services, or to impose the same rate of such tax as any other local taxing jurisdiction.

II. Definitions

As used in this Act, the following terms shall apply:

“Local taxing jurisdiction” means any municipality, city, county, township, parish, school district, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include any of the several States, the District of Columbia, or any territory or possession of the United States.

“Local transaction tax on communications services” means any tax, charge, or fee levied by a local taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for communications services, regardless of whether such

tax, charge, or fee is imposed on the seller or purchaser or the service and regardless of the terminology used to describe the tax, charge, or fee.

“Centralized tax administrator” ” means a local taxing jurisdiction or other single entity designated by majority vote of participating local taxing jurisdictions to perform the functions and duties set forth under this for any type of local transaction tax imposed on communications services.

III. Cooperation Among Jurisdictions

The centralized tax administrator may request from any local taxing jurisdiction any information that the centralized tax administrator considers necessary in administering this Act, and such agency or jurisdiction shall furnish such information.

IV. Local Level Administration

A. The centralized tax administrator shall administer and collect all local transaction taxes imposed by every local taxing jurisdiction within this state. As applicable, sellers or purchasers of communications services that are subject to any type of local transaction tax on communications services are only required to register with, file returns with, and remit amounts to the centralized tax administrator. The centralized tax administrator shall conduct, or authorize others to conduct on its behalf, audits of such sellers and purchasers for the local transaction tax on communications services. Local taxing jurisdictions shall not conduct audits of sellers or purchasers for local transaction taxes on communications services, except as otherwise provided in this Act.

B. The centralized tax administrator may authorize audits of communications service providers to be conducted or performed by others on behalf of the centralized tax administrator so long as: (1) the person is conducting the audit for all local taxing jurisdictions within the state; (2) the person is subject to the same confidentiality provisions (and other protections afforded a taxpayer) as a person working for local taxing jurisdiction; (3) the audit does not cover an audit period already conducted by a local taxing jurisdiction or other person acting on its behalf, absent fraud or mutual consent; and (4) the audit is subject to the same administrative and appeal procedures granted to audits conducted by local taxing jurisdictions.

C. Audits performed by the centralized tax administrator may include a determination of the seller’s or purchaser’s compliance with the jurisdictional siting of the end user’s service addresses and a determination of whether the rate collected for the local transaction tax on communications services is correct. However, if the centralized tax administrator determines that a seller or purchaser of communications services sells or purchases communications services within a single local taxing jurisdiction in this state, that local taxing jurisdiction may perform an audit of such person with respect to the communications services sells or purchases within the local taxing jurisdiction.

V. Registration

Each person seeking to engage in business as a communications services provider must file with the centralized tax administrator an application for a certificate of registration. Registration with the centralized tax administration agency under this section constitutes registration with every local taxing jurisdiction in this state that imposes a local transaction tax on communication services; provided that a communications services provider may elect to separately register with any local taxing jurisdiction in this state that imposes such taxes.

VI. Returns

A. For each type of local transaction tax on communications services imposed by any local taxing jurisdiction within this state, every seller or purchaser of communications services maintaining a place of business in this state shall, on or before [calendar period], make a return to the centralized tax administrator, stating:

(i) Its name.

(ii) The address of its principal place of business or the address of the principal place of business (if a different address) from which it engages in the business of providing communications services.

(iii) The total amount of gross charges billed by it during the [calendar period] for providing communications services and upon the basis of which the tax is imposed.

B. The centralized tax administrator shall:

(i) Require that only a single tax return for each taxing period for each seller or purchaser of communications services be filed for each type of local transaction tax on communications services to include all the taxing jurisdictions within the state.

(ii) Require that such returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

(iii) Make available to all sellers and purchasers of communications services a simplified return that is filed electronically.

C. Where local taxing jurisdictions impose a type of local transaction tax on communications services at varying rates, each seller or purchaser of communications services obligated to collect and/or remit one of the local transaction taxes on communications services imposed by a local taxing jurisdiction chapter shall separately report and identify each such tax to the centralized tax administrator, by jurisdiction, on a form prescribed by the centralized tax administrator, and shall pay or remit such taxes to the centralized tax administrator. The requirements of this paragraph shall not apply to

local taxing jurisdictions imposing a type of local transaction tax on communications services at rates that do not vary.

VII. Allocation and Distribution of Tax

A. The centralized tax administrator shall provide for the collection of local transaction taxes on communications services and the distribution of such amounts to each appropriate local taxing jurisdiction.

B. The proceeds of all local transaction taxes on communications services levied by each local taxing jurisdiction collected and designated for distribution to local taxing jurisdictions shall be transferred to the Local Transaction Tax Trust Fund and held there to be distributed to such local taxing jurisdiction.

1) Where local transaction tax rates vary between local taxing jurisdictions, the centralized tax administrator shall distribute the telecommunications taxes collected in the amounts as reported on the telecommunications providers' return for each taxing jurisdiction.

2) Where the local transaction tax rates do not vary between local taxing jurisdictions, the centralized tax administrator shall distribute the telecommunications taxes collected to each local taxing jurisdiction by a formula designated by local taxing jurisdictions by majority vote.

C. For purposes of this [section], the Local Transaction Tax Trust Fund shall be created by the local taxing jurisdictions and maintained by the centralized tax administrator . The local taxing jurisdictions, by majority vote, may promulgate rules for the maintenance of the Local Transaction Tax Trust Fund.

***VIII. Rates and Boundary Changes**

A. Each local taxing jurisdiction within this state that levies a tax on telecommunications shall

1) Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum sixty days' notice to the telecommunications provider.

2) Apply local taxing jurisdiction boundary changes only on the first day of a calendar quarter after a minimum sixty days' notice to the telecommunications provider.

B. The centralized tax administrator shall

1) Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

2) Provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the ? (This provision comes from the SSUTA, which provides that the Governing Board makes the decision re codes for other jurisdictions, etc. For purposes of this model statute, what body should make this decision? The state?)

3) Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates. The database records must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119(a)).

IX. Reimbursement of Administrative Costs

The centralized tax administrator shall charge the local taxing jurisdiction for its services in an amount sufficient to reimburse the centralized tax administrator for the cost to the centralized tax administrator for rendering its services; provided that the amount charged to local taxing jurisdiction for such services shall not exceed [one percent] of the tax collected. The cost of administration shall be prorated among the local taxing jurisdictions levying a local transaction tax on communications services on the basis of the amount collected for a particular local taxing jurisdiction to the total amount collected for all such jurisdictions.

X. Authority of Local Taxing Jurisdictions to Promulgate Rules

The local taxing jurisdictions, by majority vote, may promulgate rules to administer and enforce the assessment and collection of the taxes, interest, and penalties collected under or imposed by a local taxing jurisdiction.

XI. Process of Rules, Forms and Instructions

To administer each type of local transaction tax on communications services, the local taxing jurisdictions, by majority vote, may adopt rules relating to:

(i) The filing of returns and remittance of tax, including provisions concerning electronic funds transfer and electronic data interchange subject to reasonable exceptions determined by the state tax administrator.

(ii) The determination of customer service addresses, consistent with federal and state law.

(iii) The interpretation or definition of any exemptions or exclusions from taxation granted by law.

(iv) The records and methods necessary for a seller and purchaser of communications services to demonstrate the exercise of due diligence.

(v) The registration of sellers and purchasers of communications services.

(vi) The types of books and records kept in the regular course of business which must be available during an audit of a seller's or purchaser's books and records and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. Such records may be required to be made available to the state tax administrator in an electronic format when so kept by the seller or purchaser. The seller or purchaser may support any allocation of charges with books and records kept in the regular course of business covering the seller's or purchaser's entire service area, including territories outside this state. During an audit, the centralized tax administrator may reasonably require production of any additional books and records found necessary to assist in its determination.

(vii) The procedure for claiming a refund or credit of local transaction tax imposed on communications service by the local taxing jurisdiction.