



MULTISTATE TAX COMMISSION

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To:	Sales and Use Tax Subcommittee
From:	Roxanne Bland, MTC Counsel
Date:	July 14, 2011
Subject:	Telecommunications Transaction Tax Centralized Administration Project—Proposal III, Local Imposition of Tax, Local Administration

The Sales and Use Tax Subcommittee met via teleconference to discuss this project on June 21, 2011. During that meeting, the subcommittee reviewed draft Proposal III (Local Administration, Local Imposition) and directed the work group to add a definition of “telecommunications services,” since the term is used throughout the draft, but is not defined in the draft. The work group met once and presents the revised draft Proposal III (Attachment A) for the subcommittee’s consideration. The revised draft includes a definition of “telecommunications,” which is based on the SST definition.

The work group reminds the subcommittee that at the July 2010 meeting, concerns were expressed that the draft definitions as contained in a previous draft Proposal II (State Administration, Local Imposition) were too broad for a model statute pertaining to centralized administration, and that it might limit local authority to tax. In response to those concerns, the work group recommended in December 2010 that the definitions be stricken from Proposal II, and placed instead in a separate document (See Attachment B) that would become an introductory statement applicable to all three models to delineate the scope of the project.

Because the definition of “telecommunications” was added to draft Proposal III, the definitions of “local taxing jurisdiction” and “local transaction tax on telecommunications services” from the introductory statement were also included in Proposal III. The subcommittee may wish to reconsider whether it would like the definitions to be placed in a separate, introductory statement, or instead included within each of the three draft proposals.

ATTACHMENT A



Working together since 1967 to preserve federalism and tax fairness

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

MTC Sales and Use Tax Subcommittee
Draft 7/14/11—For Discussion Purposes Only

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

The administrative requirements of this chapter shall apply to each type of local transaction tax on telecommunications 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 telecommunications services be identical to those applicable to any other type of local transaction tax on telecommunications services. To the extent a tax is imposed on any telecommunications 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 telecommunications service, or to adopt any particular type of local transaction tax on telecommunications 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:

A. “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.

B. “Local transaction tax on telecommunications 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 telecommunications 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.

C. “Centralized tax administrator” means a local taxing jurisdiction or other third party, which may be a private entity, designated by majority vote of local taxing jurisdictions to perform the functions and duties set forth under this Act for any type of local transaction tax imposed on telecommunications services.

D. “Telecommunications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

2. Installation or maintenance of wiring or equipment on a customer's premises;

3. Tangible personal property;

4. Advertising, including but not limited to directory advertising.

5. Billing and collection services provided to third parties;

6. Internet access service;

7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider.

8. Ancillary services; or

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

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. The centralized tax administrator shall follow the confidentiality laws applicable to the local jurisdiction.

IV. Local Level Administration

A. The centralized tax administrator shall administer and collect all local transaction taxes on telecommunications services imposed by every local taxing jurisdiction within this state. As applicable, sellers or purchasers of telecommunications services that are subject to any type of local transaction tax on telecommunications 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 telecommunications services. Local taxing jurisdictions shall not conduct audits of sellers or purchasers for local transaction taxes on telecommunications services, except as otherwise provided in this Act.

B. The centralized tax administrator may authorize audits of telecommunications 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 for which an audit has already been 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 telecommunications services is correct. However, if the centralized tax administrator determines that a seller or purchaser of telecommunications services sells or purchases telecommunications 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 telecommunications services transactions within the local taxing jurisdiction.

V. Registration

Each person seeking to engage in business as a telecommunications 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 telecommunications 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 telecommunications services imposed by any local taxing jurisdiction within this state, every seller of telecommunications services doing

business in this state shall, on or before [calendar period], make a return to the centralized tax administrator, stating:

1. Its name.

2. 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 telecommunications services.

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

4. The amount of tax or fee due and the amount of tax or fee remitted.

B. The centralized tax administrator shall:

1. Require that only a single tax return for each taxing period for each seller of telecommunications services be filed for each type of local transaction tax on telecommunications services to include all the taxing jurisdictions within the state.

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

3. Make available to all sellers of telecommunications services a simplified return that is filed electronically.

C. Where local taxing jurisdictions impose a type of local transaction tax on telecommunications services at varying rates, each seller of telecommunications services obligated to collect and remit one of the local transaction taxes on telecommunications services imposed by a local taxing jurisdiction chapter shall separately identify each such tax on the report to the centralized tax administrator, by jurisdiction, in a manner 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 telecommunications 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 telecommunications services and the distribution of such amounts to each appropriate local taxing jurisdiction.

B. The proceeds of all local transaction taxes on telecommunications 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 determined by both 1) a majority of the number of local taxing jurisdictions in the state and 2) the local taxing jurisdictions reflecting a majority of the total population of all local taxing jurisdictions in the state according to current U.S. Census Bureau information.

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 vote as set forth in B(2) of this section, 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 services shall

1. Provide that local rate changes will be effective ~~only~~ for bills issued on or after 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 local telecommunications transaction tax purposes.

2. Provide and maintain a database of all local telecommunications transaction 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 consistent with that maintained by the state revenue agency.

a. If the state revenue agency does not maintain a database, the centralized tax administrator shall certify automated systems (CAS) to aid in the administration of local telecommunications transaction taxes. The centralized tax

administrator may certify a software program as a CAS if the centralized tax administrator determines that the program meets all of the following requirements:

- i. It determines the applicable local tax rate for a telecommunications transaction;
- ii. It determines whether or not a transaction is exempt from tax;
- iii. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
- iv. It can generate reports and returns as required by the centralized tax administrator; and
- v. It can meet any other requirement set by the centralized tax administrator.

b. Each local taxing jurisdiction shall review software submitted to the centralized tax administrator for certification as a CAS under this section. Such review shall include a review to determine that the program accurately reflects the taxability of the local telecommunications service transaction included in the program. Upon approval by the local taxing jurisdiction, the local taxing jurisdiction shall certify to the centralized tax administrator its acceptance of the determination of the taxability of local telecommunications services in the program.

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 jurisdictions for its services pursuant to a contract entered into by the centralized tax administrator and the local taxing jurisdictions. The contract shall be approved by both 1) a majority of the number of local taxing jurisdictions in the state and 2) the local taxing jurisdictions reflecting a majority of the total population of all local taxing jurisdictions in the state according to current U.S. Census Bureau information. The cost of administration shall be prorated among the local taxing jurisdictions levying a local transaction tax on telecommunications 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 both 1) a majority of the number of local taxing jurisdictions in the state and 2) the local taxing jurisdictions reflecting a majority of the total population of all local taxing jurisdictions in the state according to current U.S. Census Bureau information, 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 telecommunications services, the local taxing jurisdictions, by both 1) a majority of the number of local taxing jurisdictions in the state and 2) the local taxing jurisdictions reflecting a majority of the total population of all local taxing jurisdictions in the state according to current U.S. Census Bureau information, may adopt rules relating to:

A. 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 centralized tax administrator.

B. The determination of customer service addresses, consistent with federal and state law.

C. The interpretation or definition of any exemptions or exclusions from taxation granted by law.

D. The records and methods necessary for a seller of telecommunications services to demonstrate the exercise of due diligence in determining correct addresses and applicable rates.

E. The registration of sellers of telecommunications services.

F. 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 centralized 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 in this state, including territories outside a local taxing jurisdiction. During an audit, the centralized tax administrator may reasonably require production of any additional books and records found necessary to assist in its determination.

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

ATTACHMENT B

Communications Transaction Tax Project – Introductory Statement

The MTC initiated a project at its July 2007 meeting to develop a centralized administration model for state and local communications transaction taxes. Based on a review of administrative models around the country the Uniformity Sales and Use Tax Subcommittee decided to develop three approaches to the centralized collection model, each representing a distinct approach to centralization. The Uniformity Subcommittee appointed a working group to develop the models. Proposal I provides for state imposition and administration, with revenue sharing to local governments (see, e.g., the Virginia communications services tax). Proposal II provides for state and local imposition and state level administration (see, e.g., the Florida communications services tax). Proposal III provides for local imposition and centralized local administration of the taxes (see, e.g., the South Carolina telecommunications tax).

Scope of Taxes Covered by Model

The three proposed models are for use in reforming the administration of state and local taxes on communications services. Solely for determining whether a tax is on communications services the following definitions apply. The definitions are not intended to require a state or local government to tax or exempt any particular type of communications services.

Definitions

“Ancillary services” means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

“Communications services” includes telecommunications services, ancillary services, and video programming services.

“End user” includes any person other than a person who receives by contract a product “transferred electronically” for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.

“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.

“Purchaser” means an end user of communications services or a person acquiring communications services on behalf of an end user.

“Seller” means the provider of communications services to an end user.

“State tax administrator” means a state’s tax commission, department of revenue, public utilities commission, or any other single entity designated by state law to perform the functions and duties set forth under this chapter for any type of local transaction tax imposed on communications services.

“Telecommunications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

- A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;
- B. Installation or maintenance of wiring or equipment on a customer's premises;
- C. Tangible personal property;
- D. Advertising, including but not limited to directory advertising.
- F. Internet access service;
- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider.
- H. Ancillary services; or
- I. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

“Video programming services” includes cable service as defined in 47 U.S.C. § 522(6); interactive on-demand service as defined in 47 U.S.C. § 522(12); the provision of video programming by a multichannel video programming distributor as defined in 47 U.S.C. §§ 522(20) and –(13); and the provision of video programming by providers of commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations, when such services are offered for purchase by subscribers or customers of such service.