

House Bill 1443

By: Representatives Skipper of the 137th, Royal of the 164th and Buck of the 135th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia
2 Annotated, relating to general provisions regarding state sales and use tax, so as to provide
3 for the taxation of mobile telecommunications services; to provide for procedures,
4 conditions, and limitations; to provide for powers, duties, and authority of the Department
5 of Revenue; to change certain provisions regarding imposition of various taxes by political
6 subdivisions; to amend Code Section 46-5-134 of the Official Code of Georgia Annotated,
7 relating to the billing of subscribers for "911" charges, so as to provide for applicability of
8 certain charges; to provide for circumstances under which this Act shall be invalid and
9 unenforceable; to provide an effective date; to provide for applicability; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Part 1 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
14 relating to general provisions regarding state sales and use tax, is amended by adding a new
15 subsection at the end of Code Section 48-8-6, relating to imposition of various taxes by
16 political subdivisions, to be designated subsection (c) to read as follows:

17 "(c) Notwithstanding any law or ordinance to the contrary, any tax, charge, or fee levied
18 by any political subdivision of this state and applicable to mobile telecommunications
19 services, as defined in Section 124(7) of the federal Mobile Telecommunications Sourcing
20 Act, 4 U.S.C. Section 124(7), shall apply only if the customer's place of primary use is
21 located within the boundaries of the political subdivision levying such local tax, charge,
22 or fee. For purposes of this subsection, the provisions of Code Section 48-8-13 shall apply
23 in the same manner and to the same extent as such provisions apply to the tax levied by
24 Code Section 48-8-1 on mobile telecommunications services. This subsection shall not be
25 construed to authorize the imposition of any tax, charge, or fee."

SECTION 2.

Said part is further amended by adding a new Code section at the end thereof, to be designated Code Section 48-8-13, to read as follows:

"48-8-13.

(a) For purposes of this Code section, the terms and corresponding definitions set forth in 4 U.S.C. Section 124 shall apply.

(b) Subject to the provisions of 4 U.S.C. Section 116(c), the tax levied by this chapter shall apply only to those charges for mobile telecommunications services subject to tax that are deemed to be provided to a customer by a home service provider pursuant to 4 U.S.C. Section 117(a) if the customer's place of primary use is located within this state, regardless of where the mobile telecommunications services originate, terminate, or pass through.

(c) If a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a bill under the provisions of this Code section is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within 60 days of receiving a notice under this subsection, the home service provider shall review its records to determine the customer's taxing jurisdiction. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer. The procedures in this subsection shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction or a refund of or other compensation for taxes, charges, or fees erroneously collected by the home service provider, and no cause of action based upon a dispute arising from such taxes, charges, or fees shall accrue until a customer has exhausted the remedies set forth in this subsection.

(d)(1) If a mobile telecommunications service is not subject to the tax levied by this chapter, and if the amount charged for such mobile telecommunications service is aggregated with and not separately stated from the amount paid or charged for any service that is subject to such tax, then the nontaxable mobile telecommunications service shall be treated as being subject to such tax unless the home service provider can reasonably identify the amount paid or charged for the mobile telecommunications

1 service not subject to such tax from its books and records kept in the regular course of
2 business.

3 (2) If a mobile telecommunications service is not subject to the tax levied by this chapter,
4 a customer may not rely upon the nontaxability of such mobile telecommunications
5 service unless the customer's home service provider separately states the amount charged
6 for such nontaxable mobile telecommunications service or the home service provider
7 elects, after receiving a written request from the customer in the form required by the
8 provider, to provide verifiable data based upon the home service provider's books and
9 records that are kept in the regular course of business that reasonably identifies the
10 amount charged for such nontaxable mobile telecommunications service.

11 (e)(1) A mobile telecommunications services provider who is obligated to remit or pay
12 the tax levied by this chapter shall be held harmless from any liability, including tax,
13 interest, and penalties, which would otherwise be due solely as a result of an assignment
14 of a place of primary use to an incorrect jurisdiction, if the mobile telecommunications
15 services provider satisfies the requirements of 4 U.S.C. Section 120(a).

16 (2)(A) The department may elect to provide an electronic database that satisfies the
17 requirements of 4 U.S.C. Section 119. If the department provides such database, a
18 home service provider using the data contained in such database shall be held harmless
19 from any liability, including tax, interest, and penalties, which would otherwise be due
20 solely as a result of an assignment of a place of primary use to an incorrect local
21 jurisdiction.

22 (B) Paragraph (1) of this subsection shall apply to a home service provider who is in
23 compliance with the terms of such paragraph until the later of:

24 (i) Eighteen months after the approval described in 4 U.S.C. Section 119(a); or

25 (ii) Six months after the department provides an electronic database that satisfies the
26 requirements of 4 U.S.C. Section 119.

27 (3) A home service provider shall be responsible for obtaining and maintaining the
28 customer's place of primary use. Subject to paragraph (5) of this subsection, if the home
29 service provider's reliance on information provided by its customer is in good faith:

30 (A) The home service provider shall be entitled to rely on the applicable residential or
31 business street address supplied by such customer; and

32 (B) The home service provider shall be held harmless from liability for any additional
33 tax, including any related interest or penalties, which are based on a different
34 determination of such customer's place of primary use.

35 (4) Except as provided in paragraph (5) of this subsection, a home service provider shall
36 be allowed to treat the address used for purposes of the tax levied by this chapter for any
37 customer under a service contract in effect on August 1, 2002, as that customer's place

1 of primary use for the remaining term of such service contract or agreement, excluding
2 any extension or renewal of such service contract or agreement.

3 (5)(A) If the department determines that the address used by a home service provider
4 as a customer's place of primary use does not meet the definition of 'place of primary
5 use,' the department shall notify such customer of such determination and provide such
6 customer an opportunity to demonstrate that such address satisfies such definition.

7 (B) If the customer fails to demonstrate that the address meets the definition of such
8 customer's place of primary use, the department shall provide the home service
9 provider with the proper address to be used as such customer's place of primary use,
10 and the home service provider shall begin using the address provided by the department
11 as such customer's place of primary use in the next full billing period.

12 (6)(A) If the department determines that the assignment of a taxing jurisdiction by a
13 home service provider does not reflect the correct taxing jurisdiction, the department
14 shall notify the home service provider of such determination and provide such home
15 service provider an opportunity to demonstrate that the assignment represents the
16 correct taxing jurisdiction.

17 (B) If the home service provider fails to demonstrate that the assignment reflects the
18 correct taxing jurisdiction, the department shall provide the home service provider with
19 the correct taxing jurisdiction to be used, and the home service provider shall begin
20 using the taxing jurisdiction provided by the department in the next full billing period."

21 **SECTION 3.**

22 Code Section 46-5-134 of the Official Code of Georgia Annotated, relating to the billing of
23 subscribers for "911" charges, is amended by adding a new subparagraph at the end of
24 paragraph (2) of subsection (a), to be designated subparagraph (D), to read as follows:

25 "(D) Notwithstanding the foregoing, the application of any '911' service charge with
26 respect to a mobile telecommunications service, as defined in 4 U.S.C. Section 124(7),
27 shall be governed by the provisions of Code Section 48-8-6."

28 **SECTION 4.**

29 If a court of competent jurisdiction enters a final judgment on the merits that is based on
30 federal law, is no longer subject to appeal, and substantially limits or impairs the essential
31 elements of Sections 116 through 126 of Title 4 U.S.C., then all provisions and applications
32 of this Act are declared to be invalid and have no legal effect as of the date of entry of such
33 judgment.

