

Chapter 8

MOBILE TELEPHONE SERVICE REVENUE TAX

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2-8-1: DEFINITIONS:

For purposes of this chapter, the following terms are defined as follows:

CUSTOMER:

- A. The person or entity having a place of primary use within the town, that contracts with the home service provider for mobile telecommunications services; or
- B. If the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services; but this clause applies only for the purpose of determining the place of primary use.
- C. "Customer" does not include:
 - 1. A reseller of mobile telecommunications service; or
 - 2. A serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

DESIGNATED DATABASE PROVIDER: A corporation, association or other entity representing all the political subdivisions of a state that is:

- A. Responsible for providing an electronic database prescribed in subsection 119(a) of chapter 4, title 4 of the United States code if the state has not provided such electronic database; and
- B. Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide such database prescribed by sections 116 through 126 of chapter 4, title 4 of the United States code.

ENHANCED ZIP CODE: A United States postal zip code of nine (9) or more digits.

HOME SERVICE PROVIDER: The facilities based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

LICENSED SERVICE AREA: The geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

MOBILE TELECOMMUNICATIONS SERVICE: Commercial mobile radio service, as defined in section 20.3 of title 47 of the code of federal regulations as in effect on June 1, 1999. For purposes of this chapter, "mobile telecommunications services" shall not include:

- A. Pager services using mobile devices that do not allow for two-way voice communication;
- B. Narrowband personal communications services; and
- C. Short message services (SMS).

PLACE OF PRIMARY USE: The street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

- A. The residential street address or the primary business street address of the customer; and
- B. Within the licensed service area of the home service provider.

PREPAID TELEPHONE CALLING SERVICES: The right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

RESELLER:

- A. A provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and
- B. Does not include a serving carrier with which a home service provider arranges for the service to its customers outside the home service provider's licensed service area.

SERVING CARRIER: A facilities based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-2: MONTHLY TAX LEVIED:

There is levied upon every home service provider a tax of one dollar (\$1.00) per month for each telephone number assigned to any customer whose place of primary use is within the town.

The home service provider may or may not pass this tax on to its customers. If the home service provider passes the tax on to the customer, and the tax is reflected on the customer's bill, the tax shall be shown on the bill as a flat rate municipal tax charge. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-3: REMITTANCE DATE:

- A. Filing And Payment: Within thirty (30) days after the end of each calendar month, the home service provider taxed hereunder shall file, with the Town Treasurer, a report computing the tax. Coincidental with the filing of such report, the business shall pay to the Town Treasurer the amount of the tax due for the calendar month subject to the report. If the thirtieth day after the end of each calendar month falls on a Saturday, Sunday or state or federal holiday, the deadline for filing the monthly report and remitting payment for that month is extended to the next subsequent business day.
- B. Delinquent Payment: Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10%) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this chapter. All overdue amounts, including penalty charges, shall bear interest until paid at the rate of an additional ten percent (10%) per annum.
- C. Reconciliation: Within three (3) years after the filing of any report or the making of any payment, the Town Treasurer may examine such report or payment, determine the accuracy thereof, and, if the town treasurer finds any errors, report such errors to the home service provider for correction. If any tax, as paid, shall be found deficient, the home service provider shall within sixty (60) days remit the difference, and if the tax as paid to be found excessive, the town shall within sixty (60) days refund the difference, plus interest, at the same rate as if such amount were deficient. In the event of a disagreement, the home services provider shall file under protest pending the resolution of the dispute between the parties or through the courts.
- D. Record Inspection: The records of the home service provider pertaining to the reports and payment of the tax, including, but not limited to, any records deemed necessary by the town to calculate or confirm proper payment by the home service provider, shall be open for inspection by the town and its duly authorized representatives upon reasonable notice at all reasonable business hours of the home services provider within the statute of limitations period defined in subsection C of this section, "reconciliation".
- E. Home Service Provider Duty To Cooperate On Record Inspection:
 - 1. In order to facilitate any record inspection, the home service provider shall, upon thirty (30) days' prior written request:
 - a. Grant the town or its duly authorized representatives reasonable access to those portions of the books and records of the home service provider necessary to calculate and confirm property payment of the tax; or

- b. Provide the town or its duly authorized representatives with reports containing or based on information necessary to calculate and confirm proper payment of the tax.
2. Any requests for such books, records, reports or portions thereof shall specify in writing the purpose for such request. Any books, records, reports or portions thereof provided by the home service provider to the town under a claim that such documents are confidential business records are hereby designated as "protected records" and shall not be copied or disclosed by the town to third parties without the written permission of the home service provider, unless such documents are determined by a court of law to constitute "public records" within the meaning of the Utah government records access and management act. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-4: ELECTRONIC DATABASE OR ENHANCED ZIP CODE LISTING:

A. Electronic Database:

1. Provision Of Database: The state may provide an electronic database to a home service provider; or, if the state does not provide such an electronic database, the designated database provider may choose to provide an electronic database to a home service provider.
 2. Format:
 - a. Such electronic database, whether provided by the state or the designated database provider, shall be provided in a format approved by the American National Standards Institute's accredited standards committee X12, which, allowing for de minimis deviations, designates for each street address in the town, including, to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code identified by one nationwide standard numeric code.
 - b. Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.
 - c. The nationwide standard numeric codes shall contain the same number of numeric digits, with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States, using a format similar to FIPS 55-3 or other appropriate standard approved by the federation of tax administrators and the multistate tax commission, or their successors. Each address shall be provided in standard postal format.
- B. Notice; Updates:** The state or designated database provider that provides or maintains an electronic database described above shall provide notice of the availability of the then current electronic database and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge or fee notices to taxpayers in such state.

- C. User Held Harmless: A home service provider using the data contained in an electronic database described above shall be held harmless from any tax, charge or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the town or designated database provider. The home service provider shall reflect the changes made to such database during a calendar quarter, no later than thirty (30) days after the end of such calendar quarter the state has issued notice of the availability of an electronic database reflecting such changes under subsection B of this section, "notice; updates".
- D. Procedure If No Electronic Database Provided:
1. Safe Harbor: If neither the state nor the designated database provider provides an electronic database, a home service provider shall be held harmless from any tax, charge or fee liability in the town that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction, if the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction and exercises due diligence to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code. Any enhanced zip code assignment changed is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:
 - a. Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;
 - b. Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and
 - c. Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.
 2. Termination Of Safe Harbor: Subsection D1 of this section, "safe harbor", applies to a home service provider that is in compliance with the requirements of the "safe harbor" subsection with respect to a state for which an electronic database is not provided, until the later of:
 - a. Eighteen (18) months after the nationwide standard numeric code has been approved by the federation of tax administrators and the multistate tax commission; or
 - b. Six (6) months after the state or a designated database provider in the state provides such database. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-5: PLACE OF PRIMARY USE:

- A. A home service provider is responsible for obtaining and maintaining the customer's place of primary use, subject to section [2-8-4](#) of this chapter, and if the home service provider's reliance on information by its customer is in good faith, a home service provider:
 - 1. May rely upon the applicable residential or business street address supplied by the home service provider's customer.
 - 2. Is not liable for any additional taxes, charges or fees based on a different determination of the place of primary use for taxes, charge or fees that are customarily passed on to the customer as a separate address under existing agreements.
- B. A home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect two (2) years after the date of this amendment to this chapter as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction to which taxes, charges or fees on charges for mobile telecommunication services are remitted. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-6: TAX AGAINST CUSTOMER:

Each customer shall accurately report the customer's place of primary use. The customer shall be liable for any taxes not paid by the home service provider as a result of the customer's failure to accurately report the customer's place of primary use. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-7: NONAPPLICATION:

This chapter does not apply to the determination of the taxing situs of:

- A. Prepaid telephone calling services; or
- B. Air-ground radio telephone service, as defined in section 22.99 of title 47 of the code of federal regulations as in effect on June 1, 1999. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-8: IMPLEMENTATION DATE:

If this chapter is adopted before January 1, 2001, a home service provider shall have a minimum of thirty (30) days' notice before being obligated to collect the tax described in this chapter. After January 1, 2001, a home service provider shall have a minimum of sixty (60) days' notice before being obligated to collect the tax described in this chapter. After January 1, 2001, a home service provider shall receive a minimum of sixty (60) days' notice regarding any changes to this chapter. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-9: SEVERABILITY:

If the monthly tax levied, section [2-8-2](#) of this chapter, is for any reason determined to be, or is rendered, illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such section shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section; provided, however, upon such event and in lieu of such tax, there is levied upon every home service provider a tax equal to six percent (6%) of the annual gross revenue of the home service provider generated from services and products to customers. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)