

EFFECTIVE DATE; APPLICATION OF AMENDMENT

Section effective July 28, 2000, and applicable only to customer bills issued after the first day of the first month beginning more than 2 years after July 28, 2000, see section 3 of Pub. L. 106-252, set out as a note under section 116 of this title.

§ 120. Procedure if no electronic database provided

(a) **SAFE HARBOR.**—If neither a State nor designated database provider provides an electronic database under section 119, a home service provider shall be held harmless from any tax, charge, or fee liability in such State that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to section 121, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction 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 for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 121 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 such home service provider demonstrates that it has—

(1) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

(2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

(3) 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.

(b) **TERMINATION OF SAFE HARBOR.**—Subsection (a) applies to a home service provider that is in compliance with the requirements of subsection (a), with respect to a State for which an electronic database is not provided under section 119 until the later of—

(1) 18 months after the nationwide standard numeric code described in section 119(a) has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

(2) 6 months after such State or a designated database provider in such State provides such database as prescribed in section 119(a).

(Added Pub. L. 106-252, §2(a), July 28, 2000, 114 Stat. 628.)

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see section 3 of Pub. L. 106-252, set out as a note under section 116 of this title.

§ 121. Correction of erroneous data for place of primary use

(a)¹ **IN GENERAL.**—A taxing jurisdiction, or a State on behalf of any taxing jurisdiction or taxing jurisdictions within such State, may—

(1) determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use in section 124(8) 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 if—

(A) if the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

(B) before the taxing jurisdiction gives such notice of determination, the customer is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the address is the customer's place of primary use;

(2) determine that the assignment of a taxing jurisdiction by a home service provider under section 120 does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if—

(A) if the taxing jurisdiction making such determination is not a State, such taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the State before giving such notice of determination; and

(B) the home service provider is given an opportunity to demonstrate in accordance with applicable State or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

(Added Pub. L. 106-252, §2(a), July 28, 2000, 114 Stat. 629.)

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§ 122. Determination of place of primary use

(a) **PLACE OF PRIMARY USE.**—A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use (as defined in section 124). Subject to section 121, and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall—

(1) allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer; and

¹ So in original. No subsec. (b) was enacted.

(2) not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.

(b) ADDRESS UNDER EXISTING AGREEMENTS.—Except as provided in section 121, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect 2 years after the date of the enactment of the Mobile Telecommunications Sourcing Act 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 jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

(Added Pub. L. 106-252, §2(a), July 28, 2000, 114 Stat. 630.)

REFERENCES IN TEXT

The date of the enactment of the Mobile Telecommunications Sourcing Act, referred to in subsec. (b), is the date of enactment of Pub. L. 106-252, which was approved July 28, 2000.

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§ 123. Scope; special rules

(a) ACT DOES NOT SUPERSEDE CUSTOMER'S LIABILITY TO TAXING JURISDICTION.—Nothing in sections 116 through 126 modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of, any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

(b) ADDITIONAL TAXABLE CHARGES.—If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to such tax, charge, or fee from its books and records that are kept in the regular course of business.

(c) NONTAXABLE CHARGES.—If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are

kept in the regular course of business that reasonably identifies the nontaxable charges.

(Added Pub. L. 106-252, §2(a), July 28, 2000, 114 Stat. 630.)

REFERENCES IN TEXT

Act, referred to in subsec. (a), probably means the Mobile Telecommunications Sourcing Act, Pub. L. 106-252, July 28, 2000, 114 Stat. 626, which enacted sections 116 to 126 of this title and provisions set out as notes under sections 1 and 116 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of this title and Tables.

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§ 124. Definitions

In sections 116 through 126 of this title:

(1) CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.—The term “charges for mobile telecommunications services” means any charge for, or associated with, the provision of 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, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) CUSTOMER.—

(A) IN GENERAL.—The term “customer” means—

(i) the person or entity that contracts with the home service provider for mobile telecommunications services; or

(ii) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service, but this clause applies only for the purpose of determining the place of primary use.

(B) The term “customer” does not include—

(i) a reseller of mobile telecommunications service; or

(ii) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(3) DESIGNATED DATABASE PROVIDER.—The term “designated database provider” means 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 section 119(a) 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 this title.