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## Finance Committee

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### HB 2404

**Brief Description:** Implementing the federal mobile telecommunications sourcing act.

**Sponsors:** Representatives Berkey, Gombosky, Morris and McIntire; by request of Department of Revenue.

#### Brief Summary of Bill

- State and local excise taxes on mobile telecommunications are sourced to the customer's primary place of use, in a manner consistent with federal law.
- A procedure is created for customer complaints about incorrect tax amounts on mobile telecommunications billings.

**Hearing Date:** 1/24/02

**Staff:** Bob Longman (786-7139).

#### Background:

Telephone services are taxed as retail sales. Thus, telephone service providers pay state Business and Occupation (B&O) tax on gross receipts from sales of telephone service, and collect retail sales taxes from buyers of telephone services. Many cities also impose utility taxes on telephone services. State and county taxes are also imposed on telephone access lines to support emergency services communications systems (911).

Mobile telecommunication services, also known as wireless or cellular telephone services, are taxed as telephone service. The mobile nature of mobile telecommunication service raises questions about which jurisdiction may tax a particular transaction. The process of determining where a transaction is taxable is commonly referred to as "sourcing."

Congress enacted the Mobile Telecommunications Sourcing Act in 2000. This law takes effect on August 2, 2002, and requires state and local taxes to source mobile telecommunication transactions to the customer's primary place of use. Federal law defines primary place of use as "the street address representative of where the customer's use of the mobile telecommunications service primarily occurs." This address must be either the residential street address or the primary business street address of the customer and must be

within the licensed service area of the provider.

Under federal law, states have the option of supplying wireless providers with an electronic database that matches each street address with its appropriate taxing jurisdiction. The legislation outlines the technical standards a state-provided database must meet and the duties of the state and wireless providers when there are database changes. If the state fails to supply the provider with a database, the wireless provider can employ nine-digit zip codes to assign addresses to appropriate taxing jurisdictions. If a wireless provider uses one of these two designated methods for assigning addresses, the provider will be held harmless for any taxes that might otherwise be due as the result of an erroneous assignment, provided the provider exercises "due diligence" in assigning jurisdictions.

**Summary of Bill:**

State and local excise taxes on mobile telecommunications are sourced to the customer's primary place of use, in a manner consistent with the federal Mobile Telecommunications Sourcing Act. This sourcing rule applies to state B&O tax, state and local retail sales taxes, city utility taxes, and state and county telephone access line taxes. However, for state B&O taxes, a mobile telecommunications service provider may elect to pay tax on all services that originate from or are received on telecommunications equipment or apparatus in this state and are billed to a person in this state, regardless of the customer's place of primary use. If the service provider chooses to make this election, the service provider must provide written notice to the Department of Revenue (DOR).

The DOR may provide an electronic database to mobile telecommunications service providers to assist in determining a customer's primary place of use. The bill provides minimum standards the database must meet, and specifies the duties of the state and wireless providers when there are database changes.

If a customer believes that the amount of tax on a mobile telecommunications bill is erroneous, the customer may notify the service provider in writing. The service provider must respond within 60 days by correcting the error or providing a written explanation of why the service provider believes the tax is correct. If the customer is dissatisfied with this response, the customer may seek a refund from the city imposing the tax. The customer may not file a lawsuit for refund of erroneous tax charges until these procedures are followed. These provisions relating to billing errors are not required by federal law.

**Appropriation:** None.

**Fiscal Note:** Requested January 17, 2002.

**Effective Date:** The bill takes effect August 1, 2002.