

A Technical Information Release is designed to provide immediate information of changes in tax laws administered by the Department and for the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.). Questions specific to this Technical Information Release should be directed to the NH Dept. of Revenue Administration, Audit Division, 45 Chenell Drive, Concord, NH 03301 or (603) 271-3400.

Sourcing Of Calls For Mobile Telecommunication Services

Chapter 219 of the Laws of 2002 conforms the Communications Services Tax [RSA 82-A] to the provisions of the Federal Mobile Telecommunication Sourcing Act [P.L. 106-252][4 U.S.C. §116-126] adopted by Congress in July 2000. The changes made to the Communications Services Tax are effective for consumer invoices issued by home service providers after August 1, 2002.

The Communications Services Tax will apply to all charges for mobile telecommunication services provided to a customer having its **place of primary use** in New Hampshire regardless of whether individual transmissions originate or terminate in the licensed service area [RSA 82-A:2, XIX] of the home service provider [RSA 82-A:2, XVIII]. For purposes of this tax, the terms customer and taxpayer have the same meaning. The statute [RSA 82-A:2 XXI] defines the **place of primary use** as follows:

"Place of primary use" means the street address representative of where the taxpayer's use of the mobile telecommunications service primarily occurs, which must be:

- (a) Either the residential street address or the primary business street address of the taxpayer; and
- (b) Within the licensed service area of the home service provider.

For purposes of determining the place of primary use for a customer, the home service provider must determine the use by the end user of the mobile telecommunication services and not rely on the location of the contracting party. A serving carrier under an arrangement to serve mobile telecommunication customers outside their home service provider's licensed area will not be considered as a customer subject to tax.

When NH customers are making calls in a state outside of their place of primary use, the other state will not be permitted by the federal Mobile Telecommunication Sourcing Act to impose its tax on any portion of such calls.

The Communications Services Tax will no longer apply to mobile telecommunications service that either originate or terminate in NH when an out of state customer uses their mobile telephone in this state.

Under Chapter 219, a home service provider will be responsible for obtaining and maintaining the taxpayers' place of primary use. For taxpayers with service contracts or agreements that are **in effect prior to July 28, 2002**, a home service provider may treat the billing address used for the customer as their place of primary use until a new contract or agreement is entered into **or** the current contract or agreement is renewed or extended.

The Commissioner of Revenue Administration will allow home service providers to use the US Postal Service's enhanced zip code for their customer to determine New Hampshire's taxable jurisdictions for Communications Services Tax purposes. The enhanced zip code must be for the residential or business street address and not for a post office box or mail forwarding location.

Customers who believe that there is an error in the amount of tax calculated or in the assignment of the place of primary use will be required to resolve the matter through the home service provider in accordance with the provision enumerated under RSA 82-A: 4-b, V (a) through (c). The home service provider, during the course of its investigation of a complaint, may review any issues raised by the customer with the department's audit division.

A home service provider that does not separately list taxable and non-taxable charges will be required to tax the entire amount unless it can reasonably identify the charges not subject to tax from its books and records maintained in the ordinary course of business. In instances where an audit of the home service provider determines that the business records do not support the non-taxable status of the charge, the home service provider will be responsible for the collection and payment of the unpaid taxes.

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Audit Division, 45 Chenell Drive, Concord, NH 03301 or (603) 271-3400.