Legislative Fiscal Bureau

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November 5, 2001

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 260: Sourcing of Mobile Telecommunications Services for Sales Tax Purposes and Clarification of the Sales Tax Statutes Regarding Prepaid Telephone Calling Cards [REVISED PAPER]

Senate Bill 260 was introduced on October 2, 2001, and referred to the Joint Survey Committee on Tax Exemptions, which reviewed the bill on October 9, 2001. SB 260 was later referred to the Committee on Information Policy and Technology, which recommended passage of the bill by a 4 to 1 vote. The bill was then referred to the Joint Committee on Finance.

SUMMARY OF THE BILL

Provisions Related to Mobile Telecommunications Services

Under current law, the sale of a mobile telecommunications service, such as the use of a cellular telephone, is subject to the sales tax if: (a) the service either originates or terminates in Wisconsin; and (b) the sale is charged to a service address in this state. For example, a call placed via cell phone by a Wisconsin resident from a neighboring state to a non-Wisconsin destination would not be taxable because the call did not originate or terminate in Wisconsin.

SB 260 would provide that, for customer bills issued after August 1, 2002, mobile telecommunications services would be subject to the sales tax if the customer's place of primary use of the service is in Wisconsin, regardless of where the service originates or terminates. This change would bring Wisconsin's sales and use tax statutes into conformance with federal laws regarding the sourcing of mobile telecommunications services [4 USC 116 to 126], as amended by P.L. 106-252, the federal Mobile Telecommunications Sourcing Act, by incorporating the provisions of these portions of federal law, as amended, into state law. The provisions of SB 260 would not affect the tax rate on mobile telecommunications services; rather, they would determine only which jurisdiction has the authority to tax such services. Under these provisions, a call placed via cell phone by a Wisconsin resident from Illinois to California, for example, would be taxable because the call would be sourced to the Wisconsin resident's designated address. Should P.L. 106-252 or its application be found unconstitutional, the sale of mobile telecommunications services would be subject to the sales tax under current state law.

Provisions Related to Prepaid Telephone Calling Cards

Under current law as interpreted by the Department of Revenue, telephone services obtained by using a prepaid telephone calling card are exempt from the sales and use tax if sales or use tax was paid on the purchase of the prepaid calling card. SB 260 would clarify current law by creating a specific sales and use tax exemption for telecommunications services obtained by using a prepaid telephone calling card if sales or use tax was paid on purchase of the card.

Initial Applicability

As drafted, the provisions of SB 260 would first apply to customer bills issued after August 1, 2002, for both prepaid telephone calling cards and mobile telecommunications services. However, since customer bills typically are not issued for prepaid services, it is unclear how the indicated initial applicability provisions would relate to the sales tax exemption created by the bill on the purchase of prepaid telephone cards. An amendment could be adopted to clarify this uncertainty.

BACKGROUND

The mobile telecommunications sourcing provisions SB 260 would incorporate into Wisconsin's sales tax statutes are the product of a joint effort undertaken at the national level by representatives of the wireless telecommunications industry and state and local governments to establish clear guidelines to determine which jurisdiction would have the right to tax a call that originates and terminates in different taxing jurisdictions. Among the factors that have contributed to the desire for a clear sourcing standard for mobile telecommunications services are the increasing number of calls that originate in one state or local jurisdiction and travel through other jurisdictions during the course of the call as well as an array of service-package characteristics--expanded home calling areas, bundled service offerings and other marketing advances--that may make the task of assigning each transaction to a specific taxing jurisdiction increasingly difficult.

FISCAL EFFECT

SB 260 would apply only to customer bills issued after August 1, 2002. For mobile telecommunications services, therefore, no revenue effect would be realized until fiscal year 2003.

For that year, the Department of Revenue estimates that the bill's provisions would result in increased general-fund revenues of approximately $200,000; thereafter, the revenue effect is estimated at an additional $250,000 annually.

The bill's provisions regarding prepaid telephone calling cards would have no fiscal effect since they clarify a policy already in place.

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