

A motion by Oklahoma relating to other communication taxes in proposed federal legislation:

SEC. 7. MINIMUM SIMPLIFICATION REQUIREMENTS.

(a) In General- The minimum simplification requirements for the Agreement are as follows:

~~(17) Each Member State shall apply the simplification requirements of the Agreement to taxes on telecommunications services, except as provided herein. This requirement is applicable to Member States as of July 1, 2010, except that sales and use taxes on telecommunications services shall be subject to the Agreement and the authority granted to the Member States when the requirements of section 4(a) are met. On or after July 1, 2010, for those Member States which meet the requirements of this paragraph, the authority granted such Member States under section 4 may be exercised by such Member States, pursuant to the terms of section 4 and section 5, with respect to taxes on telecommunications services other than sales and use taxes on such services. The following are exceptions to the requirement established under this paragraph:~~

~~(A) The requirement for one uniform return shall not apply, provided, however, there shall be one uniform return for each type of tax on telecommunications services within a State.~~

~~(B) The requirements for rate simplification are modified to require that each taxing jurisdiction shall have only one rate for each type of tax on telecommunications services.~~

~~(C) The requirements for tax base uniformity in section 302 of the Agreement shall apply to each type of tax on telecommunications services within a State, but shall not be construed to require that the tax base for different types of taxes on telecommunications services must be identical to the tax base for sales and use taxes imposed on telecommunications services.~~

(20) Application of Simplification Requirements to Taxes on Communications Services

(A) In General - Each Member State shall apply the simplification requirements of this Section 7 to sales and use taxes on communications services.

(B) Other Taxes On Communications Services – Not later than the first day of the calendar quarter beginning on or after the third anniversary of the enactment of this Act, each Member State shall apply the simplification requirements of this Section 7, as modified by subparagraph (E) of this paragraph, to taxes on communications services, other than sales and use taxes. Such simplification requirements shall be applied separately to each type of tax on communications services within a State and, for purposes of applying such requirements to each type of tax other than sales and use tax, references in paragraphs (1) through (19) to sales and use taxes shall be treated as referring to such other type of tax.

(C) Grant of Authority – Each Member State found to be in compliance by the Governing board with the provisions of the Agreement corresponding to subparagraph (B) of this paragraph is authorized, subject to the requirements of Section 4, to require all sellers not qualifying for a small seller exception, to collect and remit such other taxes on communications services with respect to remote sales sourced to that Member State under the Agreement on the first day of a calendar quarter at least 6 months after the date the Governing Board certifies such state’s compliance with this provision.

(D) Termination – A state that has failed to be found in compliance, or that is found to be out of compliance with subparagraph (B) shall no longer possess or exercise with respect to any tax the authority granted to Member States under Section 4(a) until such Member State is found to be in compliance with subparagraph (B). The State shall still be considered a Member State for purposes of Section 4(a)(2)(A), notwithstanding the loss of authority.

(E) Modifications – In applying the simplifications of this section 7 to taxes on communications services, other than sales and use taxes on communication services, the following modifications shall apply:

(1) The requirement in Section 7(a)(1) is modified to permit a centralized, one-stop, registration system at the state-level for taxes administered solely within the state. Sellers shall also be allowed to elect to register directly with localities.

(2) The requirement in Section 7(a)(2) for tax base uniformity shall apply to each type of tax on communications services within a State, but shall not be construed to require that the tax base for different types of taxes on communications services must be identical to the tax base for sales and use taxes imposed on communications services. In addition, if a state does not impose a particular type of tax on communications services that is imposed by more than one locality in such state, Section 7(a)(2) shall be construed to require that all such local taxes have the same tax base.

(3) The requirement in Section 7(a)(6) is modified to permit one State-specific uniform return for each type of tax on communications services.

(4) The requirement in Section 7(a)(9) is modified to require that each taxing jurisdiction shall have only one rate for each type of tax on communications services. In addition, a State may take into account all State and political subdivision taxes on communication services that are imposed on a similar product when applying the last sentence of section 308A, as amended through the date of enactment of this Act.

(5) The requirement in Section 7(a)(13) is modified to require a single audit conducted at the state level for each type of tax on communications services within the state.

SEC. 8. LIMITATION.

(a) In General- -Nothing in this Act shall be construed as--

- (1) subjecting a seller to franchise fees/taxes, income taxes, property taxes or licensing requirements of a Member State or political subdivision thereof; or
- (2) affecting the application of such fees/taxes or requirements or enlarging or reducing the authority of any Member State to impose such fees/taxes or requirements; or
- (3) affecting franchise agreements entered into by Member States or localities with providers of multichannel video programming services, except that any provision in any such agreement that relates to [the imposition or collection of] a tax on communications services (as defined in section 10 of this Act) shall be subject to the minimum simplification requirements as set out in this Act; or
- (4) bearing on Congressional intent in enacting the Mobile Telecommunications Sourcing Act or to modify or supersede the operation of such Act.

SEC. 10. DEFINITIONS.

For the purposes of this Act the following definitions apply:

~~(11) TAX ON TELECOMMUNICATIONS SERVICES- The term `tax on telecommunications services' or `taxes on telecommunication services' shall encompass the same taxes, charges, or fees as are included in section 116 of title 4, United States Code, except that `telecommunication services' shall replace `mobile telecommunications services' whenever such term appears.~~

~~(12) TELECOMMUNICATIONS SERVICE-~~

~~(A) IN GENERAL- The term `telecommunications service' means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.~~

~~(B) INCLUSION- The term `telecommunication service'--~~

~~(i) includes transmission services in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such services are referred to as voice over Internet protocol services or are classified by the Federal Communications Commission as enhanced or value added services; and~~

~~(ii) does not include the data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the primary purpose of such purchaser for the underlying transaction is the processed data or information.~~

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(ii) does not include the data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the primary purpose of such purchaser for the underlying transaction is the processed data or information.

(10) TAX ON COMMUNICATIONS SERVICES- (A) The term `tax on communications services' or `taxes on communications services' means any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for communication services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer or the service and regardless of the terminology used to describe the tax, charge, or fee. A tax on communications services shall include any tax, charge, or fee that is a payment obligation to a state enabled under subsection 254(f) of the Communications Act of 1934.

(B) The term `tax on communication services' or `taxes on communication services' does not apply to:

(1) any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of communication service;

(2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determine on a transactional basis;

(3) any tax, charge, or fee that represents compensation for a communications service provider's use of public rights of way or other public property, provided that such tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or is in any way measured by gross amounts charged to customers or gross revenue for communication services; or

(4) any generally applicable business and occupation tax that is imposed by a State, is applied to gross receipts or gross proceeds, is the legal liability of the seller of communications services, and that statutorily allows the seller of

communications services to elect to use the sourcing method required under the Agreement;

(11) COMMUNICATIONS SERVICES-

(A) IN GENERAL- The term `communications services' includes -
`telecommunications services' and ancillary services as defined in the
Agreement and `video programming services' .: