

810-6-5-.26.01 Mobile Communication Services Tax.

(1) Unless otherwise defined herein, the definitions of terms set forth in Sections 40-21-120 and 40-21-125, Code of Alabama 1975, as per Act #2001-1090, are incorporated by reference herein.

(a) Although Section 40-21-125, Code of Alabama 1975 was created as a result of Section 2 of Act #99-399, Section 2 of Act #2001-1090 erroneously refers to Section 40- 21-125 as a "new section added to Code of Alabama 1975." Upon codification of this section by the Code Commissioner, this section may be corrected and codified as a different code section. Until such codification and corresponding rule amendments are made, this rule implies that Section 40-21-125 contains the provisions of Section 2 of both Act #99-399 and Act #2001-1090.

(2) Section 40-21-121, Code of Alabama 1975, levies a privilege or license tax against every home service provider doing business in the State of Alabama on account of the furnishing of mobile telecommunications service to customers with a place of primary use in the State of Alabama. Effective February 1, 2002, Section 40-21-125, Code of Alabama 1975, levies a tax on mobile radio communication services at the same rate as the tax levied in Section 40-21-121. (Act #2001-1090)

(3) (a) For bills dated prior to February 1, 2002, the tax was to be determined by the application of rates against gross sales or gross receipts, as the case may have been, from the monthly charges from the furnishing of cellular telecommunication services in the State of Alabama and computed monthly in accordance with the following table:

<u>If monthly gross sales or gross receipts respecting a person are:</u>	<u>The tax is:</u>
*Not over \$600,000	4% of such gross sales or gross receipts
*Over \$600,000	\$4,020 plus 3.7% of excess over \$60,000

Note: Act #92-623 amended Sections 40-21-121 and 40-21-82, Code of Alabama 1975, effective October 1, 1992. Section 40-21-121 clearly stated that the rate was 4%, or, if less, the rate imposed under Section 40-21-82(b). Therefore, the tax on receipts up to \$600,000 were determined under Section 40-21-121, and the tax on receipts in excess of \$600,000 were determined under Section 40-21-82(b).

(b) Act #2001-1090 amended Section 40-21-121 and provides that on bills dated on or after February 1, 2002, regardless of when the services being billed were provided, the tax shall be determined by the application of rates against gross sales or gross receipts, as the case may be, from the monthly charges from the furnishing of mobile telecommunications service to customers with a place of primary use in the State of Alabama and shall be computed monthly at the rate of 6%.

(4) Every home service provider of mobile telecommunications service and mobile radio communication services subject to this tax shall add the tax to the price or charge for the taxable services and shall collect from every customer an amount equal to the prescribed percentage of the price or charge for the taxable services.

(5) Act #2001-1090 further provides that the home service provider furnishing such mobile telecommunications service shall be entitled to deduct and retain from the gross amount of tax billed by the home service provider 9/10 of 1% of the amount of such tax billed on or after February 1, 2002, in consideration of the costs incurred by the home service provider in collecting and remitting the tax levied by Section 40-21-121. However, on and following October 1, 2002, the amount deducted and retained by such provider shall be 1/4 of 1% of the gross amount of such tax billed.

(6) The terms "mobile telecommunications service" and "mobile radio communication services" are defined in Sections 40-21-120(1)(a) and 40-21-125, respectively, as defined in 47CFR20.3 as in effect on June 1, 1999, as per Act #2001-1090. These terms may be referred to in this rule collectively as mobile communication services. Mobile communication services include, but are not limited to, the following services which the monthly charges for such services shall be included in the measure of the tax levied in Section 40-21-121 provided these services are mobile services that (i) are provided for profit, (ii) are an interconnected service, and (iii) are available to the public:

- (a) cellular telecommunications service,
- (b) personal communications service,
- (c) specialized mobile radio service,
- (d) mobile service that is the functional equivalent of a commercial mobile radio service,
- (e) one-way and two-way radio communications service,
- (f) paging/beeper services.

(7) Section 40-21-122 specifically excludes the gross receipts or gross sales from the tax levied in Section 40-21-121 for the following:

(a) the furnishing of mobile telecommunications service which is otherwise taxed under the provisions of Sections 40-23-1 through 40-23-36;

(b) the furnishing of mobile telecommunications service through the use of a prepaid telephone calling card, a prepaid authorization number, or both;

(c) the furnishing of mobile communication services to the Federal Government and its agencies. However, the tax levied in Section 40-21-121 shall apply to mobile communication

services furnished for use by the State of Alabama, the counties within the State of Alabama, and the incorporated municipalities of the State of Alabama;

(d) wholesale sales.

(8) In order for a transaction to qualify for the wholesale exclusion contained in Section 40-21-122, the purchaser of the mobile communication services must furnish the home service provider with either a valid mobile communication services tax account number issued by the Department and a written statement that the services purchased are for resale, or a valid mobile communication services tax certificate of exemption (From STE-3) issued pursuant to Rule 810-6-5-.26.05. (Section 40-21-125)

(9)(a) For the period prior to February 1, 2002, the term "monthly charges" as used in this rule shall mean monthly recurring access charges and local airtime charges only.

1. Local airtime charges were those charges levied by the provider of cellular telecommunications services for usage of the cellular system and which charges were based on the period of time the customer used the cellular system during a billing period. Local airtime charges included out-collect roamer air charges but did not include in-collect roamer air charges.

2. In-collect roamer air charges meant airtime charges levied by a foreign cellular provider with respect to the use of the foreign provider's system by a local provider's customer while roaming in the foreign provider's area. Usually the local provider, as agent for the foreign provider, billed in-collect roamer air charges to its customer.

3. Out-collect roamer air charges meant airtime charges levied by a local cellular provider with respect to the use of the local provider's system by a customer of a foreign provider roaming in the local provider's area. Such charges may ultimately have been collected by the roaming customer's home provider based on billing information received from the provider whose system was utilized.

4. In situations where both the foreign provider and the local provider served Alabama markets, the local cellular provider was responsible for collecting and remitting the cellular services tax due on out-collect roamer air charges.

5. The term "monthly charges" did not include the following:

activation date charge
change phone number charge
change serial number charge
detailed billing charge
emergency service charge
feature activation charge
feature deletion charge
federal excise taxes
in-collect roamer air charge

long distance directory assistance charge
local land charge (a flat, per call charge)
monthly feature charge
NSF check service charge
rate plan charge
resume service charge
roamer land charge (a flat, per call charge)
roamer surcharge (a per day and/or per call charge)

international call charge
interstate toll charge
intrastate toll charge
local directory assistance charge

roamer taxes
service programming charge
start of service charge
suspend service charge
voice mail charge

(b) For customer bills dated on or after February 1, 2002, Act #2001-1090 provides that the term "monthly charges" as used in this rule shall mean monthly recurring access charges and all airtime charges, regardless of when the services being billed were provided. However, as a result of the Mobile Telecommunications Sourcing Act of 2000 (Public Law 106-252), monthly charges on customer bills issued during the period of February 1, 2002 through August 1, 2002, shall not include charges which cannot be sourced to Alabama.

1. The term "monthly charges" shall not include the following charges:

activation date charge
change phone number charge
change serial number charge
detailed billing charge
emergency service charge
feature activation charge
feature deletion charge
federal excise taxes
international call charge
interstate toll charge
intrastate toll charge

local directory assistance charge
long distance directory assistance charge
monthly feature charge
NSF check service charge
rate plan charge
resume service charge
service programming charge
start of service charge
suspend service charge
voice mail charge

(10) As a result of the Mobile Telecommunications Sourcing Act of 2000, Act # 2001-1090 provides that effective for customer bills issued on or after August 2, 2002, monthly charges for mobile communication services provided to a customer and billed by or for the customer's home service provider are deemed to be provided at the customer's place of primary use. Such monthly charges are subject to the mobile communication services tax if the customer's place of primary use is located in this state.

(11) The term "home service provider" as used in this rule shall mean the facilities-based carrier or reseller with which the customer contracts for the provision of mobile communication services.

(12) The term "customer" as used in this rule shall mean the person or entity that contracts with the home service provider for mobile communication services. In the event the end user is not the contracting party, the end user of the mobile communication services will be used for purposes of determining the place of primary use. The term does not include a reseller of mobile communication services or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed area.

(13) The term "licensed service area" as used in this rule shall mean the geographic area in which the home service provider is authorized by law or contract to provide mobile communication services.

(14) The term "place of primary use" as used in this rule shall mean the street address representative of where the customer's use of the mobile communication services primarily occurs, which must be the residential street address or the primary business street address and within the licensed service area of the home service provider.

(15) The term "reseller" as used in this rule shall mean a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. The term does not include a service carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(16) The term "serving carrier" as used in this rule shall mean a facilities-based carrier providing mobile communication services to a customer outside a home service provider's or reseller's licensed service area.

(17) Any person engaging or continuing in the business of providing mobile communication services subject to the tax levied in Section 40-21-121, shall apply for and obtain from the Department a license to engage in and conduct such business. The application for a mobile communication services license shall be made on forms furnished by the Department. (Section 40-21-124)

(a) The application for a mobile communication services tax license shall require the following information:

1. Applicant's Federal Employer Identification Number,
2. Applicant's legal name, trade name, and complete mailing address,
3. Number of businesses in Alabama and exact location of each (exact location shall include city, county, and street address; if location is on highway or rural route, exact location shall include details sufficient to allow Department personnel to find the place of business),
4. Indication of the legal form of ownership (sole proprietorship, partnership, corporation, multi-member limited liability company, single-member limited liability company, limited liability partnership, etc.),
5. If the applicant is a corporation, a copy of the certified certificate of incorporation, amended certificate of incorporation, certificate of authority, or articles of incorporation; if the applicant is a limited liability company or limited liability partnership, a copy of the certified articles of organization,

6. Name, title, home address, and social security number of the sole proprietor, each partner, each corporate officer, or each member (for a partner or member that is a corporation or limited liability entity, the federal employer identification number shall be requested in lieu of a social security number),

7. Type of services provided,

8. Name of former owner of business, if any,

9. Beginning date of business,

10. Business and home phone numbers, and

11. Signature and title of the sole proprietor, each partner, an elected corporate officer, or a member and the date of the signature.

(18) The mobile communication services tax shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every home service provider of mobile communication services shall prepare and forward to the Department, within the time prescribed by law, a mobile communication services tax return for each calendar month using forms furnished by the Department and shall compute the tax due and shall pay to the Department the amount of tax shown to be due. Every person engaged in the business of providing mobile communication services shall file only one return for all business units or locations within the state. Any home service provider of these services liable for the tax whose average monthly liability was \$10,000 or greater during the preceding calendar year shall make estimated payments to the Department on or before the twentieth day of the month in which the liability occurred. These estimated payments must be at least equal to the taxpayer's actual tax liability for the same calendar month of the preceding year. (Section 40-21-123) **Beginning with the October 2011 return due November 20, 2011, the term "actual tax liability" as used herein shall not include the estimated amounts reported on the return from the previous year.**

(a) Mobile communication services tax returns shall require the following information:

1. Taxpayer's tax account number, legal name, and complete address,

2. Period covered by the return and due date of the return,

3. Estimated tax due for the current month, if applicable, **must be at least equal to line 4 (Total Amount of Tax) of the return for the same calendar month of the preceding year,**

4. Total receipts, exempt receipts, and taxable receipts from furnishing commercial mobile radio services, paging/beeper services, and other mobile services,

5. Tax due,

6. Less collection allowance,
7. Estimated tax paid on previous month's return, if applicable,
8. Tax due after deducting credit for previous month's estimate and collection allowance,
9. Total tax due (total tax due plus current month's estimate, if applicable),
10. Penalties and interest due, if applicable,
11. Credits claimed, if any,
12. Total amount remitted,
13. An indication if payment of tax is made through electronic funds transfer (EFT), and
14. Taxpayer's signature, title, and date signed.

(19) The mobile communication services tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40, Code of Alabama 1975, along with the procedures outlined in Sections 40-23-8 through 40-23-12, 40-23-25, and 40-23-27 through 40-23-31, Code of Alabama 1975, as amended, together with the applicable definitions contained in Section 40-23-1, Code of Alabama 1975, as amended. (Section 40-21-123)

(20) Act #2001-1090 provides that if nontaxable charges for mobile communication services are aggregated with and not separately stated from charges that are subject to taxation, the charges for nontaxable mobile communication services may be subject to taxation unless the home service provider can reasonably identify charges not subject to taxation from its books and records that are kept in the regular course of business. (Section 40-21-121(d).)

(21) A home service provider is not required to collect mobile communication services tax from a customer who claims an exemption from the tax and, as documentation of the exemption claim, furnishes the home service provider a properly executed mobile communication services tax certificate of exemption (form STE-3) issued by the Department pursuant to Rule 810-6-5-.26.05. The home service provider who relies in good faith on the Form STE-3 and reasonably believes the tax exemption claim is legal shall not be held liable for the tax later determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the tax due from the party or parties who made the illegal tax-free purchase with the Form STE-3 and the person or persons who benefitted from the illegal use of the Form STE-3. (Section 40-21-125)

(22) As stipulated in paragraph (9)(b), the mobile sourcing definitions and provisions are effective after August 1, 2002.

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Authority: Sections 40-2A-7(a)(5), 40-23-31, 40-21-120, 40-21-121, 40-21-122, 40-21-124, 40-21-125, **Code of Alabama 1975**

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