

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**SESSION LAW 2002-16  
HOUSE BILL 1521**

AN ACT TO CONFORM SOURCING OF MOBILE TELECOMMUNICATIONS SERVICES TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT AND TO CODIFY THE SOURCING PRINCIPLES FOR OTHER TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-164.3 is amended by adding a new subdivision to read:

**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(26a) Place of primary use. – The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use."

**SECTION 2.** G.S. 105-164.3(27) reads as rewritten:

"(27) Prepaid telephone calling ~~arrangement~~. Service. – A right that meets all of the following requirements:

- a. Authorizes the exclusive purchase of telecommunications service.
- b. Must be paid for in advance.
- c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
- d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis."

**SECTION 3.** G.S. 105-164.3(39) is repealed.

**SECTION 4.** G.S. 105-164.4(a)(4d) reads as rewritten:

"(4d) The sale or recharge of prepaid telephone calling ~~arrangements~~ service is taxable at the general rate of tax. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. Prepaid telephone calling arrangements service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision are ~~is not~~ subject to tax as a telecommunications service.

~~Prepaid telephone calling arrangements are taxable at the point of sale instead of at the point of use. If the sale or recharge of a prepaid telephone calling arrangement does not take place at a retailer's place~~

~~of business, the sale or recharge is considered to have taken place at one of the following:~~

- ~~a. The customer's shipping address, if an item of tangible personal property is shipped to the customer as part of the transaction.~~
- ~~b. The customer's billing address or, for mobile telecommunications service, the customer's service address, if no tangible personal property is shipped to the customer as part of the transaction."~~

**SECTION 5.** G.S. 105-164.4B(a)(3) reads as rewritten:

"(a) Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product.

...  
(3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this ~~subsection~~ subdivision that is known to the seller:

- a. The business or home address of the purchaser.
- b. The billing address of the ~~purchaser~~ purchaser or, if the product is a prepaid telephone calling service that authorizes the purchase of mobile telecommunications service, the location associated with the mobile telephone number.
- c. The address of the seller."

**SECTION 6.** G.S. 105-164.4C(a) reads as rewritten:

"(a) General. – The gross receipts derived from providing telecommunications service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). ~~Mobile telecommunications service is provided in this State if the customer's service address is in this State and the call originates or terminates in this State.~~ Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services."

**SECTION 7.** G.S. 105-164.4C(b)(1) reads as rewritten:

"(b) Included in Gross Receipts. – Gross receipts derived from telecommunications service include the following:

(1) Receipts from ~~local, intrastate, interstate, toll, private, and mobile telecommunications service.~~ flat rate service, service provided on a call-by-call basis, mobile telecommunications service, and private telecommunications service.

...  
**SECTION 8.** G.S. 105-164.4C(c)(2) reads as rewritten:

"(c) Excluded From Gross Receipts. – Gross receipts derived from telecommunications service do not include any of the following:

...  
(2) Telecommunications services that are resold as part of a prepaid telephone calling ~~arrangement~~ service.

...  
**SECTION 9.** G.S. 105-164.4C is amended by adding two new subsections

to read:

"(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

(1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.

- (2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:
  - a. The call both originates and terminates in this State.
  - b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.
- (3) Postpaid. – A postpaid calling service is sourced in accordance with either of the following principles, at the election of the seller:
  - a. The principle set out in subdivision (a1)(2) of this section for call-by-call service.
  - b. The origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

- (1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is authorized by a prepaid telephone calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is included within the term 'charges for mobile telecommunications services' under the federal Mobile Telecommunications Sourcing Act.
- (2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.
- (3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section."

**SECTION 10.** G.S. 105-164.4C(e) reads as rewritten:

"(e) ~~Interstate-Private Line.~~ – The gross receipts derived from ~~interstate-private~~ telecommunications service are ~~taxable-sourced~~ as follows:

- (1) ~~One hundred percent (100%) of the charge imposed at each channel termination point in this State. If all the customer's channel termination points are located in this State, the service is sourced to this State.~~
- (2) ~~One hundred percent (100%) of the charge imposed for the total channel mileage between each channel termination point in this State. If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.~~
- (3) ~~Fifty percent (50%) of the charge imposed for the total channel mileage between the first channel termination point in this State and the nearest channel termination point outside this State. If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:~~
  - a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.
  - b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel

termination point located in another state is sourced to this State.

- (4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points."

**SECTION 11.** G.S. 105-164.4C(h) reads as rewritten:

"(h) Definitions. – The following definitions apply in this section:

- (1) ~~Call center. – Defined in G.S. 105-164.27A.~~
- (2) ~~Interstate telecommunications service. – Telecommunications service that originates or terminates in this State, but does not both originate and terminate in this State, and is charged to a service address in this State.~~
- (3) ~~Intrastate telecommunications service. – Telecommunications service that both originates and terminates in this State.~~
- (4) ~~Local telecommunications service. – Telecommunications service that provides access to a local telephone network and enables a user to communicate with substantially everyone who has a telephone or radiotelephone station that is part of the local telephone network.~~
- (5) ~~Mobile telecommunications service. – Defined in G.S. 105-164.3.~~
- (6) ~~Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.~~
- (7) ~~Service address. – Defined in G.S. 105-164.3.~~
- (8) ~~Telecommunications service. – Defined in G.S. 105-164.3.~~
- (9) ~~Toll telecommunications service. – Any of the following:~~
- ~~a. A service for which there is a toll charge that varies in amount with the distance or elapsed transmission time of each individual communication.~~
- ~~b. A service that entitles the subscriber, upon payment of a periodic charge, determined as a flat amount or on the basis of total elapsed transmission time, to an unlimited number of communications to or from all or a substantial portion of those who have a telephone or radiotelephone station in an area outside the local telephone network.~~
- (1) Call-by-call basis. – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.
- (2) Call center. – Defined in G.S. 105-164.27A.
- (3) Mobile telecommunications service. – Defined in G.S. 105-164.3.
- (4) Place of primary use. – Defined in G.S. 105-164.3.
- (5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid telephone calling service, except the exclusive use requirement.
- (6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.

(7) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

(8) Telecommunications service. – Defined in G.S. 105-164.3."

**SECTION 12.** G.S. 105-467(b)(6) reads as rewritten:

"(6) The sales price of prepaid telephone calling ~~arrangements~~ service taxed as tangible personal property under G.S. 105-164.4(a)(4d)."

**SECTION 13.** Subdivision (6) of the first paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws reads as rewritten:

"(6) The sales price of prepaid telephone calling ~~arrangements~~ service taxed as tangible personal property under G.S. 105-164.4(a)(4d)."

**SECTION 14.** G.S. 105-164.4C(a1)(3), as enacted by this act, reads as rewritten:

"(3) ~~Post paid.Postpaid. – A post paidpostpaid calling service is sourced in accordance with either of the following principles, at the election of the seller:~~

a. ~~The principle set out in subdivision (a1)(2) of this section for call by call service.~~

b. ~~The~~  
to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider."

**SECTION 15.** G.S. 62A-21(4) reads as rewritten:

"(4) "CMRS connection" means each mobile handset telephone number assigned to a CMRS customer with a ~~billing address~~ place of primary use in North Carolina."

**SECTION 16.** G.S. 105-164.4C(e)(4), as enacted by Section 10 of this act, and Section 14 of this act become effective January 1, 2004, and apply to taxable services reflected on bills dated on or after January 1, 2004. The remainder of this act becomes effective August 1, 2002, and applies to taxable services reflected on bills dated after August 1, 2002.

In the General Assembly read three times and ratified this the 3<sup>rd</sup> day of July, 2002.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 3:30 p.m. this 11<sup>th</sup> day of July, 2002