Mobile Telecommunications Sourcing Act

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About Kimbell Sherman Ellis

- Multistate government affairs firm
- Assisted tax departments of major wireless telecommunications companies in MTSA legislative efforts (ALLTEL, AT&T Wireless, Cingular, Nextel, Sprint, Verizon Wireless, T-Mobile, and Western Wireless)
MTSA Success Story

- Model of industry / government cooperation in development of federal bill
- State tax agencies and industry cooperation in legislative passage
- Carriers have implemented successfully

Why MTSA?

- Some roaming calls do not meet Goldberg test
- Companies concerned about:
  - Lawsuits
  - Double taxation
  - Administrative costs
Review of MTSA Provisions

- Sourcing to Place of Primary Use
- Zip+4 or state-provided database
  - FTA & MTC adopt database standards
  - If zip+4, due diligence
- Hold harmless
- Bundled transactions

Industry-backed Provisions

- “Customer remedy” provision (not in MTSA bill)
  - Customer must contact company first, before filing suit
  - Intended to cut down of class-action lawsuits for improper collection of tax
Most MTSA provisions are in SSTP agreement

Most states are waiting for SSTP “technology model” development for MTSA tax jurisdiction assignment

MTSA Status Report

- Legislation enacted in 47 states
- MD – rule issued
- WV – no tax, fees conform to MTSA in practice
- DC – temporary legislation expected to be made permanent this fall
- MT – bill vetoed, roaming not taxed
Issues Raised During Process

- Interstate vs. intrastate tax base
- Bundling – how will it work in practice

Issues for the Future

- The wireless industry is migrating away from traditional voice communications and toward digital products and data applications
- Wireless competitors of the future are not just telecommunications companies
Issues for the Future

- New products and services – taxed at telecom rates while competitors’ products are untaxed or taxed a lower sales tax rates

- Bundling of content and transmission

Need for Telecommunications Tax Reform

- Legislative (NCSL, ALEC) and executive (NGA) have endorsed

- New product offerings defy traditional categorization

- Feds may pre-empt through ITFA
What is Telecommunications Industry Seeking?

- Tax telecommunications like general business
  - Tax customers under sales and use tax
  - End discriminatory property tax treatment
  - Eliminate taxation of business inputs
  - Provide administrative simplification

What is Industry Seeking?

- If industry-specific taxes are retained:
  - Eliminate local filing
  - Provide other simplification that is contained in SSTP agreement
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