

**City of Emeryville  
Utility Users Tax Administrative Ruling  
[Best Practices Policy 1.0 (Version 9)—Wireless]**

To achieve administrative efficiency, tax uniformity, and fairness, the City of Emeryville UUT Tax Administrator hereby adopts the attached Best Policy Practices 1.0 (Version 9) regarding the taxation of wireless packages, and directs all wireless providers to follow Instruction "A" as set forth therein. The UUT Tax Administrator determines that said Instruction is consistent with its existing UUT ordinance and the federal Wireless Telecommunications Sourcing Act, and further finds that implementation of said Instruction will result in the fair and uniform application and collection of the UUT by numerous wireless service providers in the City.

**"Best Practices" Policy 1.0  
[Wireless Telecommunications]  
Version (9)**

Whereas, 153 California public agencies impose a utility users tax (UUT) on telecommunication services in a similar manner as the federal excise tax, which tax applies to all voice quality telecommunications using the public switched network, regardless of the technology employed, including the wireless technology (with minor exception);

Whereas, the one hundred plus wireless service providers currently apply the local UUT to their customer charges using significantly different approaches, depending on billing software and other technical limitations (e.g., call tracking);

Whereas, there is an urgent need to eliminate the inconsistent tax application practices of such wireless providers and resellers in California by developing uniform tax application rules to assure competitive fairness, tax equity, and administrative ease;

Whereas, in 2000, the wireless industry, with the support of the National League of Cities, and other public agencies, sponsored the Mobile Telecommunications Sourcing Act of 2000 (Pub. L. 106-252; 114 Stat. 626; 4 USC Section 116 et seq.), which Congress enacted and thereby created a uniform "sourcing" rule for ease of administration of local and state telecommunication taxes, effective August 1, 2002;

Whereas, Congress established preemptive "sourcing" rules in Sec. 117 of the **Mobile Telecommunications Sourcing Act of 2000** (hereinafter referred to as "the Act") whereby the charges for all mobile telecommunications services are deemed to be provided by the customer's home service provider. Congress further authorized such charges to be subject to the local tax of the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through. Whereas, these preemptive federal sourcing rules will assure that the local UUT be applied to telecommunication services in a uniform, non-discriminatory manner, so as to avoid discriminatory taxation of its citizens as well as avoid creating an unfair competitive advantage to certain companies or industry sectors depending on the manner in which they apply and collect the local utility users tax; and,

Whereas, in September, 2000, a voluntary statewide organization of UUT public agencies was formed with the approval and support of the League of California Cities and the California Association of Counties, namely the "Utility Users Tax Technical Task Force" (UUT TTF) for the purpose of achieving, among other things, uniformity in the application and collection of UUT in California;

**NOW THEREFORE**, in order to achieve uniformity, competitive fairness, and ease of administration among wireless telecommunication providers, while at the same time recognizing differences in individual ordinances and their interpretation, the UUT TTF, following collaborative

discussions with the wireless industry, hereby recommends that the following "best practices" policy be disseminated to all public agencies with UUT ordinances for appropriate voluntary action by each public agency:

**"Best Practices" Policy 1.0 - Application of Local UUT to Certain Wireless Telecommunication Services**

**I. Administrative Adoption of the Mobile Telecommunications Sourcing Act of 2000.**

Except as may be specifically provided otherwise in a local UUT ordinance or by administrative interpretation (as determined by the City Attorney or County Counsel of the taxing jurisdiction), Sections 116 through 126 of the federal Mobile Telecommunications Sourcing Act of 2000 are adopted by reference for purposes of applying the local UUT to wireless telecommunication services.

**II. UUT Ordinances with Full Application (Instruction A).** With respect to UUT ordinances with application to telecommunications services in the same manner as the federal excise tax and without limitation (as determined by the City Attorney or County Counsel of the taxing jurisdiction), wireless service providers are directed to apply the public agency's UUT in the same manner as the federal excise tax, and in accordance with the sourcing rules of Section 117 of the Act (*i.e.*, regardless of the origination or termination of the call, and regardless whether the call is included within a "package" or is billed as a separately listed call). If the UUT ordinance is limited to "intrastate" calls (irrespective of the origination or termination of such intrastate calls), then separately listed interstate or international calls (*i.e.*, not within the "package") are not subject to the UUT.

This direction shall be known as Instruction A.

**III. UUT Ordinances with No Application to Separately Listed Calls (Instruction B).** With respect to UUT ordinances with no application to separately listed calls (pursuant to specific language or by administrative interpretation as determined by the City Attorney or County Counsel of the taxing jurisdiction), wireless service providers are directed to apply the public agency's UUT in the same manner as the federal excise tax and in accordance with the sourcing rules of Section 117 of the Act (*i.e.*, to "packages" that include some amount of airtime, regardless of the origination or termination of the calls within the "packages"), except that the UUT shall not apply to separately listed calls (*i.e.*, not within the "packages") that do not originate or terminate within the public agency. If the origination or termination cannot, as a practicable matter, be determined, then the UUT shall not be applied to such separately listed calls until such time as the identification of the origination or termination of such calls is practicable.

This direction shall be known as Instruction B.

**IV. UUT Ordinances with No Application to Call-Related Charges (Instruction C):** With respect to UUT ordinances with no application to call-related charges (pursuant to specific language or by administrative interpretation as determined by the City Attorney or County Counsel of the taxing jurisdiction), wireless service providers are directed to apply the public agency's UUT in the same manner as the federal excise tax, except that the UUT shall not apply to any call-related charges, including charges for "packages" that include some amount of airtime. Notwithstanding the foregoing, the UUT shall be applied to an imputed value of the non-call portion of the "package" as determined, and from time to time adjusted, by the UUT TTF. Such values shall be established based on the industry-wide pricing practices for similar services or "packages", and shall be published on the UUT TTF website to assure uniform application.

This direction shall be known as Instruction C.

- V. **Billing Software Limitations.** In the event that a wireless service provider is unable to implement one of the above Instructions due to billing software limitations, the wireless service provider is directed to apply the UUT in a manner that assures, at a minimum, the full collection of the UUT as directed by the public agency. To the extent that an excessive collection occurs due to billing software limitation, the wireless service provider shall provide reasonable notice to the customer of such circumstances, and shall direct the customer to a designated contact of the public agency for purposes of obtaining a tax refund or other appropriate adjustment for such excessive collection.
- VI. **Contact Person for Public Agency.** In the event that a taxpaying customer has any question regarding the UUT of the public agency, the tax-collecting utility provider may refer such inquiry to the assigned persons on the web site of the UUT TTF: [www.uutinfo.org](http://www.uutinfo.org). The Utility Users Tax Technical Task Force shall prepare, and periodically update, a "frequently asked questions" (FAQ) regarding the application of the UUT to wireless charges for use by UUT public agencies and the wireless industry. The Utility Users Tax Technical Task Force shall also develop a "clearinghouse" mechanism to assure that tax application information and directions to UUT tax collectors and tax payers are consistent and uniform.
- VII. **Prospective Effect of Ruling.** A public agency's adoption of this "best practices policy" and an appropriate "Instruction" selection (by administrative ruling, resolution, ordinance amendment, or some other written communication) shall prospectively take effect two years after the date of the enactment of the Act (*i.e.*, on August 1, 2002). Nothing herein shall be construed as establishing or otherwise affecting the collection or tax application responsibility of the tax collecting utility provider for periods prior to August 1, 2002.