



# REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

CONSENT REPORT

April 8, 2010

Honorable Members of the  
Law and Legislation Committee

**Subject:** Legislative Position: Oppose Unless Amended HR 1521 (Lofgren) – Cell Tax  
Fairness Act

**Location/Council District:** Citywide

**Recommendation:**

Adopt an oppose position on HR 1521 (Lofgren) unless it is amended to except from the proposed five year moratorium, local taxes that are voter approved pursuant to state law.

**Contact:** Mark Prestwich, Special Projects Manager, (916) 808-5380

**Presenters:** n/a

**Department:** City Manager's Office

**Division:** Legislative Affairs

**Organization No:**

**Description/Analysis**

**Issue:** As introduced, HR 1521 likely removes the ability of cities to seek voter-approved amendments to existing local taxes on wireless telecommunications or to seek voter approval of new or increased local taxes in a non-discriminatory manner (e.g. treating wireless and wire telecommunications in the same manner). While Sacramento is unlikely to be affected by this legislation because voters modernized the City's telecommunications ordinance in November 2008, the proposed measure diminishes the City's control over its essential tax revenues unless it is amended to exempt voter approved local taxes as California law requires.

**Policy Considerations:** Sacramento has a long standing tradition of supporting local control, and opposing state and federal legislation that diminishes the City's control of essential local tax revenues.

**Environmental Considerations:** None.



**Attachment 1 - Draft Letter**

April 9, 2010

TO ALL MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

**SUBJECT: Oppose Unless Amended HR 1521 – Cell Tax Fairness Act**

Dear Member:

Since 1969, the City of Sacramento has applied a tax on utility services, including electricity, gas and telephone services. The City's utility tax also applies to cable television and, since 1993, to wireless phone service (cell phones).

Our utility tax revenues go directly to the City's general fund to pay for essential city services including police, fire protection and parks. Last year, the utility tax on communications services provided over \$21 million for city services, with \$12 million of that amount coming directly from wireless phone service. In November 2008, 64.9% of our local voters approved a modernized and non-discriminatory local tax on wired and wireless telecommunication technologies.

The City of Sacramento opposes HR 1521 because it: 1) takes away our *"local control"* (i.e., by precluding new or increased local taxes on wireless that receive local voter approval); and, 2) takes away our ability to adopt a *"non-discriminatory"* telecommunications tax by treating wireless communications the same as other wired technologies.

To address our concern of "local control" and "non-discriminatory taxes", we urge you to **support an amendment** that would except from the proposed five year moratorium, local taxes that are voter approved pursuant to state law (see attached letter of the League of California Cities).

Thank you for your consideration.

Sincerely,

LAUREN HAMMOND, Chair  
Law and Legislation Committee

Attachment

cc: Mayor Johnson and Members of the City Council  
U.S. Representative Doris Matsui  
David Jones, Emanuels and Jones and Associates  
League of California Cities



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February 24, 2010

The Honorable Judy Chu  
U.S. House of Representatives  
2421 Rayburn House Office Building  
Washington, DC 20515

**RE: Oppose Legislation That Would Reduce Critical Local Government Revenue**

Dear Congresswoman Chu:

As the second session of the 111<sup>th</sup> Congress gets underway I am writing you on behalf of the League of California Cities (League), which represents California's 480 cities, to reiterate our deep concern over HR 1521—the Cell Tax Fairness Act of 2009, which would impose a five-year moratorium on “new” state and local taxes on mobile services and the providers of mobile services.

The language in the measure is broadly drafted and would likely remove the ability of California cities to seek *voter-approved* amendments to *existing* local taxes on wireless telecommunications or to seek voter approval of new or increased local taxes in a non-discriminatory manner (i.e., taxing wireless and wired telecommunications in the same manner). During the past four years, California voters have been approving local telephone tax measures that would treat wired and wireless taxes in the same manner, regardless of technology, by overwhelming majorities. The proposed bill, however, would preclude such local determinations by prohibiting “new” taxes on wireless telecommunications.

At a time of great fiscal crisis for California's cities, it is critical that cities retain their traditional authority to enact local taxes, which require voter approval under the California Constitution, in order to pay for essential local services such as police, fire, emergency 911, street maintenance, parks and libraries. Prior to the economic downturn California cities already faced limited options to generate revenue to provide city services, as significant levels of the property taxes collected at the local level have been transferred to balance the state's budget in recent years, despite the fact that California cities are experiencing the same recessionary effects as the state. As the current national economic crisis expands, a number of local governments are being forced to impose severe cuts on its critical public services, as well as defer important

local public infrastructure maintenance and upgrade projects that would provide jobs sorely needed in this economy.

California cities are strong advocates of "local control", and now seek the assistance of their Congressional representatives in opposing proposed Federal legislation that would diminish their local control over essential tax revenues. We strongly believe that our local voters are best suited to decide whether to increase or maintain local taxes or face further reductions in essential local services.

For these reasons we urge you to oppose this legislation unless it is amended to specifically exclude any local taxes that receive voter approval pursuant to state law. To our knowledge, only three other states have such voter approval requirements of local taxes, so such exclusion would have a minimal effect, while preserving local control in those states requiring voter approval of local taxes.

Please let me know if you have any questions or need any additional information, or contact the League's Washington advocates, Eve O'Toole and Dustin McDonald, at (202) 419-2505 and (202) 419-2511 respectively. We look forward to continuing to work with you on California's important local priority issues.

Sincerely,

A handwritten signature in cursive script that reads "Chris McKenzie".

Christopher McKenzie  
Executive Director

**Attachment 2 – Bill Text**

HR 1521 IH

111th CONGRESS

1st Session

H. R. 1521

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

IN THE HOUSE OF REPRESENTATIVES

**March 16, 2009**

Ms. ZOE LOFGREN of California (for herself, Mr. FRANKS of Arizona, Mr. COHEN, Mr. SMITH of Texas, Mrs. BONO MACK, Mr. SENSENBRENNER, Ms. ESHOO, Mr. COBLE, Ms. JACKSON-LEE of Texas, Mr. WEXLER, Mr. JORDAN of Ohio, Mr. GUTIERREZ, Mr. ISSA, Mr. GONZALEZ, Mr. CARDOZA, Mr. FORBES, Mr. COSTA, Mr. WITTMAN, Mr. BACA, Mr. RADANOVICH, Mr. GENE GREEN of Texas, and Mr. BERRY) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Cell Tax Fairness Act of 2009'.

**SEC. 2. MORATORIUM.**

(a) In General- No State or local jurisdiction shall impose a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile service property, during the 5-year period beginning on the date of enactment of this Act.

(b) Definitions- In this Act:

(1) MOBILE SERVICE- The term 'mobile service' means commercial mobile radio service, as such term is defined in section 20.3 of title 47, Code of Federal Regulations, as in effect on the date of enactment of this Act, or any other service that is primarily intended for receipt on,

transmission from, or use with a mobile telephone, including but not limited to the receipt of a digital good.

(2) **MOBILE SERVICE PROPERTY**- The term 'mobile service property' means all property used by a mobile service provider in connection with its business of providing mobile services, whether real, personal, tangible, or intangible and includes, but is not limited to goodwill, licenses, customer lists, and other similar intangible property associated with such business.

(3) **MOBILE SERVICE PROVIDER**- The term 'mobile service provider' means any entity that sells or provides mobile services, but only to the extent that such entity sells or provides mobile services.

(4) **NEW DISCRIMINATORY TAX**- The term 'new discriminatory tax' means any tax imposed by a State or local jurisdiction that--

(A) is imposed on or with respect to, or is measured by the charges, receipts, or revenues from or value of--

(i) any mobile service and is not generally imposed, or is generally imposed at a lower rate, on or with respect to, or measured by the charges, receipts or revenues from, other services or transactions involving tangible personal property;

(ii) any mobile service provider and is not generally imposed, or is generally imposed at a lower rate, on other persons that are engaged in businesses other than the provision of mobile services; or

(iii) any mobile service property and is not generally imposed, or is generally imposed at a lower rate, on or with respect to, or measured by the value of, other property that is devoted to a commercial or industrial use and subject to a property tax levy, except public utility property owned by a public utility subject to rate of return regulation by a State or Federal regulatory authority; and

(B) was not generally imposed and actually enforced on mobile services, mobile service providers, or mobile service property prior to the date of enactment of this Act.

(5) **STATE OR LOCAL JURISDICTION**- The term 'State or local jurisdiction' means any of the several States, the District of Columbia, any territory or possession of the United States, a political subdivision of any State, territory, or possession, or any governmental entity or person acting on behalf of such State, territory, possession, or subdivision and with the authority to assess, impose, levy, or collect taxes or fees.

(6) **TAX**-

(A) **IN GENERAL**- The term 'tax' means any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed on an individual entity or class of entities for a specific privilege, service, or benefit conferred exclusively on such entity or class of entities.

(B) **EXCLUSION**- The term 'tax' does not include any fee or charge--

- (i) used to preserve and advance Federal universal service or similar State programs authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or
- (ii) specifically dedicated by a State or local jurisdiction for the support of E-911 communications systems.

(c) Rules of Construction-

(1) DETERMINATION- For purposes of subsection (b)(4), all taxes, tax rates, exemptions, deductions, credits, incentives, exclusions, and other similar factors shall be taken into account in determining whether a tax is a new discriminatory tax.

(2) APPLICATION OF PRINCIPLES- Except as otherwise provided in this Act, in determining whether a tax on mobile service property is a new discriminatory tax for purposes of subsection (b)(4)(A)(iii), principles similar to those set forth in section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 11501) shall apply.

(3) EXCLUSIONS- Notwithstanding any other provision of this Act--

(A) the term 'generally imposed' as used in subsection (b)(4) shall not apply to any tax imposed only on--

- (i) specific services;
- (ii) specific industries or business segments; or
- (iii) specific types of property; and

(B) the term 'new discriminatory tax' shall not include a new tax or the modification of an existing tax that--

(i) replaces one or more taxes that had been imposed on mobile services, mobile service providers, or mobile service property; and

(ii) is designed so that, based on information available at the time of the enactment of such new tax or such modification, the amount of tax revenues generated thereby with respect to such mobile services, mobile service providers, or mobile service property is reasonably expected to not exceed the amount of tax revenues that would have been generated by the respective replaced tax or taxes with respect to such mobile services, mobile service providers, or mobile service property.

### **SEC. 3. ENFORCEMENT.**

(a) Burden of Proof- The burden of proof in any proceeding brought under this Act shall be upon the party seeking relief and shall be by a preponderance of the evidence on all issues of fact.

(b) Relief- In granting relief against a tax which is discriminatory or excessive under this Act with respect to tax rate or amount only, the court shall prevent, restrain, or terminate the imposition, levy, or collection of no more than the discriminatory or excessive portion of the tax as determined by the court.