

This letter discusses the Prepaid Wireless 9-1-1 Surcharge Act. 50 ILCS 753.
(This is a GIL.)

July 30, 2012

Dear:

This letter is in response to your letter dated July 2, 2012, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have questions regarding taxes that should be collected, at retail, for wireless service payments. My uncertainty pertains to the definition of the type of wireless service, prepaid or not.

I will attempt to be concise in my facts, references, and questions.

- My business is that of wireless retail (brick and mortar).
- Consumers come to our establishments to pay for their wireless service, although they could do the same via other methods (i.e. phone, internet).
- We can take payments from many providers, each offering different plan/subscription types.

There are three taxes that I understand my [sic] come into play, and I would like to know if we, a wireless retailer (not service operator or provider), should collect them.

1. Retailers' Occupation Tax

The initial part of the following regulation leads me to believe that sales tax should be collected:

Title 86 Part 130 RETAILERS' OCCUPATION TAX Section 130.101 Character and Rate of Tax (<http://tax.illinois.gov/LegalInformation/regs/part130/130-101.pdf>)

The Retailers' Occupation Tax Act (the Act) [35 ILCS 120] imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed

under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed (Section 2 of the Act).

But then the regulation goes on to specifically state:

“Prepaid telephone calling arrangement” does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan.

If I had to assume what this Act was trying to distinguish, I would guess that the Act is trying to address the differences typically found between contract service, and that of non-contract service (although even those in contract, are eventually out of contract). And/or, I may think that the Act is trying to refer to whether or not a bill is mailed (despite e-billing being increasing popular). And/or, I might think that the Act is trying to refer to different relationships where credit is granted, or not granted, by the service provider. Unfortunately, I do not have the luxury of assuming intention, rather, I must follow the specific language of the regulation.

From my understanding of the Retailers' Occupation Tax Act, prepaid is being defined as usage in “predetermined units or dollars”, and not that of a “subscription plan” whereby the purchase is reflected as a “credit” on an account.

My understanding of an example arrangement qualifying as a “Prepaid telephone calling arrangement”:

- \$10 added to an account, to be used at a rate of \$0.20 per minute

My understanding of an example arrangement not qualifying as a “Prepaid telephone calling arrangement”:

- \$100 added to an account, to be used at a rate of \$55/month for an unlimited usage plan, deducted from the account balance/credit on the 5th of every month

Thus, regardless of whether a customer is under contract or not, or if the customer is mailed a bill or not, or if the customer is granted credit or not (because this regulation does not speak to any of that), determining applicability of of [sic] Retailers' Occupation Tax (and thus Sales Tax), is dependent on the plan/arrangement chosen by the consumer. Of which, both aforementioned plan types are offered by many wireless providers, including those traditionally referred to as “prepaid” providers.

Am I correct in saying that Sales Tax should not be collected on non-minute or non-card purchases, even if commonly referred to as “prepaid” (as in the second example provided above), but not per Illinois' definition?

2. Telecommunications Excise Tax

If indeed such payments are not subject to the Retailers' Occupation Tax, then the following leads me to believe that Telecommunications Excise Tax should be collected:

ST 12-0014-GIL 03/14/2012 TELECOMMUNICATIONS EXCISE TAX
(<http://tax.illinois.gov/LegalInformation/Letter/rulings/st/2012/ST-12-0014.pdf>)

Prepaid telephone plans that do not meet the definition of a "prepaid telephone calling arrangement" are taxed under the Telecommunications Excise Tax.

And if there is uncertainty pertaining to the timing of the payment, the following is stated:

Paying in advance recurring monthly charges for telecommunications services obtained under a subscription plan does not convert telecommunications services into a prepaid telephone calling arrangement.

Therefore, I believe that Telecommunications Excise Tax should be paid, but is this the responsibility of a retailer whom only posts payments, and does not provide the service them self?

3. E911 Surcharge

I understand that the E911 Surcharge is to be collected on prepaid wireless telecommunications services, but is the same logic as above used to determine qualification?

FY 2012-01 (<http://tax.illinois.gov/Publications/Bulletins/2012/FY-2012-01.pdf>)

Prepaid wireless telecommunications service is service that must be paid for in advance and is sold in predetermined units or dollars. As the predetermined units are used, the amount remaining available for use declines in a known amount. Examples include prepaid calling cards and minutes added to "pay-as-you-go" phones.

Therefore, a \$55/month plan, where the purchase is reflected as a credit to the account, is not considered a "prepaid telephone calling arrangement", and thus does not qualify for the retail E911 Surcharge? Again, even if commonly called "prepaid"?

In Illinois, specifically Chicago, you can understand how important these answers are. Sales Tax is 9.5%, and the E911 Surcharge is another 7%, totaling 16.5%! I am uncertain about the Telecommunications Excise Tax.

I very much appreciate your time, and seek an official ruling for my records.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Retailers' Occupation Tax is measured by the sellers' gross receipts from sales of tangible personal property. If retailers sell cellular phones to their customers, the retailers incur Retailers' Occupation Tax measured by the gross receipts from the sales. At the time the retailers purchase cellular phones from their suppliers, the retailers should supply Certificates of Resale to their suppliers. Then, when the retailers sell the cellular phones, the retailers will pay Retailers' Occupation Tax based on the amount they receive from their customers. This amount represents the gross receipts received from the sale of the cellular phone. It is important that retailers be very careful when computing the amount of gross receipts from the sales of their cellular phones. "Gross receipts" means "all the consideration actually received by the seller, except traded-in tangible personal property" from all sources. See 86 Ill. Adm. Code 130.401. The retailers are required to collect a complementary Use Tax liability from their customers when the sales of the cellular phones occur. The taxes should be listed as a separate item from the selling price of the equipment and not as an administration or service charge. See 86 Ill. Adm. Code § 150.135.

Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to Retailers' Occupation Tax liability and not the Telecommunications Excise Tax. 35 ILCS 120/2. Prepaid telephone plans that do not meet the definition of a "prepaid telephone calling arrangement" are taxed under the Telecommunications Excise Tax. 35 ILCS 630/3 & 4. "Prepaid telephone calling arrangements" generally means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. "Prepaid telephone calling arrangements" include the recharge of a prepaid calling arrangement. "Prepaid telephone calling arrangement" does not however include an arrangement whereby a customer purchases a payment card and pursuant to which the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. 35 ILCS 120/2-27.

The Telecommunications Excise Tax Act

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 630/3 and 4. The Simplified Municipal Telecommunications Tax Act allows municipalities to impose a tax on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by persons in Illinois at a rate not to exceed 6% for municipalities with a population of less than 500,000, and at a rate not to exceed 7% for municipalities with a population of 500,000 or more, of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 636/5-10 and 5-15.

"Telecommunications," in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter;

computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. "Telecommunications" do not include "value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide these services, the charges for each service must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

"Gross charges" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. "Gross charges" do not include "charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content." See 86 Ill. Adm. Code 495.100(c).

The Prepaid Wireless 9-1-1 Surcharge Act

The Prepaid Wireless 9-1-1 Surcharge Act imposes on consumers a prepaid wireless 9-1-1 surcharge of 1.5% per retail transaction. This surcharge does not apply in a home rule municipality having a population in excess of 500,000. A home rule municipality having a population in excess of 500,000 on the effective date of the Act may impose a prepaid wireless 9-1-1 surcharge not to exceed 7% per retail transaction sourced to that jurisdiction. 50 ILCS 753/15(a) & (a-5).

The prepaid wireless 9-1-1 surcharge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this State and home rule municipality having a population in excess of 500,000 that elects to impose a prepaid wireless 9-1-1 and shall be remitted to the Department by the seller. The amount of the prepaid wireless 9-1-1 surcharge shall be separately stated as a distinct item apart from the charge for the prepaid wireless telecommunications service on an invoice, receipt, or other similar document that is provided to the consumer by the seller or shall be otherwise disclosed to the consumer. If the seller does not separately state the surcharge as a distinct item to the consumer, then the seller shall maintain books and records which clearly identify the amount of the 9-1-1 surcharge for retail transactions. 35 ILCS 753/15(b) & (b-5).

When prepaid wireless telecommunications service is sold with one or more other products or services that is not subject to the prepaid wireless 9-1-1 surcharge for a single, non-itemized or bundled price, then the appropriate prepaid wireless 9-1-1 surcharge shall be applied to the entire non-itemized or bundled price unless the seller elects to apply the prepaid wireless 9-1-1 surcharge to (i) the dollar amount of the prepaid wireless telecommunications service if that dollar amount is disclosed to the consumer or (ii) the portion of the price that is attributable to the prepaid wireless telecommunications service if the retailer can identify that portion by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, books and records that are kept for non-tax purposes.

However, if a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized or bundled price, then the seller may elect not to apply the prepaid wireless 9-1-1 surcharge to such transaction. For purposes of this subsection, an amount of service denominated as 10 minutes or less or \$5 or less is considered minimal. 35 ILCS 753/15(f).

If a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized or bundled price and the seller elects not to apply the prepaid wireless 9-1-1 surcharge to such transaction, no amount of prepaid wireless 9-1-1 surcharge will be added to Schedule B of the ST-1, Sales and Use Tax and E911 Surcharge Return. However, all of the gross receipts received from the sale will be subject to Retailers' Occupation Tax liability.

Except for the situations when a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized or bundled price, all sales of prepaid wireless telecommunications services, regardless of the amount, are subject to the prepaid wireless 9-1-1 surcharge and reported on Schedule B of the ST-1, Sales and Use Tax and E911 Surcharge Return.

A person may be a retailer of prepaid calling arrangements, a reseller of telecommunications service or simply providing a bill collection service for a telecommunications provider. Without reviewing the contracts between a retailer and its suppliers, it is not possible to determine the tax liability of each of the parties. We note, however, that a person that sells prepaid calling arrangements, whether in the form of a card or recharge of minutes, is generally considered the retailer of such arrangements and responsible for paying Retailers' Occupation Tax and the Prepaid Wireless 9-1-1 Surcharge.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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