

This letter discusses “prepaid telephone calling arrangements” and the Prepaid Wireless 9-1-1 Surcharge Act. See 35 ILCS 120/2-7 and 50 ILCS 753. (This is a GIL.)

March 31, 2013

Dear:

This letter is in response to your letter dated January 22, 2013, 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:

This is to request legal advice on the amounts of sales taxes that are to be charged on sale of PREPAID WIRELESS SERVICES.

We believe that in the city of Chicago, we have to charge 7 percent for the Surcharge E911 for transactions of prepaid wireless telecommunications service.

We have been told that we should also charge the customer with 9.5% on purchases of ELECTRONIC PINS, creating a total tax of 16.5% on the transaction.

Is there any established sales tax obligation on prepaid services?

We believe that Prepaid wireless telecommunications services are paid for in advance and is sold in predetermined units or dollars, and that sale is of SERVICES.

Please let us know what the Law says and whether we are charging the customer the correct amount of taxes. If we are charging the correct amount of taxes, there is no problem, but if we are not charging them the correct amount, we may be obligated to pay the additional taxes. We wanted to be correct and to pay what the Law of the State indicates.

Please note that:

1. - if I charge additional taxes, my customers will get angry,
2. - think that we are stealing money,
3. - refuse to do business with us, because in some places there is no tax being charged for the services.
4. - Is this some sort of Illegal competition?

Please help us clarify the problem. We believe on paying what is correct, and we want to charge the customer the right amounts of taxes.

DEPARTMENT'S RESPONSE:

The Telecommunications Excise Tax Act (The 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. See 35 ILCS 630/3 & 4 and 86 Ill. Adm. Code 495. The Act defines gross charges as including amounts 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 retailers. 35 ILCS 630/2(a).

Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to the tax imposed under the Retailers' Occupation Tax Act, regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. 35 ILCS 120/2. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption at a rate of 6.25%. Under the Use Tax Act, a tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer. The Use Tax Act applies when tangible personal property is purchased anywhere at retail. In essence, the retailer collects the Use Tax from the customer to reimburse it for the Retailers' Occupation Tax paid by it to the State. Prepaid telephone calling arrangements are also subject to retailers' occupation taxes imposed by units of local government.

"Prepaid telephone calling arrangements" mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made 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 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. 35 ILCS 120/2-27.

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

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 surcharge 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).

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,

Richard S. Wolters
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