

This letter discusses the Prepaid Wireless 9-1-1 Surcharge Act. 50 ILCS 753.

December 4, 2019

This letter is in response to your letter dated July 23, 2019, in which you requested 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](http://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:

My name is NAME, my address is ADDRESS, my phone number is NUMBER and my EIN is NUMBER. I am requesting a private letter ruling concerning whether the E911 surcharge tax should be imposed on the sale of a recharge of a prepaid telephone calling arrangement for a phone device that is located and will be used in foreign countries and not within the United States.

1. Question:

Is the E911 surcharge tax applicable to the sale of recharges of prepaid telephone calling arrangements for a phone service that is provided by a foreign company in a foreign country and is used by the citizens living in those foreign countries?

2. Statement of Facts and Law

In conformity with title 2 Ill. Adm. Code 1200.110(b)(1), the material facts are as follows: Sales of telephone recharges are made to customers in Illinois. Illinois customers purchase cell phone recharges for the cell phones that their family and friends use in foreign countries such as Honduras, Mexico, Guatemala, etc. Once the Illinois customer pays for the telephone recharge, the cell phones of their family and friends in foreign countries get time they can use to originate or receive calls to their cell phones in those foreign countries. The cell phone services in those foreign countries are operated by foreign telecommunication companies.

According to 101<sup>st</sup> General Assembly Public Acts 50 ILCS 753/5, the purpose of the E911 Surcharge tax is as follows:

The General Assembly finds and declares that maintaining effective and efficient 9-1-1 systems across the State benefits all citizens. **The fees imposed upon the consumers of telecommunication services that have the ability to dial 9-1-1 are an important funding mechanism to assist the State and units of local government with the deployment of enhanced 9-1-1 services to the citizens of this State.**

Prepaid wireless telecommunication services are an important segment of the telecommunications industry and have proven particularly attractive to low-income and low-volume consumers. Unlike traditional telecommunication services, prepaid wireless telecommunications services are not sold or used pursuant to term contracts or subscriptions and monthly bills are not sent to consumers by prepaid wireless telecommunication service providers or retail vendors.

Prepaid wireless consumers have the same access to emergency 9-1-1 services from their wireless devices as wireless consumers on term contracts. Prepaid wireless consumers benefit from the ability to access the 9-1-1 system by dialing 9-1-1.

Consumers purchase prepaid wireless telecommunication services at a wide variety of general retail locations and cash-and-carry or pay-as-you-go basis from retailers.

It is the intent of the General assembly to:

- (1) ensure equitable contributions to the funding of 9-1-1 systems from consumers or prepaid wireless telecommunications services:
- (2) collect 9-1-1 surcharges from purchasers of prepaid wireless telecommunications services at the point of sale;
- (3) impose the collection and remittance obligation for 9-1-1 surcharges on sellers of prepaid wireless telecommunication services;
- (4) impose a statewide administered 9-1-1 surcharge on point of sale transactions in order to minimize administrative costs on retailers.

(Source: P.A. 97-463, eff. 1-1-12.)

However, the purchase of cell phone recharges by customers in Illinois is not for the personal enjoyment of the customers in this State but for the enjoyment of their families and friends in foreign countries that do not have the ability to dial 911.

### 3. Analysis

If the purpose the Prepaid Wireless 9-1-1 Surcharge Act is to impose fees upon consumers of telecommunication services that have the ability to dial 9-1-1 (See 50 ILCS 753/5 The fees imposed upon the consumers of telecommunication services that

have the ability to dial 9-1-1 are an important funding mechanism to assist the State and units of local government with the deployment of enhanced 9-1-1 services to the citizens of this State), then, consumers making purchases of cell phone recharges for the cell phones that their family and friends use in foreign countries such as Honduras, Mexico, Guatemala, etc., should not be subject to the prepaid wireless E911 Surcharge Tax since they have no access to 911 services in their own countries.

I could not locate any Illinois regulation, case law or administrative rulings evaluating if the sales of recharges to use in foreign countries would be subject to the E911 Surcharge Tax.

Some sellers of recharges are imposing the 911 Surcharge tax to their customers while others are not. To be in compliance, I respectfully request the issuance of a PLR from the Department regarding this issue.

According to title 2 Ill. Admin. Code 1200.110(b)(3), the tax period at issue is July 2019 through the present. There are not pending audits or litigation with the department.

According to title 2 Ill. Admin. Code 1200.110(b)(4), to the best of my knowledge, the Department has not ruled on the same or similar issue presented in this PLR request for me or a predecessor. Neither, myself or any representative have not submitted the same or a similar issue to the Department in the past but withdrew it before a letter ruling was issued.

I look forward to the Department's response. Thank you for your time and consideration.

## **DEPARTMENT'S RESPONSE:**

The Prepaid Wireless 9-1-1 Surcharge Act imposes on consumers of a prepaid wireless a 911 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 per retail transaction sourced to that jurisdiction. 50 ILCS 753/15(a) & (a-5).

“Consumer’ means a person who purchases prepaid wireless telecommunications service in a retail transaction.” “Retail transaction’ means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.” “Prepaid wireless telecommunications service’ means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the amount declines with use in a known amount.”

The prepaid wireless 911 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 911 surcharge and shall be

remitted to the Department by the seller. The amount of the prepaid wireless 911 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 911 surcharge for retail transactions. 50 ILCS 753/15(b) & (b-5).

The Prepaid Wireless 9-1-1 Surcharge Act imposes the prepaid wireless 911 surcharge on persons who purchase prepaid wireless. The purchases you describe are made by purchasers during a retail transaction that occurs in Illinois. The prepaid wireless 911 surcharge must be collected by the seller from the consumer with respect to each retail transaction occurring in this State. Therefore, the surcharge is imposed on the purchase of prepaid wireless in this State, regardless of the location where the prepaid calling arrangements are used.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's

Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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RSW:bkI