

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

December 29, 2011

Dear Xxxxx:

This letter is in response to your letter dated December 14, 2011, 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:

We recently received the above titled informational bulletin.

We would like clarification about how sales of prepaid phone cards with a value of \$5 or less are handled.

Reading the bulletin, it appears such sales would fall under the minimal sales category; where we would not be required to collect the surcharge from the customer nor show it on the receipt.

Our questions are whether such sales are to be reported on Schedule B of the revised ST-1 form and whether we should remit a calculated surcharge for those sales. Do we as a retailer need to pay the surtax even if it is not shown on a receipt or collected from a customer.

All of our prepaid phone cards for sale in our stores are \$5 or less in value. So another question would be what if one customer buys several \$5 prepaid phone cards in one transaction?

Basic question is: 'are minimal sales' *exempt* sales on the new Schedule B?

In talking with a Department of Revenue agent, I was told I should ask the Legal Department this question.

Any help would be appreciated.

DEPARTMENT'S RESPONSE:

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.

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
Associate Counsel

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