

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

June 29, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated January 21, 2015, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

My firm represents the above-referenced taxpayer COMPANY (“COMPANY” or the “Taxpayer”). A Form IL-2848 Power of Attorney (“POA”) is attached to hereto as Exhibit A. Pursuant to 2 Ill. Adm. Code 1200.110, this letter shall serve as COMPANY’s request for a Private Letter Ruling (“PLR”) from the Illinois Department of Revenue (the “Department”) concerning whether the Illinois Prepaid Wireless E911 Surcharge (the “Surcharge”) should be imposed on COMPANY’s sale of prepaid cellular (“cell”) phone service plans.

I. QUESTION PRESENTED

Is the Surcharge applicable to COMPANY’s sales of prepaid cell phone service plans?

II. STATEMENT OF MATERIAL FACTS AND LAW

Pursuant to 2 Ill. Adm. Code 1200.110(b)(1), the material facts are as follows: COMPANY is an Illinois corporation that owns and operates a major wireless communications service provider (the "Provider") retail franchise store located in CITY, Illinois ("the Store"). In addition to Provider brand cell phones and general cell phone accessories, COMPANY sells two general types of Provider cell phone service plans (the "Plan(s)"), the "MONTHLY PLAN" and the "DAILY PLAN." The MONTHLY PLANS provide purchasers with an unlimited amount of cell phone usage for one month, with variable amounts of higher speed internet, for \$35, \$45, or \$55. Purchasers of the DAILY PLAN pay a minimum of \$10 for three days of unlimited cell phone usage. The Plans are compatible only with Provider brand cell phones.

When COMPANY sells a Plan at a Store, a sales representative accesses a Provider website for dealers, creates a customer account for the purchaser linked to the purchaser's Provider brand cell phone serial number, and inputs the purchaser's name, address and Plan information. Once the account is created, the website generates a phone number and an account number and the sales representative activates the purchaser's Provider cell phone. The sales representative then processes payment for the Plan through a third party payment processing company website which automatically receives the information from the purchaser's newly created Provider account. The Store sales representative charges the purchaser for the sale of the Plan immediately, and COMPANY is later billed by the Provider through the third party payment processing company for the sale of the Plan, minus COMPANY's percentage commission. A customer may purchase additional periods of service at any Provider franchise store, or at any retailer that processes the Provider's bill payments, including RETAILER 1, RETAILER 2 and RETAILER 3 stores. However, the purchaser's cell phone service will cease after the period of time of the service purchased under a Plan has lapsed if no additional payment is made prior to that time. Further, if no additional payment is made within 60-90 days after the Plan has lapsed, the purchaser loses the cell phone number and account number created with the purchase of the Plan and a new account and cell number must be created and generated upon an additional Plan purchase. Purchasers have the option of setting up automatic service purchases and bill payment through the Provider website charged to the purchaser's credit card or similar account.

Effective January 1, 2012, the Prepaid Wireless 9-1-1 Surcharge Act imposes the Surcharge on consumers per "retail transaction," defined as the purchase of "prepaid wireless telecommunications service" from a seller for any purpose other than resale in Illinois. The seller must collect the Surcharge from the consumer and remit it to the Department. See 50 ILCS 753/10&15. "Prepaid wireless telecommunications service" means "a wireless telecommunications service¹ that allows a caller to dial 9-1-1 to access the 9-1-1 system, which service

¹ "Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. 20.3. See 50 ILCS 753/10.

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.” See 50 ILCS 753/10. “[P]repaid 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... such purchases are made on a cash-and-carry or pay-as-you-go basis from retailer’s.” See 50 ILCS 753/5.

III. ISSUES AND ANALYSIS

It is unclear whether the Plans sold by COMPANY described above meet the definition of a “prepaid wireless telecommunications service” such that the Plans would be subject to the Surcharge. While the Plans would appear to provide a wireless telecommunications service that allows the purchaser to call and access 9-1-1, and must be paid for in advance, it is not clear whether the Plans meet the definitional requirement that the service is “sold in predetermined units or dollars of which the amount *declines with use in a known amount*” (emphasis added), in that the Plans discontinue after a period of time has lapsed unless additional service is purchased, but provide for unlimited telephone service within that period. The Department has cited prepaid calling cards or minutes added to a “pay-as-you-go” phones as examples of “prepaid wireless telecommunications service,” but such arrangements appear dissimilar from the Plans in that those services decline at a known rate per usage (such as 10 cents per minute). See Illinois Department of Revenue Information Bulletin No. FY 2012-01.

COMPANY has been unable to locate any Illinois regulations, case law or administrative rulings analyzing whether services similar to the Plans would constitute “prepaid wireless telecommunications service” subject to the Surcharge. COMPANY is aware however that some Provider franchisees are imposing the Surcharge on their sales of the Plans, but that others are not. In view of the ambiguity concerning whether the described Plans would constitute “prepaid wireless telecommunications service” subject to the Surcharge, guidance from the Department is warranted and COMPANY respectfully requests the issuance of a PLR from the Department regarding same.

IV. DISCLOSURES

Pursuant to 2 Ill. Adm. Code 1200.110(b)(3), the tax period at issue is January 2012 through the present. COMPANY is not involved in any currently pending audits or litigation with the Department.

Pursuant to 2 Ill. Adm. Code 1200.110(b)(4), to the best of this firm and COMPANY’s knowledge, the Department has not previously ruled on the same or similar issue presented in this PLR request for COMPANY or a predecessor. Neither COMPANY nor any of its representatives have previously submitted the

same or similar issue to the Department but withdrew it before a letter ruling was issued.

We look forward to the Department's response. Thank you for your consideration and assistance.

DEPARTMENT'S RESPONSE:

The Prepaid Wireless 9-1-1 Surcharge Act imposes on consumers a prepaid wireless 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).

“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).

According to the Taxpayer, COMPANY sells two general types of cell phone service plans, the “MONTHLY PLAN” and the “DAILY PLAN.” “MONTHLY PLANS” provide purchasers with an unlimited amount of cell phone usage for one month, with variable amounts of higher speed internet, for \$35, \$45, or \$55. Purchasers of the DAILY PLAN pay a minimum of \$10 for three days of unlimited cell phone usage.”

Based on the Department's review of your letter and the Prepaid Wireless 9-1-1 Surcharge Act, it is the Department's opinion that the MONTHLY PLAN and the DAILY PLAN are subject to the prepaid wireless 911 surcharge.

The factual representations upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a

pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

RSW:kad

