

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

April 4, 2019

Dear Xxxx:

This letter is in response to your letter dated March 6, 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 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:

COMPANY d/b/a COMPANY1 was recently approved to provide prepaid wireless Lifeline services in Illinois. COMPANY1 intends to remit E911 surcharges for its Illinois customers in accordance with the Prepaid Wireless E911 Surcharge Act (50 ILCS 753) (“PW9SA”).

It is COMPANY1 understanding that the PW9SA imposes on sellers of prepaid wireless service the duty to collect the surcharges from buyers at the point of sale, and requires the Illinois Department of Revenue to administer collection of the sum; it does not, however, impose a surcharge on the consumer or provider for wireless Lifeline service where the consumer does not pay the provider for the service, i.e. where the consumer’s monthly service charge is fully subsidized by the federal Lifeline benefit.¹

COMPANY1 hereby seeks a written response, addressed to the undersigned and returned using the included postage-prepaid envelope, affirming that the Company’s understanding set forth herein is correct, or, if applicable, providing detailed clarification as to how the PW9SA should otherwise be interpreted.

If you have any questions, or if I may provide you with additional information, please contact me at the above address or telephone number. Thank you for your attention to this matter.

DEPARTMENT’S RESPONSE:

¹ See 50 ILCS 753/15(g) which states: “(g) The prepaid wireless 9-1-1 surcharge imposed under subsections (a) and (a-5) of the Section is not imposed on the provider or the consumer for wireless Lifeline service where the consumer does not pay the provider for the service. Where the consumer purchases from the provider optional minutes, texts, or other services in addition to the federally funded Lifeline benefit, a consumer must pay the prepaid wireless 9-1-1 surcharge, and it must be collected by the seller according to subsection (b-5).”

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. 50 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. 50 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.

The surcharge is not imposed or collected from entities that have an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act. 50 ILCS 15(c). As you noted in your letter, the prepaid wireless 9-1-1 surcharge is not imposed on the provider or the consumer for wireless Lifeline service where the consumer does not pay the provider for the service. Where the consumer purchases from the provider optional minutes, texts, or

other services in addition to the federally funded Lifeline benefit, a consumer must pay the prepaid wireless 9-1-1 surcharge, and it must be collected by the seller. 50 ILCS 15(g).

If your Company provides Lifeline service and the customer does not pay your Company anything for the Lifeline service, the prepaid wireless 9-1-1 surcharge would not apply.

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

RSW:rkn