

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

May 16, 2012

Dear:

This letter is in response to your letter dated April 19, 2012, 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](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:

A disagreement with Ms. Z (State agent representative) has brought this issue for you to clarify.

She stated that all prepaid telephone calling arrangements shall be reported on schedule B-E911 (Form ST-1) Surcharge including the prepaid phone cards with access code number used on international calls; (see sample included in this letter).

While I'm aware of the Retailers' Occupation Tax Act (the Act) [35 ILCS 120] in which a tax is imposed in this service and properly reported on the ST-1, I disagree that the sales of these cards should also be reported and paid on schedule B-E911.

The question is: why the state tax me twice, first when I pay for the prepaid phone card and then again when I use either my cell phone or my land line phone.

You need to remember these cards are not the same than the prepaid minutes added to 'pay-as-you-go' phones.

It is possible that the state agent is not interpreting the law right; that is why I need in writing the answer from your department to this issue so I can educate my clients with a solid base.

#### **DEPARTMENT'S RESPONSE:**

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" 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.

If a service or plan meets the definition of a "prepaid telephone calling arrangement" it is subject to the tax imposed under the Retailers' Occupation Tax Act, and the exemptions available under this Retailers' Occupation Tax Act apply.

The Illinois General Assembly enacted the Emergency Telephone Assistance Act to create a mechanism to fund the establishment and operation of 911 systems in municipalities and counties in the State. 50 ILCS 750/. The corporate authorities of any municipality or any county were allowed to impose a monthly surcharge on billed subscribers of network connections provided by telecommunication carriers engaged in the business of transmitting messages within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with the Act. 50 ILCS 750/15.3.

The General Assembly subsequently enacted the Wireless Emergency Telephone Safety Act. 50 ILCS 751/. The General Assembly enacted the Act in response to the Federal Communications Commission's requirement that wireless carriers provide E9-1-1 service in the form of automatic location identification and automatic number identification pursuant to policies set forth by the FCC. Public safety agencies and wireless carriers operating wireless 9-1-1 and wireless E9-1-1 systems required adequate funding to recover the costs of designing, purchasing, installing, testing, and operating enhanced facilities, systems, and services necessary to comply with the requirements mandated by the Federal Communications Commission.

Each wireless carrier is required to impose a monthly wireless carrier surcharge per Commercial Mobile Radio Service or CMRS connection that either has a telephone number within an area code assigned to Illinois by the North American Numbering Plan Administrator or has a billing address in this State. No wireless carrier shall impose the surcharge authorized by this Section upon any subscriber who is subject to the surcharge imposed by a unit of local government pursuant to Section 45. Prior to January 1, 2008, the surcharge amount was set by the Wireless Enhanced 9-1-1 Board.

Beginning on January 1, 2008, the monthly surcharge imposed was \$0.73 per CMRS connection. The wireless carrier that provides wireless service to the subscriber collects the surcharge from the subscriber. For mobile telecommunications services provided on and after August 1, 2002, any surcharge imposed under the Act was imposed based upon the municipality or county that encompasses the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. The surcharge is stated as a separate item on the subscriber's monthly bill. State and local taxes do not apply to the wireless carrier surcharge. 50 ILCS 751/17.

Effective January 1, 2012, the Wireless Emergency Telephone Safety Act no longer applies to prepaid wireless telecommunications service. Beginning January 1, 2012, the Prepaid Wireless 9-1-1 Surcharge Act imposes on consumers a prepaid wireless 9-1-1 surcharge of 1.5% per retail transaction. 50 ILCS 753/. "Prepaid wireless telecommunications service' means a wireless telecommunications service that allows a caller to dial 9-1-1 to access the 9-1-1 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." "Wireless telecommunications service' means commercial mobile radio service as defined by 47 C.F.R. 20.3." 50 ILCS 753/10. The prepaid wireless 9-1-1 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 of the prepaid wireless telecommunications service 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).

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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](http://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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