

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Prepaid Wireless 911 Service Charge (LAC 61:I.5401)

Act 531 of the 2009 Regular Session of the Legislature imposed a service charge upon the sales of prepaid wireless telecommunications. In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish rules, and R.S. 47:1511, which allows the department to make reasonable rules and regulations, the secretary hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule. This Emergency Rule shall be effective January 1, 2010 and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

This Emergency Rule is necessary to allow the secretary to provide needed information to Louisiana taxpayers regarding the collection and remittance of the prepaid wireless 911 service charge as provided by R.S. 33:9101.1. The effective date of this new law is January 1, 2010. The Department of Revenue is charged with the responsibility of administering the prepaid wireless 911 service charge.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 54. Prepaid Wireless 911 Service Charge §5401 Prepaid Wireless 911 Service Charge

A. Revised Statute 33:9109.1 imposes a service charge of 2 percent upon a consumer's retail purchase of prepaid wireless telecommunications service. .

B. Definitions

Consumer—a person who purchases prepaid wireless telecommunications service in a retail transaction.

Person—includes both businesses and individuals.

Prepaid Wireless Telecommunications Service—a wireless telecommunications system that allows a caller to dial 911 to access the 911 system, which service shall be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

Prepaid Wireless 911 Service Charge—the charge that is required to be collected by a seller from a consumer.

Provider—a person that provides prepaid wireless telecommunications service from a seller pursuant to a license issued by the Federal Communications Commission.

Retail Transaction—each individual purchase of prepaid wireless telecommunications from a seller for any purpose other than resale.

Seller—a person who sells prepaid wireless telecommunications to another person.

Wireless Telecommunications Service—commercial mobile radio service as defined by 47 C.F.R. 20.3, as amended.

C. Calculation of the Service Charge. Retail sellers of prepaid wireless telecommunications service will collect a 2 percent 911 service charge.

1. The seller must separately state the service charge for each transaction on an invoice, receipt or similar document provided to the consumer.

2. If the seller fails to separately state the service charge, the seller will be deemed to have collected the service charge.

3. When a tax or other fee is calculated on the retail transaction, the prepaid wireless 911 service charges is not included in the base for measuring the tax, fee, surcharge or other charge imposed by the state, political subdivision of the state or any intergovernmental agency.

4. There is no service charge imposed on the sale of a cellular phone that does not include preloaded minutes or units of airtime or rebates for minutes or units of airtime.

D. To determine whether or not a transaction occurs in Louisiana and is subject to the prepaid wireless 911 service charge, the following criteria should be used.

1. If a consumer purchases prepaid wireless telecommunications at a Louisiana location of a seller's business, then the transaction is to be treated as occurring in Louisiana.

2. If a customer does not physically purchase the prepaid wireless telecommunication service at the vendor's place of business, then the retail transaction shall be deemed to take place in the following locations:

a. the consumer's shipping address, if there is a shipment;

b. the consumer's billing address;

c. another address of the consumer, that is known by the vendor; or

d. the vendor's address or alternatively in the case of prepaid wireless calling service, the location associated with the mobile telephone number.

E. Quarterly Filing and Payment

1. Sellers must file and remit all prepaid wireless service charges collected to the Louisiana Department of Revenue (LDR) on a quarterly basis.

2. The return must be filed on or before the 20th day of the month following the end of the quarter.

3. The first quarter return for fees collected January 1, through March 31, 2010, will be due on or before April 20, 2010.

4. Sellers must file a return for the first quarter, even if no service charges were collected to be remitted to LDR.

F. Electronic Filing and Payment of 911 Service Fee Required

1. Sellers must file the 911 service fee return and pay the 911 service fees collected electronically via the LDR web site.

2. Sellers must register for the electronic filing system and select an electronic payment method.

G. Administration Fee

1. Sellers are allowed to deduct and retain 4 percent of the prepaid wireless 911 service charges collected from consumers as compensation for administering the service charge.

2. For the first quarter of 2010, sellers will be permitted to deduct and retain all service charges collected from consumers on retail transactions as compensation for establishing a system for administering the service charge.

3. LDR is allowed to retain up to 2 percent of the remitted service charges for reimbursement of direct administrative costs.

4. For the fiscal year 2009-2010, LDR may retain up to \$800,000 of the remitted service fees for implementation costs to establish an electronic system for collection and remittance of the prepaid wireless 911 service charges.

H. Distribution of 911 Service Charges to Eligible Communication Districts

1. Each communications district will receive a distribution of the 911 service charges remitted within 30 days of the end of each quarter.

2. The distribution will be calculated on a per capita basis by dividing the communication district's population by the state's population and multiplying the quotient by the total revenues remitted after deducting the administrative fee retained by LDR.

I. Audit and appeal procedures applicable to state sales tax under Chapter 2 of Title 47 of the Louisiana Revised Statutes shall apply to the prepaid wireless 911 service charge. Prescription of the prepaid wireless 911 service charge is governed by Article VII § 16 of the Louisiana Constitution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 33:9109.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 36:

Cynthia Bridges
Secretary