

810-6-5-.36 Prepaid Wireless 9-1-1 Charge.

(1) The Legislature has passed Act No. 2012-293 amending Chapter 98 of Title 11, which governs the operations of the Commercial Mobile Radio Service (CMRS) Board and imposes the CMRS emergency telephone service charge, herein referred to as the "9-1-1 Charge." Under the provisions of the Act, effective September 1, 2012, new Section 5.3 is added to Chapter 98 which requires the Department of Revenue to administer and collect the 9-1-1 Charge imposed on retail sales of prepaid wireless telephone service. The CMRS Board will continue to collect the 9-1-1 Charge on postpaid service.

(2) For purposes of this rule, the following terms shall have the respective meanings ascribed by this section:

(a) The term "department" shall mean the Department of Revenue for the State of Alabama.

(b) The term "prepaid retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(c) The term "prepaid wireless consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

(d) The term "prepaid wireless telephone service" means a service that meets all of the following requirements:

1. Authorizes the purchase of CMRS, either exclusively or in conjunction with other services.
2. Must be paid for in advance of the usage.
3. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis or provides for unlimited usage for a fixed period of time.

(e) The term "resale" means a sale of a prepaid wireless telecommunication service to a purchaser who acquires the service for the purpose of reselling it in the United States in the normal course of business in the form or condition in which it is purchased or as an integral part of a taxable item as defined in Section 40-23-1.

(f) The term "seller" means a person who sells prepaid wireless telecommunication services to any consumer. The term also includes those CMRS service providers who provide prepaid wireless service to their customers by either selling prepaid services at a retail location, via the Internet, telecommunication device, or otherwise.

(g) The term "9-1-1 Charge" shall mean the current CMRS emergency telephone service charge established under Section 11-98-7(b)(1). Upon its implementation, the replacement, statewide 9-1-1 Charge will be imposed under Section 11-98-5(a) as of October 1, 2013.

(3) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 11-98-1, are incorporated by reference herein.

(4) All sellers, including retailers and CMRS service providers, making sales of prepaid wireless telephone service shall collect from the consumer the 9-1-1 Charge on prepaid retail transactions occurring in this state and report the number of taxable and nontaxable transactions and the amounts of 9-1-1 Charges collected to the Department of Revenue.

(5) The 9-1-1 Charge shall be collected on each prepaid retail transaction regardless of whether the prepaid wireless telephone service is purchased in person at the business location of the seller in Alabama, by telephone, through the Internet or by any other method by a consumer in Alabama.

(6) For purposes of retail transactions occurring via the Internet, or by other telecommunication device, the Prepaid Wireless 9-1-1 Charge shall be collected on each transaction with a customer if that customer has a primary street or business address in Alabama and the customer is within the licensed service area of the CMRS provider. If the primary street or business address cannot be determined and if that customer has an area code designated as an area code for Alabama or a credit card billing address in Alabama, then the Prepaid Wireless 9-1-1 Charge shall be collected from that customer for each transaction. A flat rate of \$1.75 per retail transaction will be effective August 1, 2014. The historical rates for the Prepaid Wireless 9-1-1 Charge are as follows: \$.70 per retail transaction for the period of September 1, 2012 through September 30, 2013, and \$1.60 per retail transaction for the period October 1, 2013 through July 31, 2014.

(7) The 9-1-1 Charge collected on prepaid wireless service will be reported by the seller on a new form entitled "Prepaid Wireless 9-1-1 Return." Sellers shall be required to file their Prepaid Wireless 9-1-1 Returns electronically through the Department's online filing system, My Alabama Taxes (MAT). However, a seller who is unable to file online because the seller does not have access to a computer or the Internet, or because of other special circumstances, may apply to the Commissioner for a waiver from the requirement to file electronically.

(8) The 9-1-1 Charge on prepaid wireless telephone service is the liability of the consumer and not the seller or provider, except that the seller shall be liable to collect and remit all Prepaid Wireless 9-1-1 Charges on all qualifying transactions, including all instances where the seller has failed to separately state and collect the charge from the consumer. When the Prepaid Wireless 9-1-1 Charge is billed as a separate charge, the amount shall not be included in the base for measuring any tax,

fee, surcharge, or other charges that are imposed by this state, any political subdivisions of this state, or any intergovernmental agency.

(9) An allowance or discount of 4% of the 9-1-1 Charge collected, or deemed to be collected, on sales of prepaid wireless telephone service may be deducted on the return and retained by the seller.

(10) Section 11-98-5.3 provides that the Department shall administer the 9-1-1 Charge on prepaid wireless telephone service under the same provisions and procedures applicable to the administration of state sales tax, which include the provisions in Chapter 1, Chapter 2A, and Chapter 23 of Title 40.

(11) All persons selling prepaid wireless telephone service to consumers in Alabama shall make application for an account number for reporting the 9-1-1 Charge online at www.revenue.alabama.gov or by contacting the Registration Unit.

(12) The Prepaid Wireless 9-1-1 Return and payment are due on or before the twentieth (20th) day of each calendar month for the preceding calendar month.

(13) If a return is not timely filed and/or paid, the seller shall be assessed the appropriate penalties and interest as provided in Sections 40-2A-11 and 40-1-44.

(14) Transactions excluded from the 9-1-1 Charge:

(a) The sale of prepaid wireless telephone service for resale.

(b) A sale of a minimal amount of service, sold for a single, non-itemized price as part of the purchase of a wireless communications device, the seller may elect not to apply the 9-1-1 charge to the initial transaction. For these purposes, a service allotment denominated as ten (10) minutes or less, or five dollars (\$5) or less, is a minimal amount. If the seller elects to collect such charge, it shall be reported with other prepaid communication charges.

(c) The seller is required to maintain records in order to verify that transactions on which the Prepaid Wireless 9-1-1 Charge was not collected are not subject to the charge. The record may be in paper or electronic format and shall include the details of the transaction including the date of the transaction, the customer's name and address, the reason the exemption is claimed (9-1-1 Charge account number if applicable), invoice number, and the transaction details. If the seller fails to maintain the records to substantiate that a transaction is not subject to the 9-1-1 Charge, then the transactions will be subject to the charge.

(15) The Prepaid Wireless 9-1-1 Returns shall require the following information:

(a) Seller's Prepaid Wireless account number, legal name, and complete

address,

- (b) Period covered by the return and due date of the return,
- (c) The number of transactions of sales of prepaid wireless service,
- (d) The number of transactions not subject to the 9-1-1 charge,
- (e) The number of transactions subject to the 9-1-1 charge,
- (f) Amount of the 9-1-1 charge due,
- (g) Allowance or discount of 4% of the 9-1-1 Charge collected,
- (h) Penalties due, if applicable,
- (i) Interest due, if applicable,
- (j) Credits claimed, if any
- (k) Total amount due,
- (l) Total amount remitted,
- (m) An indication if payment of tax is made through electronic funds transfer (EFT), and
- (n) Seller's signature, title, and date signed.

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