

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 97-010

**This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a) (1993 Replacement Volume).**

TO:

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: September 3, 1997

RE: Revenue Ruling 97-010

**ISSUES AND FACTS**

The Taxpayer through its subsidiary companies provides wireless telecommunication services which are subject to the Alabama Cellular Radio Telecommunication Services Tax. In the collection and administration of the tax, the Taxpayer's companies must determine the validity of exclusions from tax which are claimed by many of their customers. In many instances the Taxpayer has difficulty determining when a customer is excluded from the payment of the tax. The exclusions may be provided under various federal and state provisions. The Taxpayer requests a revenue ruling stating that the seller of the wireless telecommunication services will not be liable for the collection or payment of the tax if a certificate is obtained in good faith from a customer certifying that it is excluded from the tax.

**LAW AND ANALYSIS**

The Alabama Cellular Radio Telecommunication Service Tax is codified at §§40-21-120 through 40-21-1245, Code of Alabama 1975. Section 40-21-121(b) provides as follows:

(b) Every provider subject to the tax herein levied ... shall add to the price or charge for such services and collect from every purchaser thereof an amount equal to the prescribed percentage of gross price or gross charge therefore. It shall be unlawful for any provider to fail or refuse to collect from the purchaser the amount required by this section to be collected, to refund or

offer to refund all or any part of the amount collected, or to absorb or advertise directly or indirectly the absorption or refund of said amount or any portion thereof. The provisions of this subsection that the tax herein levied shall be collected from the purchaser shall in no way relieve any provider of the tax herein levied. Nor shall the inability, and impracticality, refusal, or failure so to collect from such purchaser the amounts provided herein relieve such provider of the tax herein levied ...  
(Emphasis provided).

Section 40-21-121(b) specifically provides that the provider shall be liable for payment of the tax if the provider fails to collect the tax from its customers. Unlike the authority provided in §§40-23-120, relating to the State's sales tax on retail purchases, there is no authority in the statutory provisions providing for the Cellular Radio Telecommunication Services Tax which will allow the Department to provide for the waiver of taxes levied upon the provider of cellular radio telecommunication services. Since there is no authority for the Department to issue a certificate of exemption to the customers of cellular telecommunication service providers, there is no authority for a customer of a provider to exempt itself from tax even though a written certificate states that it is exempt. Under the facts as stated, the Alabama Department of Revenue cannot agree that a provider of Cellular Radio Telecommunication Services would not be liable for the tax due from his customer even though the customer certifies that it is exempt from the Cellular Radio Telecommunication Services Tax.

### **RULING**

A provider of cellular radio telecommunication services that is subject to the Cellular Radio Telecommunication Services Tax found at §40-21-120 et seq. is liable for such taxes found to be due from its customers, but not collected, even though the customers certify in writing to the provider that they are exempt from the Cellular Radio Telecommunication Services Tax.

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H. E. Monroe, Jr.  
Commissioner of Revenue

HEM:JWH:em