

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-6-5-.36

Rule Title: Prepaid Wireless 9-1-1 Charge

New; Amended; Repealed; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule? N/A

Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule relate to or effect any matter of litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.



Signature of certifying officer

Date 02/19/2019

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-5-.36

Rule Title: Prepaid Wireless 9-1-1 Charge

 New X Amend Repeal Adopt by Reference

- NO
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH
IF THE RULE IS NOT IMPLEMENTED:

11. OTHER COMMENTS:

ALABAMA DEPARTMENT OF REVENUE
Sales and Use Tax

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-3-.07.05 Charitable Organizations and Institutions

INTENDED ACTION

Amend

SUBSTANCE OF PROPOSED ACTION:

The department proposes to amend the above mentioned rule to update the Charitable Organizations and Institutions rule to include the new informational report filing requirements.

RULE NO. & TITLE

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

INTENDED ACTION

Amend

SUBSTANCE OF PROPOSED ACTION:

The department proposes to amend the above mentioned rule to reflect the rate increase of the Prepaid Wireless 911 Charge from \$1.75 to \$1.86 effective 1/1/2019.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **1:00 PM on Tuesday, April 9, 2019, Room 1203, First Floor, Gordon Persons Building**, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy/>.

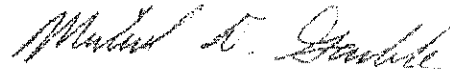
All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, April 9, 2019

CONTACT PERSON AT AGENCY:

Meagan Barrett
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380



Michael D. Gamble, Secretary
Alabama Department of Revenue

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 of Title 11 which §11-98-5.3, requires~~ the Department of Revenue is required 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 Alabama 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, on a 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 Ala. 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 must** collect from the consumer the 9-1-1 Charge on prepaid retail transactions occurring in this state and report the number of taxable and non-taxable transactions and the amounts of 9-1-1 Charges collected to the **D**epartment of Revenue.

(5) The 9-1-1 Charge **shall must** 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 of~~ a consumer in Alabama.

(6) For purposes of retail transactions occurring via the Internet, or ~~by other~~ on a telecommunication device, the Prepaid Wireless 9-1-1 Charge **shall must** 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 must** be collected from that customer ~~for each transaction~~. A flat rate of ~~\$1.75~~ \$1.86 per retail transaction will be effective ~~August 1, 2014~~ January 1, 2019. 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 ~~of~~ October 1, 2013 through July 31, 2014, ~~and~~ \$1.75 per retail transaction for the period of August 1, 2014 through December 31, 2018.

(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 ~~are~~ shall be required to file their Prepaid Wireless 9-1-1 Returns electronically through the **D**epartment'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~~ unless a waiver has been granted by the

commissioner due to 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~~ is 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~~ may 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 ~~Dd~~ 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~~ must apply for a Prepaid Wireless 9-1-1 Charge account number ~~for reporting the 9-1-1 Charge~~ by contacting the department either online at www.revenue.alabama.gov or by contacting the or through the Entity Registration Unit.

(12) The Prepaid Wireless 9-1-1 Charge 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~~ will be assessed the appropriate penalties and interest as provided in ~~Sections §§~~ 40-2A-11 and 40-1-44.

(14) Transactions excluded from the Prepaid Wireless 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 Prepaid Wireless 9-1-1 eCharge 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 must** 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 exempt**. The record may be in paper or electronic format and **shall must** 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), **and the** invoice number, ~~and the transaction details~~. If the seller fails to maintain the records to substantiate that a transaction is not subject to the **Prepaid Wireless** 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 **Prepaid Wireless** 9-1-1 eCharge,
- (e) The number of transactions subject to the **Prepaid Wireless** 9-1-1 eCharge,
- (f) Amount of the **Prepaid Wireless** 9-1-1 eCharge due,
- (g) Allowance or discount of 4% of the **Prepaid Wireless** 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.

Authors: Ginger Buchanan, Leslie Michaud

Authority: §§11-98-1, 11-98-5.3, 11-98-7(b)(1), 40-1-44, 40-2A-7(a)(5), 40-2A-11, 40-23-1, Code of Ala. 1975. ~~Act 2012-293, 11-98-5.3,~~

History: **New Rule:** Filed November 19, 2012; effective December 24, 2012.

Amended: Filed November 20, 2013; effective December 25, 2013.

Amended: Filed September 15, 2014; effective October 20, 2014.

Amended: Filed February 20, 2019; effective.