

GUIDELINES AND RULES FOR THE PREPAID WIRELESS E-911 FEE

December 27, 2010

Effective January 1, 2011, House Bill 754 and Senate Bill 441 (2010 *Acts of Assembly*, Chapters 566 and 466) repeal the current E-911 surcharge on prepaid wireless service and impose a new Prepaid Wireless E-911 Fee of \$0.50 on each retail purchase of prepaid wireless calling service. The fee is collected at the point of sale by retail merchants or the service provider and administered by TAX in the same manner as the Retail Sales and Use Tax. Each wireless service carrier and reseller will continue to collect a surcharge of \$0.75 per month from each of its postpaid customers through its regular billing.

These guidelines and rules ("Guidelines") are issued by the Department of Taxation ("TAX") to provide guidance to taxpayers regarding the new law. These guidelines are exempt from the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 *et seq.*). As necessary, additional Guidelines will be published and posted on TAX's website, www.tax.virginia.gov.

Definitions

Terms used for the purposes of the Prepaid Wireless E-911 Fee have the same meaning as those used in the Retail Sales and Use Tax, unless defined otherwise, as follows:

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended. (Source: *Va. Code* § 56-484.12)

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia. (Source: *Va. Code* § 56-484.12)

"Dealer" means a person who sells prepaid CMRS to an end user. (Source: *Va. Code* § 56-484.17:1)

"End user" means a person who purchases prepaid CMRS in a retail transaction. (Source: *Va. Code* § 56-484.17:1)

"Prepaid wireless calling service" means CMRS that allows a caller to dial 911 to access the 911 system, which CMRS service is required to be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount. (Source: *Va. Code* § 56-484.17:1)

"Prepaid Wireless E-911 Fee" means the fee of \$0.50 imposed on each retail purchase of prepaid wireless calling service and required to be remitted to TAX.

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 2

"Retail transaction" means the purchase of prepaid wireless calling service from a dealer for any purpose other than resale. If more than one item or article of prepaid wireless calling service is purchased by an end user, then each item or article purchased shall be deemed to be a separate retail transaction. (Source: *Va. Code* § 56-484.17:1)

"Small dealer" means a dealer who has collected less than \$1,200 in Prepaid Wireless E-911 Fees in the previous calendar year. For the year beginning January 1, 2011, a dealer will be considered a "small dealer" if he is currently allowed to file the Retail Sales and Use Tax on a quarterly or less frequent basis.

"Wireless calling service" means CMRS that allows a caller to dial 911 to access the 911 system.

"Wireless E-911 Surcharge" means the monthly fee of \$0.75 billed with respect to postpaid CMRS by each CMRS provider and CMRS reseller and remitted to the Wireless E-911 Services Board.

Imposition of the Fee

The fee is imposed on each purchase of prepaid wireless calling service. Prepaid wireless calling service is mobile telecommunications service that allows a caller to dial 911 to access the 911 system and is required to be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount. For the purposes of the Prepaid Wireless E-911 Fee, unlimited wireless calling service, if paid for in advance of use, is considered prepaid wireless calling service. Unlimited wireless calling service, if paid for in advance of use, is subject to the Prepaid Wireless E-911 Fee.

Prepaid wireless calling service subject to the Prepaid Wireless E-911 Fee purchased along with tangible personal property or services not subject to the Prepaid Wireless E-911 Fee sold for one nonitemized charge are subject to the Prepaid Wireless E-911 Fee. (Source: *Va. Code* § 56-484.17:1)

The fee is not imposed on tangible personal property or services that are sold without prepaid CMRS.

Example 1

A dealer sells an end user a card that provides 200 minutes of prepaid wireless calling service. The dealer collects the Prepaid Wireless E-911 Fee of \$0.50 and remits the fee to TAX with the Retail Sales and Use Tax return for that filing period.

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 3

Example 2

A dealer sells an end user a calling card that provides 200 minutes of landline communications service. The purchase is not subject to the Prepaid Wireless E-911 Fee and the dealer would not collect the Prepaid Wireless E-911 Fee of \$0.50.

Example 3

A dealer sells an end user a cell phone that is also loaded with 200 minutes of prepaid wireless calling service. The dealer collects the Prepaid Wireless E-911 Fee of \$0.50 and remits the fee to TAX with the Retail Sales and Use Tax return for that filing period.

Example 4

A dealer sells an end user a cell phone with no units or minutes of prepaid wireless calling service. As there is no purchase of prepaid wireless calling service, the purchase of the cell phone is not subject to the Prepaid Wireless E-911 Fee and the dealer would not collect the Prepaid Wireless E-911 Fee of \$0.50.

Example 5

A dealer sells an end user a cell phone with unlimited wireless calling service that is paid for in advance of use. As the wireless service is unlimited but paid for in advance of use, the dealer collects the Prepaid Wireless E-911 Fee of \$0.50 and remits the fee to TAX with the Retail Sales and Use Tax return for that filing period.

Transitional Rules

All prepaid wireless calling service purchased prior to January 1, 2011 are subject to the Wireless E-911 Surcharge remitted to the Wireless E-911 Services Board. The tax on prepaid wireless service is remitted by the CMRS provider or reseller and can be calculated using one of the following three methods:

- 1) The CMRS provider or reseller can collect the \$0.75 surcharge a month from each active prepaid customer with an account balance equal to or greater than \$0.75;
- 2) The CMRS provider or reseller can divide its total prepaid wireless revenue from Virginia customers each month, dividing by \$50, and multiplying the result by \$0.75. This amount would be remitted without the wireless carrier collecting a separate charge from its prepaid customers for the amount; or
- 3) The CMRS provider or reseller can collect the \$0.75 surcharge at the point of sale.

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 4

Beginning January 1, 2011, each retail purchase of prepaid wireless calling service is subject to the Prepaid Wireless E-911 Fee of \$0.50. (Source: Va. Code § 56-484.17:1)

Example 6

A CMRS provider sells prepaid wireless calling service to a customer on December 31, 2010. The CMRS provider collects the Wireless E-911 Surcharge using one of the three above methods and remits the fee to the Wireless E-911 Services Board.

Example 7

A dealer sells prepaid wireless calling service to an end user on January 1, 2011. The dealer collects the Prepaid Wireless E-911 Fee of \$0.50 on each item and remits the fee to TAX with the January Retail Sales and Use Tax return due on or before the 20th day of the month following the reporting period (February 20, 2011 for monthly filers).

Separately Stated Charges

Any dealer collecting the Prepaid Wireless E-911 Fee must separately state the Prepaid Wireless E-911 Fee on any bill, invoice, ticket, or other billing statement unless such dealer qualifies as a "small dealer." The new law provides that small dealers, which must be defined by TAX based, in part or in whole, upon the extent to which the dealer sells prepaid wireless calling service, are exempt from the otherwise mandatory requirement to disclose the Prepaid Wireless E-911 Fee to the end user.

For the purposes of the Prepaid Wireless E-911 Fee, "small dealer" is defined as a dealer who has collected less than \$1,200 in Prepaid Wireless E-911 Fees in the previous calendar year. For the year beginning January 1, 2011, a dealer will be considered a "small dealer" if he is currently allowed to file the Retail Sales and Use Tax on a quarterly or less frequent basis.

In order to allow dealers additional time to program their systems and registers, the requirement that the Prepaid Wireless E-911 Fee be separately stated shall not be enforced until July 1, 2011. If a dealer that is otherwise required to separately state the Prepaid Wireless E-911 Fee on bills, invoices, or other billing statements believes that it would be impractical to do so after the Prepaid Wireless E-911 Fee has been in effect for six months, he may request in writing that the Tax Commissioner waive the requirement. Requests for a waiver should be mailed to:

**Tax Commissioner
Virginia Department of Taxation
Post Office Box 546
Richmond, Virginia 23218-0546**

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 5

Absorption of the Fee

In lieu of collecting the Prepaid Wireless E-911 Fee from end users, a dealer may absorb such fees and shall become solely liable for the same on all sales of prepaid CMRS in retail transactions, provided that the Tax Commissioner has granted to the dealer a written authorization to absorb the Prepaid Wireless E-911 Fee on all sales made by the dealer of prepaid wireless calling service in retail transactions and such authorization provides a temporary period for which the dealer shall be permitted to absorb the Prepaid Wireless E-911 Fee.

In order to allow dealers additional time to program their systems and registers, dealers may absorb the Prepaid Wireless E-911 Fee until July 1, 2011. In order to absorb the Prepaid Wireless E-911 Fee after it has been in effect for six months, the dealer must request in writing authorization from the Tax Commissioner and clearly state the nature of the hardship with documentation and the time period that the dealer wishes to absorb the Prepaid Wireless E-911 Fee. Requests for authorization should be mailed to:

**Tax Commissioner
Virginia Department of Taxation
Post Office Box 546
Richmond, Virginia 23218-0546**

However, nothing in this section allows a dealer to hold out to the public that he will absorb all or any part of the Prepaid Wireless E-911 Fee, or that he will relieve any customer of the payment of all or any part of the Prepaid Wireless E-911 Fee. (Source: *Va. Code* § 56-484.17:1)

Exclusion from Other Taxes

The amount of Prepaid Wireless E-911 Fee collected by a dealer from an end user shall be excluded from the base for measuring any fee, tax, surcharge, or other charge that is imposed by the Commonwealth, any political subdivision of the Commonwealth, or any intergovernmental agency. (Source: *Va. Code* § 56-484.17:1)

Exemptions

The Prepaid Wireless E-911 Fee does not apply to transactions occurring outside of the Commonwealth or to purchases by the Commonwealth, any political subdivision of the Commonwealth, or the federal government, its agencies and instrumentalities that, under provisions of the United States Constitution, Virginia is prohibited from taxing.

Registration of Dealers

The Prepaid Wireless E-911 Fee will be collected by all dealers with sufficient contact, or nexus, with the Commonwealth to be subject to the Prepaid Wireless E-911 Fee

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 6

using the same rules that apply to the Retail Sales and Use Tax. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration if it does any of the following activities:

- Maintains or has within the Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature.
- Solicits business in the Commonwealth by employees, independent contractors, agents or other representatives.
- Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in the Commonwealth, or through materials distributed in the Commonwealth by means other than the United States mail.
- Makes regular deliveries of tangible personal property within the Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter the Commonwealth more than twelve times during a calendar year to deliver goods sold by him.
- Solicits business in the Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the Commonwealth or distributed from a location within the Commonwealth.
- Solicits business in the Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in the Commonwealth or benefits from the location in the Commonwealth of authorized installation, servicing, or repair facilities.
- Is owned or controlled by the same interests which own or control a business located within the Commonwealth.
- Has a franchisee or licensee operating under the same trade name in the Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under *Code of Va.* § 58.1-613.
- Owns tangible personal property that is rented or leased to a consumer in the Commonwealth, or offers tangible personal property, on approval, to consumers in the Commonwealth.

(Source: *Va. Code* §§ 56-484.17:1 and 58.1-612)

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 7

A dealer that is currently registered for the Retail Sales and Use Tax does not need to register with TAX for the Prepaid Wireless E-911 Fee. The dealer will remit the Prepaid Wireless E-911 Fee using his regular Retail Sales and Use Tax return. If the dealer is not registered with TAX for the Retail Sales and Use Tax, the dealer must apply to TAX for a certificate of registration for the Retail Sales and Use Tax using Form R-1, Business Registration Application. Each application must set forth the name under which the applicant intends to transact business, the location of its place of business, and such other information as TAX may require. TAX will issue to each applicant a registration certificate that is not assignable and is valid only for the provider in whose name it is issued and for the transaction of the business designated therein.

Filing of Returns

Every dealer registered for the Retail Sales and Use Tax is required to file a Retail Sales and Use Tax return on or before the 20th day of the month following the reporting period. A return must be filed for each reporting period even if no tax is due. The dealer must report any Prepaid Wireless E-911 Fee collected on the Retail Sales and Use Tax return using the applicable lines. At the time of filing the Retail Sales and Use Tax return, the dealer must pay the Prepaid Wireless E-911 Fee due. The return for each period becomes delinquent on the twenty-first day of the succeeding month if not paid. Dealers filing Retail Sales and Use Tax returns on a less frequent basis than monthly will continue to file on their normal schedule.

In the event that a dealer collects the Prepaid Wireless E-911 Fee on exempt or non-taxable transactions, the dealer must remit the erroneously or illegally collected fee to TAX unless or until the dealer can affirmatively show that the fee has been refunded to the customer or credited to his account.

Dealer Discount

As compensation for accounting for and paying the Prepaid Wireless E-911 Fee, a dealer is allowed a discount of five percent of the Prepaid Wireless E-911 Fee due in the form of a deduction, provided the amount due was not delinquent at the time of payment. This dealer discount is separate from the dealer discount allowed for the Retail Sales and Use Tax. Dealers that are not eligible for the dealer discount allowed for the Retail Sales and Use Tax are still eligible for the discount for the Prepaid Wireless E-911 Fee provided that the amount due was not delinquent at the time of payment. (Source: *Va. Code* § 56-484.17:1)

Example 8:

Distributor collects \$500 in Prepaid Wireless E-911 Fees. The dealer is entitled to retain a dealer's discount of \$25, provided that his return is timely filed and the Prepaid Wireless E-911 Fees are timely paid. The \$25 discount is computed by multiplying the Prepaid Wireless E-911 Fees (\$500) by 5%.

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 8

Any amount of fees refunded by TAX to a dealer will be reduced by any dealer's discount claimed on the transaction to which the refund relates.

Example 9:

Dealer sells prepaid CMRS to end users and collects \$100 in Prepaid Wireless E-911 Fees. The dealer timely files a return reporting the \$100 in fees on the transactions, claims the \$5 discount, and remits \$95 in Prepaid Wireless E-911 Fees. Subsequently, the dealer provides a refund to the end user and requests a refund from TAX for the amount of fees paid. The amount refunded would be \$95 (\$100 less 5% of the \$100 Prepaid Wireless E-911 Fee = \$100 - \$5 = \$95).

Bad Debts

Every dealer will be allowed a credit against the Prepaid Wireless E-911 Fee shown to be due on the return for the amount of fees previously paid on accounts that are owed to the dealer and that have been found to be worthless within the period covered by the return. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the dealer shall be included in the first return filed after such collection. If the credit exceeds that month's liability for the Prepaid Wireless E-911 Fee, the excess amount should be taken on the next return. (Source: Va. Code § 58.1-621)

Compliance Provisions

The retail sales and use tax compliance provisions listed below and applicable Retail Sales and Use Tax Regulations will apply to the Prepaid Wireless E-911 Fee:

- Va. Code § 58.1-630 Dealer Bonds;
- Va. Code § 58.1-631 Jeopardy Assessments;
- Va. Code § 58.1-632 Memoranda of Lien;
- Va. Code § 58.1-633 Recordkeeping Requirements;
- Va. Code § 58.1-634 Period of Limitations;
- Va. Code § 58.1-635 Failure to File Return; Fraudulent Returns; Civil Penalties (and Interest);
- Va. Code § 58.1-636 Penalty for Failure to File Return or Making False Return; and

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 9

- *Va. Code § 58.1-637* Bad Checks.

(Source: *Va. Code § 56-484.17:1*)

Disposition of Revenues

The revenues from the Prepaid Wireless E-911 Fee will be collected and remitted monthly by dealers to TAX and, after subtracting the direct costs of administration by TAX, deposited into the state treasury. The Comptroller shall as soon as practicable deposit such moneys into the Wireless E-911 Fund for use by the Wireless E-911 Services Board. (Source: *Va. Code § 56-484.17:1*)

Appeals

Any person may appeal issues related to the Prepaid Wireless E-911 Fee to TAX using the administrative appeals process administered by TAX under *Va. Code § 58.1-1820 et seq.* and 23 VAC 10-20-165.

A properly executed Power of Attorney is needed in order for a third party to file an administrative appeal on behalf of a taxpayer. The Power of Attorney must be signed and dated by both the taxpayer and the taxpayer's representative and must accompany the administrative appeal. Form PAR 101, Power of Attorney and Declaration of Representative can be found on TAX's website, www.tax.virginia.gov. Any other Power of Attorney form containing the same information may also be accepted by TAX.

All appeals, along with supporting documentation, should be mailed to:

**Appeals and Rulings
Department of Taxation
P.O. Box 27203
Richmond, VA 23261-7203**

Additional Information

These Guidelines and rules are available on-line in the Tax Policy Library section of TAX's website, located at www.tax.virginia.gov. For additional information, please contact the Office of Customer Services at (804) 367-8037 or through the "Live Chat" service on TAX's website, www.tax.virginia.gov.

Guidelines and Rules for the Prepaid Wireless E-911 Fee

December 27, 2010

Page 10

Approved:

A handwritten signature in black ink, reading "Craig M. Burns". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Craig M. Burns
Tax Commissioner