

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Thursday, February 15, 2024, and filed with the agency secretary on Thursday, February 15, 2024.

AGENCY NAME: Alabama Department of Revenue Sales, Use & Business Tax Division

INTENDED ACTION: Amend

RULE NO.: 810-6-5-.36
(If amended rule, give specific paragraph, subparagraphs, etc., being amended) **Paragraph (6)**

RULE TITLE: Prepaid Wireless 9-1-1 Charge

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted with changes

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLII, ISSUE NO. 3, AAM,
DATED FRIDAY, DECEMBER 29, 2023.

STATUTORY RULEMAKING AUTHORITY: Sections 11-98-1, 11-98-5.3, 40-1-44, 40-2A-7, 40-2A-11, and 40-23-1, Code of Ala. 1975.

(Date Filed
(For IRS Use Only)
REC'D & FILED
FEB 16, 2024
LEGISLATIVE SVC AGENCY

Vernon Barnett

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Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

810-6-5-.36

Prepaid Wireless 9-1-1 Charge.

(1) Chapter 98 of Title 11, 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 §11-98-5.3, the department 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 have the respective meanings ascribed by this section:

(a) The term "department" means the Alabama Department of Revenue.

(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 §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.

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

(4) All sellers, including retailers and CMRS service providers, making sales of prepaid wireless telephone service 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 department.

(5) The 9-1-1 Charge must be collected on each prepaid retail transaction regardless of whether the prepaid wireless telephone service is purchased in person, 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 on a telecommunication device, the Prepaid Wireless 9-1-1 Charge 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 must be collected from that customer. A flat rate of ~~\$2.31~~\$2.23 per retail transaction will be effective January 1, 2024. 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, \$1.60 per retail transaction for the period of October 1, 2013 through July 31, 2014, \$1.75 per retail transaction for the period of August 1, 2014 through December 31, 2018, and \$1.86 per retail transaction for the period of January 1, 2019 through December 31, 2023.

(7) The 9-1-1 Charge collected on prepaid wireless service will be reported by the seller on a form entitled "Prepaid Wireless 9-1-1 Return." Sellers are required to file their Prepaid Wireless 9-1-1 Returns electronically through the department's online filing system, unless a waiver has been granted by the commissioner due to special circumstances.

(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 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 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) §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 must apply for a Prepaid Wireless 9-1-1 Charge account number by contacting the department either online or through the Entity Registration Unit.

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

(13) If a return is not timely filed and/or paid, the seller will be assessed the appropriate penalties and interest as provided in §§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 charge to the initial transaction. For these purposes, a service allotment denominated as 10 minutes or less, or \$5 or less, is a minimal amount. If the seller elects to collect such charge, it must be reported with other prepaid communication charges.

(c) The seller is required to maintain records to verify that transactions on which the Prepaid Wireless 9-1-1 Charge was not collected are exempt. The record may be in paper or electronic format and must include 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. 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 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 Charge,

(e) The number of transactions subject to the Prepaid Wireless 9-1-1 Charge,

(f) Amount of the Prepaid Wireless 9-1-1 Charge 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.

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

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 May 9, 2019; effective June 23, 2019.

Amended: Published ; ~~effective~~ February 29, 2024;
effective April 14, 2024.