

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Bill Janis

2. **Bill Number** HB 2184

3. **Committee** House Commerce and Labor

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Prepaid Wireless E-911 Fee and
Communications Sales and Use Tax;
Prepaid Telecommunications Service

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would clarify that a prepaid wireless calling service for the purposes of the Prepaid Wireless E-911 Fee and the wireless E-911 surcharge may include unlimited wireless service sold in monthly or shorter increments, and that such service, if paid for in advance, is subject to the Prepaid Wireless E-911 Fee.

The bill would also provide that prepaid calling service for the purposes of the Communications Sales and Use Tax may include unlimited wireless service sold in monthly or shorter increments, and that such service, if paid for in advance, is exempt from the Communications Sales and Use Tax.

Under current law, a prepaid wireless E-911 fee of \$0.50 is imposed on each retail purchase of prepaid wireless calling service. The prepaid wireless E-911 fee is administered by TAX and collected by retail merchants at the point of sale and separately stated on the invoice or receipt or otherwise disclosed to the customer. The revenues are deposited into the Wireless E-911 Fund. Prior to January 1, 2011, prepaid wireless calling service was subject to the wireless E-911 surcharge collected by carriers and resellers.

Under current law, revenues from the Communications Sales and Use Tax are deposited in the Communications Sales and Use Tax Trust Fund ("Fund"). All of the revenues in the Fund are distributed to localities based on the percentage share that the locality received from the Fund in Fiscal Year 2010.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs Impact

TAX considers implementation of this proposal as “routine,” and does not require additional funding.

Revenue Impact

This bill would have no impact on state revenues. TAX understands that it was the intent of House Bill 754 and Senate Bill 441 (2010 *Acts of Assembly*, Chapters 566 and 466), the legislation that imposed a Prepaid Wireless E-911 Fee on retail purchases of prepaid wireless calling service, to subject unlimited wireless calling services, if paid for in advance, to the Prepaid Wireless E-911 Fee. TAX currently provides that, for the purposes of the Prepaid Wireless E-911 Fee, unlimited service, if paid for in advance, is subject to the Prepaid Wireless E-911 Fee. As the bill codifies TAX's current policy, it would have no revenue impact on the Wireless E-911 Fund.

To the extent that unlimited wireless calling services would no longer be subject to the Communications Sales and Use Tax, this bill would have an unknown negative revenue impact on the Communications Sales and Use Tax Trust Fund.

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities
Wireless E-911 Fund

10. Technical amendment necessary: Yes.

If the intent of this legislation is to provide that unlimited calling service would be considered prepaid if paid for in advance, even if the units are measure in time, the following technical amendments are suggested:

Page 1, Line 19, After dollars

Strike: of which the number declines with use in a known amount

Page 3, Line 123, After dollars

Strike: that decrease in number with use

11. Other comments:

Prepaid Wireless E-911 Fee

Prior to January 1, 2011, prepaid and postpaid wireless calling services were subject to the wireless E-911 surcharge. Each wireless service carrier and reseller was required to collect the surcharge of \$0.75 per month on each number of its postpaid customers through its regular billing. The tax on prepaid wireless service was remitted by the service provider and could be calculated using one of three methods. The surcharge was

administered by the Wireless E-911 Services Board ("Board"), and the revenues were deposited into the Wireless E-911 Fund.

Effective January 1, 2011, a prepaid wireless E-911 fee of \$0.50 is imposed on each retail purchase of prepaid wireless calling service. The prepaid wireless E-911 fee is administered by TAX and collected by retail merchants at the point of sale and separately stated on the invoice or receipt or otherwise disclosed to the customer. The revenues are deposited into the Wireless E-911 Fund.

Each wireless service carrier and reseller continues to collect the surcharge of \$0.75 per month on each number of its postpaid customers through its regular billing. The surcharge is administered by the Wireless E-911 Services Board ("Board"), and the revenues are deposited into the Wireless E-911 Fund.

Communications Sales and Use Tax

2006 House Bill 568 (Acts of Assembly 2006, Chapter 780) replaced many of the state and local communications taxes and fees with a centrally administered Communications Sales and Use Tax and a uniform statewide E-911 Tax on landline telephone service beginning January 1, 2007. Additionally, House Bill 568 imposed a public rights-of-way use fee on cable television providers beginning January 1, 2007.

TAX ruled in Public Document ("PD") 10-192 that a monthly plan that allows unlimited voice calling and text messaging would not meet the definition of a "prepaid calling service" for the purposes of the Communications Sales and Use Tax as the communications services are not sold in predetermined units or dollars that decrease in number with use.

Proposal

This bill would clarify that a prepaid wireless calling service for the purposes of the Prepaid Wireless E-911 Fee and the wireless E-911 surcharge may include unlimited wireless service sold in monthly or shorter increments, and that such service, if paid for in advance, is subject to the Prepaid Wireless E-911 Fee.

The bill would also provide that prepaid calling service for the purposes of the Communications Sales and Use Tax may include unlimited wireless service sold in monthly or shorter increments, and that such service, if paid for in advance, is exempt from the Communications Sales and Use Tax.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 1123 would transfer the collection of the wireless E-911 surcharge from the Wireless E-911 Services Board (the "Board") to TAX.