

**TITLE 42, CHAPTER 5, ARTICLE 9, 42-5401_42-5404
PREPAID WIRELESS TELECOMMUNICATIONS E911 EXCISE TAX**

42-5401. Definitions (Eff. 1/1/14)

In this article, unless the context otherwise requires:

1. "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail sale of prepaid wireless telecommunications service.
2. "Prepaid wireless telecommunications service" means a commercial mobile radio service, as defined by 47 Code of Federal Regulations section 20.3, as amended, that allows a caller to dial 911 to access the 911 system under a service that is paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
3. "Prepaid wireless telecommunications service provider" means a person that provides prepaid wireless telecommunications service pursuant to a license that is issued by the federal communications commission.
4. "Retail sale of prepaid wireless telecommunications service" means a sale of prepaid wireless telecommunications service by a seller for any purpose other than resale.
5. "Seller" means a person who sells prepaid wireless telecommunications service to another person.
6. "Wireless services" means a commercial mobile service, as defined by 47 Code of Federal Regulations section 20.3, as amended.

42-5402. Levy of tax (Eff. 1/1/14)

A. A prepaid wireless telecommunications E911 excise tax is levied on every seller in an amount of eight-tenths of one per cent of the gross proceeds of sales or gross income derived from the retail sale of prepaid wireless telecommunications service.

B. The seller is liable for the tax imposed under this section. The amount of tax may be separately stated on the invoice, receipt or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer. The seller may retain three per cent of the amount of tax collected before remitting the tax to the department.

C. For the purpose of determining the location of a retail sale of prepaid wireless telecommunications service under this article, a retail sale of prepaid wireless telecommunications service occurs in this state if:

1. The retail sale of prepaid wireless telecommunications service is completed in person at a business location in this state.
2. If paragraph 1 of this subsection does not apply, the product is delivered to the consumer at an address in this state.
3. If paragraphs 1 and 2 of this subsection do not apply, the seller's records that are maintained in the ordinary course of business indicate that the consumer's address is located in this state and the seller's records are not made or kept in bad faith.
4. If paragraphs 1, 2 and 3 of this subsection do not apply, the consumer gives the seller an address in this state during the completion of the sale, including the consumer's payment instrument if no other address is available, and the address is not given in bad faith.
5. If paragraphs 1 through 4 of this subsection do not apply, the wireless telephone number is associated with a location in this state.

D. The amount of tax that is paid by a seller shall not be included in the tax base for computing any transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

E. The tax levied under this section shall be the only E911 funding obligation for prepaid wireless telecommunications service in this state. This state, any political subdivision of this state or any intergovernmental agency shall not levy any other similar tax or fee, however denominated, on any seller or consumer for the sale, purchase, use or provision of prepaid wireless telecommunications service for the purpose of funding E911 service.

42-5403. Administration of tax; distribution of revenues (Eff. 1/1/14)

A. Unless the context otherwise requires, article 1 of this chapter governs the administration of the tax imposed by this article.

B. A separate bond is not required of employees of the department in administering this article.

C. The procedures for a seller of prepaid wireless telecommunications service to document a sale that is not a retail sale of prepaid wireless telecommunications service shall be substantially similar to the procedures for documenting sale for resale transactions under the retail classification pursuant to sections 42-5009 and 42-5061.

D. The department shall separately account for the monies paid under this article and shall deposit, pursuant to sections 35-146 and 35-147, the net revenues collected under this article in the emergency telecommunications services revolving fund established by section 41-704.

42-5404. Liability (Eff. 1/1/14)

A. Nothing in this article creates a cause of action or right to bring an action against a seller of prepaid wireless telecommunications service for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 911 or E911 service, or for identifying, or failing to identify, the telephone number, address, location or name associated with any person or device that is accessing or attempting to access 911 or E911 service.

B. Nothing in this article creates a cause of action or right to bring an action against a seller of prepaid wireless telecommunications service for damages to any person resulting from, or incurred in connection with, any lawful investigation by a law enforcement officer of the United States, this state, any other state or any political subdivision of this state or any other state.