House Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 198

HOUSE BILL 2094

AN ACT

AMENDING SECTIONS 42-5251 AND 42-5252, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; RELATING TO PREPAID WIRELESS TELECOMMUNICATIONS E911 EXCISE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-5251, Arizona Revised Statutes, is amended to read:

42-5251. Definitions

In this article, unless the context otherwise requires:

1. "Customer" means a person or entity in whose name telephone or telecommunication services are rendered, as evidenced by a signature on an application or contract for service or by receipt or payment of bills regularly issued in the person's or entity's name.

2. "Emergency telecommunication services" means telecommunication services or systems that use number 911 or a similarly designated telephone number for emergency calls.

3. "Exchange access services" means telephone or telecommunication exchange access lines or channels ~~which~~ THAT provide local access from the premises of a customer to the local telecommunications network to effect the transfer of information.

4. "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS WIRELESS SERVICES THAT ALLOW 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.

~~4.~~ 5. "Provider" means ANY OF THE FOLLOWING:

(a) A public service corporation ~~offering~~ THAT OFFERS telephone or telecommunications services pursuant to title 40~~, which~~ AND THAT provides exchange access services.

(b) A SUPPLIER OF WIRELESS SERVICES.

(c) A SUPPLIER OF ANY COMBINATION OF WIRE AND WIRELESS SERVICES.

~~5. "Wireless provider" means a supplier of wireless services.~~

6. "Wireless services" means ~~two-way voice commercial mobile radio service as defined by the federal communications commission~~ A COMMERCIAL MOBILE SERVICE, AS DEFINED BY 47 CODE OF FEDERAL REGULATIONS SECTION 20.3, AS AMENDED.

Sec. 2. Section 42-5252, Arizona Revised Statutes, is amended to read:

42-5252. Levy of tax; applicability

A. A tax is levied on every provider in an amount as follows:

1. For the fiscal years beginning from and after June 30, 2001 and ending before July 1, 2006, thirty-seven cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.

2. For fiscal year 2006-2007, twenty-eight cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.

3. For the fiscal years beginning from and after June 30, 2007, twenty cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.

B. A tax is levied on every ~~provider~~ PUBLIC SERVICE CORPORATION at the rate of 1.1 per cent of the ~~providers'~~ PUBLIC SERVICE CORPORATIONS' gross proceeds of sales or gross income derived from the business of providing exchange access services. Revenues from the tax shall be used for the purpose of financing telecommunication devices for the deaf and the severely hearing and speech impaired under the program established pursuant to section 36-1947. FOR THE PURPOSES OF THIS SUBSECTION, "PUBLIC SERVICE CORPORATION" MEANS A PUBLIC SERVICE CORPORATION THAT OFFERS TELEPHONE OR TELECOMMUNICATIONS SERVICES PURSUANT TO TITLE 40 AND THAT PROVIDES EXCHANGE ACCESS SERVICES.

C. Each provider shall state on the invoice to customers a separate line item stating the amount of tax levied pursuant to subsections A and B of this section.

D. Unless the context otherwise requires, article 1 of this chapter governs the administration of the tax imposed under this section.

E. THE TAX LEVIED UNDER THIS SECTION DOES NOT APPLY TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.

Sec. 3. Title 42, chapter 5, Arizona Revised Statutes, is amended by adding article 9, to read:

ARTICLE 9. PREPAID WIRELESS TELECOMMUNICATIONS
E911 EXCISE TAX

42-5401. Definitions

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

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. <u>Administration of tax; distribution of revenues</u>

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

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 LIABLE 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.

Sec. 4. Department of revenue; exemption from rule making

The department of revenue is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purposes of implementing this act.

Sec. 5. Effective date

This act is effective and applies to taxable periods beginning from and after December 31, 2013.

APPROVED BY THE GOVERNOR APRIL 5, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2012.

Passed the House February 28, 2012

by the following vote: 55 Ayes,

0 Nays, 4 Not Voting vacant

Speaker of the House

Chief Clerk of the House

Passed the Senate April 3, 2012

by the following vote: 20 Ayes,

9 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

4 day of April, 2012

at 11:25 o'clock A M.

Secretary to the Governor

Approved this 5th day of

April

at 4:35 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 5th day of April, 2012

at 4:20 o'clock P M.

Jim Drake
acting Secretary of State

H.B. 2094