

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to updating references to 911

The Revenue Department hereby amends Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” Chapter 40, “Determination of Net Income,” and Chapter 224, “Telecommunication Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2017 Iowa Acts, Senate File 500.

Purpose and Summary

These amendments implement 2017 Iowa Acts, Senate File 500, which in large part amended Iowa Code chapter 34A. Senate File 500 changed the terms “Enhanced 911” and “E911” to “911” in order to reflect the merging of E911 and Next Generation 911 services. The Department is updating references to those terms.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 19, 2018, as **ARC 4176C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on January 23, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 20, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **18.20(1)“c”** as follows:

c. “Gross receipts” from the sale of communication service in this state shall mean all charges to any person which are necessary for the ultimate user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 18.20(4)). Such charges shall be taxable if the charges are necessary to secure communication service in this state even though payment of the charge may also be necessary to secure other services. Any charge necessary to secure only interstate communication service shall not be subject to tax if the nature of the service is separately stated and the charge for the service separately billed. For the present, the charges imposed by the Federal Communications Commission and referred to as “access charges for interstate or foreign access services” to an “end user” shall not be subject to tax if separately stated and billed.

Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. Such charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

If company A collects gross receipts from ultimate users for communication services performed in this state by company B, company A shall treat those gross receipts as its own, collect tax upon them, and remit the tax to the department. The situation is similar to a consignment sale of tangible personal property, and tax must be remitted by the company collecting the gross receipts from the users of the communication services.

~~As of April 4, 1990, the amount of a surcharge for enhanced 911 emergency telephone service shall not be subject to sales tax if the amount is no more than \$1 per month per telephone access line and the surcharge is separately identified and separately billed. An enhanced 911 emergency telephone service surcharge is one which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point.~~

ITEM 2. Amend rule 701—40.3(422) as follows:

701—40.3(422) Interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. to 10. No change.

11. Iowa finance authority, ~~E~~911 911 program notes and bonds: Bonds issued under Iowa Code section 34A.20(6).

12. to 22. No change.

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2014 Iowa Acts, House File 2438.

ITEM 3. Amend rule 701—40.39(422) as follows:

701—40.39(422) Exemption of interest from bonds or notes issued to fund the ~~E911~~ 911 emergency telephone system. Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the ~~E911~~ 911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

ITEM 4. Amend subrule 224.4(7) as follows:

224.4(7) Enhanced 911 surcharge. ~~An enhanced~~ A 911 emergency telephone service surcharge is a surcharge for a service which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for ~~enhanced~~ 911 emergency telephone service is not subject to sales tax if:

- a. The amount is no more than \$1 per month per telephone access line; and
- b. The surcharge is separately identified and separately billed.

ITEM 5. Amend rule 701—224.8(34A), catchwords, as follows:

701—224.8(34A) Prepaid wireless ~~E911~~ 911 surcharge.

ITEM 6. Amend subrule **224.8(1)**, definition of “Prepaid wireless E911 surcharge,” as follows:

“*Prepaid wireless ~~E911~~ 911 surcharge*” means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

ITEM 7. Rescind the definition of “E911” in subrule **224.8(1)**.

ITEM 8. Amend paragraphs **224.8(3)** “a,” “c,” “d,” “e” and “g” as follows:

a. Each seller is responsible for collecting the applicable ~~E911~~ 911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service located in paragraph 224.6(2) “b.” See also Iowa Code sections 34A.7B(4), 423.20 and 423.15.

c. The prepaid wireless ~~E911~~ 911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless ~~E911~~ 911 surcharges that the seller collects from consumers as provided in paragraph 224.8(3) “a,” including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

d. The amount of the prepaid wireless ~~E911~~ 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

e. The seller must complete ~~an E911~~ a 911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer’s Use Tax and Surcharge Return and file the information with the department.

g. The seller may deduct and retain 3 percent of prepaid wireless ~~E911~~ 911 surcharges that are collected by the seller from consumers.

ITEM 9. Amend paragraph **224.8(4)** “a” as follows:

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless ~~E911~~ 911 surcharge. See also Iowa Code sections 421.10 and 421.60.

ITEM 10. Amend subrule 224.8(6) as follows:

224.8(6) *Procedures for remitting the surcharge to the treasurer.* The department shall transfer all remitted prepaid wireless ~~E911~~ 911 surcharges to the treasurer of state for deposit in the ~~E911~~ 911 emergency communications fund created under Iowa Code section ~~34A.7A, subsection 2,~~ 34A.7A(2) within 30 days of receipt of the ~~E911~~ 911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless ~~E911~~ 911 surcharges.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/13/19.