

701—217.8(34A) Prepaid wireless 911 surcharge.

217.8(1) Definitions. The definitions in rule 701—217.2(423) apply to this rule. The following definitions are also applicable to this rule:

“*Consumer*” means a person who purchases prepaid wireless telecommunications service in a retail transaction.

“*Department*” means the department of revenue.

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

“*Provider*” means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

“*Retail transaction*” means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

Items of prepaid wireless calling service include but are not limited to prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

“*Seller*” means a person who sells prepaid wireless telecommunications service to another person.

217.8(2) Registration. Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

217.8(3) Collecting, filing, and remitting.

a. Each seller is responsible for collecting the applicable 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 in paragraph 217.6(2)“*b.*” More information is also contained in Iowa Code sections 34A.7B(4), 423.15 and 423.20.

b. The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

c. The prepaid wireless 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 911 surcharges that the seller collects from consumers as provided in paragraph 217.8(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 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 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.

f. The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

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

h. The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as \$5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with 10 minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells a prepaid wireless phone with 15 minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

217.8(4) *Audit, appeal, and enforcement.*

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless 911 surcharge. More information is contained in Iowa Code sections 421.10 and 421.60.

b. Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. More information is contained in Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of Iowa Code section 34A.7B.

217.8(5) *Procedures for documenting that a sale is not a retail transaction.* The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

217.8(6) *Procedures for remitting the surcharge to the treasurer.* The department shall transfer all remitted prepaid wireless 911 surcharges to the treasurer of state for deposit in the 911 emergency communications fund created under Iowa Code section 34A.7A(2) within 30 days of receipt of the 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 911 surcharges.

This rule is intended to implement Iowa Code section 34A.7B.

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