

RETRACTION OF TIP no.12ADM-02

Please take notice that TIP number 12ADM-02 issued March 27, 2012 titled "Prepaid Communication Services" has been retracted effective July 29, 2013. The Department received a notice of intention to initiate an action pursuant to Section 120.56(4), Florida Statutes, contesting the TIP as an un-promulgated rule. Upon advice of legal counsel the TIP has been retracted and rule making will be initiated on this subject.

Taxpayers making or who have made retail sales of communication services may wish to seek guidance from their tax advisers or the Department to see whether under their facts and circumstances they are making or have made retail sales of a "prepaid calling arrangement" subject to sales tax, plus any applicable discretionary sales surtax or if these retail sales are potentially subject to taxation under other provisions of Florida law.

Prepaid Communications Services

This Tax Information Publication provides the history and background about prepaid communications services, and clarifies the application of Florida taxes to sales of certain prepaid communications plans and services.

Overview and History

In 2000, the Florida Legislature enacted the communications services tax, Chapter 202, Florida Statutes, effective October 1, 2001 (the "CST"). The new law simplified and restructured numerous state and local taxes and fees imposed on communications services into a single tax centrally administered by the Department of Revenue. Examples of communications services subject to tax include, but are not limited to, service for land line phones, service for wireless phones, VoIP, fax, cable television, and direct-to-home satellite television.

The revenue collected under the CST is distributed three ways: a portion goes to the General Revenue Fund; a portion goes to the Public Education Capital Outlay (PECO) fund used for improvements for public education; and a portion goes to local governments based upon statutory distributions and established local rates. The law requires sellers of communications services to apply the correct local government rate based on the service address or place of primary use of the customer or end user.

Special Treatment for "Prepaid Calling Arrangements"

At the time the CST was enacted, prepaid phone cards, a popular communications services product, were sold primarily by retailers such as convenience stores, gas stations, grocery stores and other retail establishments. Prepaid phone cards were defined to be "... the right to exclusively make telephone calls that must be paid for in advance and that enable the origination of calls using an access number, prepaid mobile account, or authorization code, whether manually or electronically dialed." (Section 212.05(1)(e)1.a.(I), Florida Statutes (1999)) Prior to July 1, 2000, these cards were subject to the state sales tax at the rate of seven percent (7%).

When the CST was enacted in 2000, the reference to "prepaid phone cards" was eliminated from the sales tax statute and replaced by a very narrow exemption from CST for prepaid calling arrangements. The Legislature reduced the sales tax rate to six percent (6%) treating the sale of prepaid calling arrangements like the sale of tangible personal property under Chapter 212, F.S. (the "SUT").

The term "prepaid calling arrangement" has a specific meaning under Florida law:

"Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in

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predetermined units or dollars whose number declines with use in a known amount. (Section 212.05(1)(e)1.a.(I), Florida Statutes (2000))

The sale and recharge of a prepaid calling arrangement, as defined above, is subject to sales tax plus any applicable discretionary sales surtax. This is true even when a sale or recharge occurs over the Internet and the tangible item evidencing a transaction is not furnished to the purchaser. Anyone selling a "prepaid calling arrangement" must collect sales tax at the time of sale of the prepaid calling arrangement, just like the sale of any other taxable tangible personal property.

Other Prepaid Communications Plans and Services

Certain prepaid communications plans or services are **not** "prepaid calling arrangements." Examples of such plans that do not fall under this definition include, but are not limited to:

- Service that includes text messaging, multimedia messaging, web, e-mail, etc.;
- Unlimited calling plans that do **not** decline with usage;
- Services or plans that are **not** sold in predetermined units or dollars; or
- Services or plans that are **not** originated using an access number or authorization code.

A sale of a prepaid card or prepaid arrangement that does not fall under the definition of a "prepaid calling arrangement" is not subject to SUT. Instead, sales of such plans are subject to CST, because Florida's CST law generally applies to services that allow the transmission, conveyance, or routing of voice, data, audio, or video.

Taxpayers (including communications service providers and retailers) who have not collected and remitted CST on sales of prepaid plans and services that do not fall within the "prepaid calling arrangement" definition are encouraged to contact the Department of Revenue under the Voluntary Disclosure Program to take advantage of compromise authority prior to discovery on audit. You may contact the Voluntary Disclosure Program at 850-617-8552. More information regarding the Voluntary Disclosure Program may be found at the following links: http://dor.myflorida.com/dor/taxes/voluntary_disclosure.html and <http://dor.myflorida.com/dor/forms/2011/gt800053.pdf>

More information regarding Florida's Communications Services Tax may be found at the following links: <http://dor.myflorida.com/dor/forms/2010/gt800011.pdf> and <http://dor.myflorida.com/dor/taxes/cst.html>

References: Sections 202.11 and 212.05(1)(e), Florida Statutes

FOR MORE INFORMATION

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit our Internet site at www.myflorida.com/dor or call Taxpayer Services, 8:00 a.m. to 7:00 p.m., ET, Monday through Friday, excluding holidays, at 800-352-3671.

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, FL 32399-0112.

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