

July 2015

**This Tax Facts is designed to explain the collecting and remitting of the 911 Emergency Surcharge. If this Tax Facts does not answer your specific question, please call the Department's toll-free Helpline at 1-800-829-9188 between 8 a.m. – 5 p.m. CDT, Monday through Friday.**

**Information found in this document rescinds and replaces all previous written information on this subject. All readers and users of this publication are responsible for keeping informed about changes in tax laws and regulations by reading the Department of Revenue newsletters, press releases, Tax Facts, and other documents published by the Department of Revenue.**

## Prepaid Wireless 911 Emergency Surcharge

All sellers and wireless service providers that sell prepaid wireless service, which includes prepaid wireless airtime cards and prepaid wireless minutes and plans, are responsible for collecting and remitting the 2% Prepaid Wireless 911 Emergency Surcharge.

- The surcharge is 2% on the gross receipts from retail sales of all types of prepaid wireless service delivered to customers in South Dakota or sold to online customers with a South Dakota address.
- The surcharge is to be itemized on the customer's invoice or other documents provided to the customer and, if itemized, the surcharge is not subject to sales tax.

**Bundled transactions:** If prepaid wireless service is sold with other products for a single, non-itemized price, the 2% surcharge applies to the entire price, unless:

1. The dollar amount of the prepaid wireless service and surcharge is disclosed to the consumer; or
2. The seller identifies the portion of the price that is for the prepaid wireless service in their books and records kept in the regular course of business.

If the prepaid wireless service is disclosed or identified, then

only the portion of the charge for the prepaid wireless service is subject to the 2% surcharge.

However, a seller may elect not to collect the 2% surcharge on any sale of a prepaid wireless device, such as a prepaid wireless phone, that is bundled with prepaid wireless service denominated as ten minutes or less or as five dollars or less.

### **Examples:**

1. A retailer sells a prepaid phone package for \$9.95. The package includes 20 minutes of airtime to allow the customer to activate the phone. The retailer does not know the dollar value of the 20 minutes of airtime. The surcharge applies to the \$9.95 because the package includes more than 10 minutes and the retailer cannot document the value of the minutes. Sales tax also applies to the \$9.95 sales price.

2. A wireless phone provider sells a prepaid phone package for \$19.95 which includes 20 minutes of airtime to allow the customer to activate the phone. The provider documents in their records the value of the airtime at \$4.00 and the phone at \$15.95. Because the provider has documented the airtime at a value under \$5.00, the provider may choose to not collect the surcharge on this transaction. If the airtime value is not documented, the provider should assess the 2% surcharge on the \$19.95. Sales tax will apply to \$19.95.

3. A phone is purchased with 100 minutes of prepaid airtime for \$75.00. Because the minutes are not itemized, the entire \$75.00 is subject to the 2% surcharge. If the package indicates the fee for the phone is \$50 and the prepaid airtime is \$25, then only the \$25 is subject to the 2% surcharge. Sales tax will apply to \$75.00.

All sales of prepaid wireless airtime cards are subject to the Prepaid Wireless 911 Emergency Surcharge. When a prepaid wireless airtime card is sold to an exempt entity, such as the State of South Dakota or a local governmental entity, the receipts are not subject to sales tax; however, the 2% 911 Emergency Surcharge will apply.

## 911 Emergency Surcharge

### Definitions:

Prepaid wireless service seller is any person who sells prepaid wireless telecommunications service to the consumer.

Prepaid wireless service provider is any person that provides prepaid wireless telecommunications service.

### 911 Emergency Surcharge

All telecommunications service providers, wireless service providers, or Interconnected Voice over Internet Protocol service providers are responsible for collecting and remitting the 911 Emergency Surcharge.

- The surcharge is \$1.25 per service user line per month.
- Surcharges itemized on the customer's invoice are not subject to sales tax.
- The \$1.25 per service user line surcharge does not apply to prepaid wireless telecommunications service.

No surcharge may be imposed on more than 100 service user lines or equivalent service, per customer account billed, per month.

For multi-station network systems, the service user lines shall be equal to the number of calls that can simultaneously be made from such system to the public switched telephone network.

### Definitions:

Service provider is any person or entity providing, or offering to provide, or selling telecommunications service, wireless telecommunications service, or Interconnected Voice over Internet Protocol service.

### Administrative Fee

All sellers and providers may retain 2% of the total surcharge collected or \$25, whichever amount is greater, each month as an allowance for the cost of collecting and remitting the 911 Emergency Surcharge. The administrative fee cannot exceed the amount of surcharge collected.

**Effective July 1, 2013, 911 Emergency Surcharge returns and payments must be filed and paid timely by electronic means to receive the administrative fee.**

### Registration

All businesses reporting the 911 Emergency Surcharge or Prepaid Wireless 911 Emergency Surcharge are required to register with the Department of Revenue.

Apply for your 911 Surcharge Registration at the same time you apply for your South Dakota sales tax license online at [www.state.sd.us/taxapp](http://www.state.sd.us/taxapp). During the application process you will be asked if you sell prepaid wireless service and if you sell telecommunications, wireless, or VOIP services. After the application is submitted an agent will contact you to verify the type of South Dakota licenses you need and to discuss your tax liability.

If you already have a tax license please contact the Department at 1-800-829-9189 for your 911 Surcharge Registration.

**Change of Ownership:** The registration cannot be transferred. If the business is sold or ownership changes, the prior owner should cancel his identification number and the new owner will need to complete a new registration form.

**No Longer Selling Prepaid Wireless:** If you are no longer selling prepaid wireless services, check the box on the return showing you have discontinued selling prepaid wireless services and indicate the date sales were discontinued. This will only cancel the 911 Surcharge identification number.

If your business is closing you will also need to cancel your sales tax license.

### Reporting

All 2% Prepaid Wireless 911 Emergency Surcharge is reported and remitted directly to the Department of Revenue on the state 911 return. Do not include the surcharge on your sales tax return.

All 911 Emergency Surcharge per user line is reported on and remitted directly the Department of Revenue except for the following.

Any Tribal 911 Emergency Surcharges collected from customers with addresses in Dewey, Ziebach, and Oglala Lakota Counties and Jackson County south of the White River are not to be reported or remitted to the Department of Revenue.

911 Surcharges imposed by Tribal Governments should be remitted and reported to the tribal authority assessing the surcharge.

For questions on collection and remittance of the Tribal 911 Surcharges contact the following Tribal Governments:

- Cheyenne River Sioux Tribe – which includes Dewey and Ziebach Counties.
- Oglala Sioux Tribe – which includes Oglala Lakota County and Jackson County south of the White River.

Any 911 Emergency Surcharges collected prior to July 1, 2012, are reported to the jurisdiction that imposed the surcharge (county or city). Questions concerning the collection or remittance of the surcharges prior to July 1, 2012, should be referred to the jurisdiction that imposed the surcharge.

Reporting and paying of the 911 surcharges will be done electronically using SD EPath. You will be sent information on SD EPath after you register.

Returns will be filed monthly and are due by the 23rd of the month following the reporting period. If the 23rd falls on a Saturday, Sunday, a legal holiday enumerated in SDCL 1-5-1, or a day the Federal Reserve Bank is closed, the return is due on the next business day.

Electronic payments are due the 2nd to last working day of the month which is not a Saturday, Sunday, legal holiday, or a day the Federal Reserve Bank is closed.

If you are unable to file or pay online contact the Department at 1-800-829-9188.

All returns must be filed even if no amounts are due. Filing or paying late will result in penalty and interest being applied to your return or amount due.

Interest of 1% (.01) will be assessed each month on any past due surcharge until the surcharge is paid in full. (A minimum of \$5.00 interest is due the first month). (Interest of 1.25% is assessed for each month surcharge that is unpaid prior to July 2015).

Penalty is 10% (.10) of the surcharge liability (minimum \$10.00) and is assessed if a return is not received within 30 days following the month the return is due. Penalty will apply even if no surcharge is due.

If a taxpayer fails to file returns or pay surcharges, penalties, and interest, the Department of Revenue may use civil or criminal remedies to obtain compliance.

Corporate officers, member-managers or managers of limited liability companies, or partners that control, supervise, or

are charged with the responsibility of filing the returns or remitting the payments pursuant to SDCL 34-45 may be held personally liable for taxes accrued by the business.

### **Related Tax Publication**

Tax facts that may provide additional information for your business are available online at <http://dor.sd.gov> select business tax, then publications.

- Telecommunications Services
- Communications Equipment – Installation & Repair
- Audits

### **Talk to Us!**

If you have a tax problem or question, call the South Dakota Department of Revenue toll-free at 1-800-829-9188. Visit us on the web at <http://dor.sd.gov>, email us at [dor.911@state.sd.us](mailto:dor.911@state.sd.us) or write us:

**South Dakota  
Department of Revenue  
445 East Capitol Ave.  
Pierre, SD 57501-3185**

If you have questions on the distribution or use of the 911 Emergency Surcharges contact:

**Department of Public Safety  
South Dakota State 9-1-1 Coordinator  
118 West Capital Ave  
Pierre, SD 57501**

**Phone: 605-773-3178**

**Email: [sd911coordinator@state.sd.us](mailto:sd911coordinator@state.sd.us)**