HOUSE BILL NO. HB0044

Emergency 911 fees-prepaid wireless.

Sponsored by: Joint Corporations, Elections & Political Subdivisions Interim Committee

A BILL

for

AN ACT relating to taxation; imposing a tax on prepaid wireless communications access; providing for collection and distribution of the tax; granting rulemaking authority; requiring reporting; amending reporting provisions; updating obsolete language; providing an appropriation and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 16-9-109 is created to read:

16-9-109. State-wide imposition of tax; prepaid wireless; collection; distribution; immunity.

(a) Except as otherwise provided in this section, on and after July 1, 2016, there is imposed a 911 emergency tax of one and five-tenths percent (1.5%) on every retail sale of prepaid wireless communications access in Wyoming. The tax shall not be imposed on sales of prepaid wireless communications access intended for resale or upon any state or local governmental entity.

(b) A service supplier who sells prepaid wireless communications access shall collect the tax imposed by subsection (a) of this section from each purchaser of prepaid wireless communications access, which purchaser shall be considered a service user. The amount of the tax shall be either separately stated on an invoice, receipt or other similar document that is provided to the service user by the service supplier or shall be otherwise disclosed to the service user.

(c) For purposes of this section, a retail sale of prepaid wireless communications access occurs in Wyoming if the transaction would be sourced to Wyoming under W.S. 39-15-104(f).

(d) The tax imposed by subsection (a) of this section is the liability of the service user and the service supplier. The service supplier shall be liable to remit all taxes due or collected as provided in subsection (g) of this section.

(e) If the tax collected pursuant to this section is separately stated on an invoice, receipt or similar document provided to the service user by the service supplier, the tax shall not be included in the base for calculating any other tax, fee, surcharge or other charge imposed by this state, any political subdivision of the state or any intergovernmental agency.

(f) When prepaid wireless communication access is sold with one (1) or more other products or services for a single, nonitemized price, the tax authorized by subsection (a) of this section shall not be applied to a retail sale of prepaid wireless communications access of ten (10) or fewer minutes or which has a value of five dollars ($5.00) or less.

(g) All taxes collected under subsection (a) of this section shall be remitted by the service supplier who collected them to the department of revenue as follows:

(i) A service supplier shall remit to the department of revenue all monies collected at the times and in the manner provided by W.S. 39-15-107(a). The department of revenue may establish by rule procedures reasonably necessary to facilitate the transfer of these monies. The service supplier shall be subject to the penalty and enforcement provisions provided by W.S. 39-15-108 for any failure to collect or remit funds;

(ii) A service supplier remitting collected taxes may deduct and retain three percent (3%) of the taxes collected as the cost of administration for collecting the taxes;

(iii) The audit and appeal procedures applicable to the collection of state sales taxes shall apply to the collection and remittance of taxes authorized by this section;

(iv) Pursuant to rules adopted for this purpose, the department of revenue shall establish a procedure by which service suppliers may document that a transaction is not a retail sale subject to the tax imposed by this section. The procedure shall be substantially similar to the procedure used to document a sale for resale transaction for purposes of sales tax.

(h) The monies collected by the department of revenue under this section shall not be general revenues of the state and shall be held by the department in a separate account for distribution as follows:

(i) The department shall deduct one percent (1%) of the total monies collected to cover its administrative expenses and costs, which amount shall be remitted to the treasurer for credit to the general fund;

(ii) After deduction of the amount authorized by paragraph (i) of this subsection, the department shall pay all remaining amounts collected to each county that imposes and collects the 911 emergency tax authorized by W.S. 16-9-103;

(iii) The payment authorized by paragraph (ii) of this subsection shall be remitted to the county no later than fifteen (15) days after the close of the calendar quarter and is subject to the requirements of paragraph (iv) of this subsection;

(iv) Each county receiving payment pursuant to paragraph (ii) of this subsection shall receive three percent (3%) of the total amount distributed pursuant to paragraph (ii) of this subsection. Each county shall receive the remaining balance of the amount distributed under paragraph (ii) of this subsection in proportion to the percentage that the county's total population relates to the state's total population;

(v) If a governing body other than a county imposes a 911 emergency tax pursuant to W.S. 16-9-103, the county in which that governing body is located shall divide all monies received by the county pursuant to paragraph (iv) of this subsection equally between the county and the governing body;

(vi) All funds received by any governing body pursuant to this subsection shall be expended only for the purposes authorized by W.S. 16-9-105;

(vii) Amounts collected by any governing body pursuant to this subsection in excess of necessary expenditures within any fiscal year shall be carried forward to subsequent years and shall be used only for the purposes authorized by W.S. 16-9-105;

(viii) The department of revenue may promulgate rules necessary to implement this subsection.

(j) The tax imposed by this section shall be the only direct tax obligation imposed with respect to prepaid wireless communications access in this state for emergency 911 funding purposes. This prohibition shall not apply to sales taxes otherwise authorized.

(k) The department of revenue and the Wyoming public service commission shall jointly report to the joint corporations, elections and political subdivisions committee on or before July 1, 2019 and every four (4) years thereafter. The report required by this subsection shall contain an analysis of the tax rate imposed by subsection (a) of this section and shall determine whether that tax rate places a tax burden on purchasers of prepaid wireless communication access which is substantially equivalent to the tax burden imposed by W.S. 16-9-103(b). If the tax burden imposed by this section is not substantially equivalent to the tax burden imposed by W.S. 16-9-103(b), the department and the commission shall advise the committee on the tax rate that would make the burden imposed by the two (2) taxes equivalent. The department of revenue and the Wyoming public service commission may adopt rules requiring the reporting of sales data or other information necessary to complete the analysis required by this subsection.

Section 2. W.S. 16-9-102(a)(iv), (v), (viii), (x) and by creating a new paragraph (xvii), 16-9-103(b), (d), (e), (g) and by creating new subsections (k) and (m), 16-9-104 and 16-9-105(a), (b)(intro) and (c) are amended to read:

16-9-102. Definitions.

(a) As used in this act:

(iv) "911 emergency reporting system" or "911 system" means a telephone system consisting of network, database, services and equipment, including operating and personnel costs as specified in W.S. 16-9-105, using the single three-digit number 911 for reporting police, fire, medical or other emergency situations and enabling the users of a public telephone system, other technology or wireless telecommunications system to reach a public safety answering point to report emergencies by dialing 911. 911 emergency reporting systems may include systems consisting of network, database, services and equipment, including operating and personnel costs as specified in W.S. 16-9-105, using 911 databases and public safety answering points to disseminate warnings to the public of impending hazards, including storms, floods, hazardous materials incidents or other emergencies that could compromise the public safety. For any 911 emergency reporting system that operates a reverse 911 warning system, a quarterly test on the warning system will be conducted by calling random numbers. The level of technology for provision of the 911 emergency reporting system is to be determined by the governing body and may include enhanced wireless 911 services, however, the 911 system shall include a device for telecommunications for the deaf;~~. Effective January 1, 2009, the governing body shall file with the Wyoming public service commission a certified statement of its annual gross receipts and detailed and itemized annual expenditures of any taxes collected pursuant to this act from 2004 through and including the most recent calendar year;~~

(v) "911 emergency tax" is the state-wide tax authorized by W.S. 16-9-109 and a tax on service users within the governing body's designated 911 service area set by the governing body in accordance with this act and assessed on each service user's local exchange access lines and wireless communications access to pay the directly related costs of a 911 system as authorized in accordance with W.S. 16-9-105;

(viii) "Service supplier" means any utility, person or entity providing or offering to provide 911 system equipment, database installation, maintenance or local exchange access, wireless communication access or other technological device that under normal operation is designed or routinely used to access 911 services within the 911 service access area, including a seller of prepaid wireless communications access;

(x) "This act" means W.S. 16-9-101 through ~~16-9-108~~ 16-9-109;

(xvii) "Prepaid wireless communications access" means wireless communications access which requires advance payment that is sold in predetermined units or dollars of which the number declines with use in a known amount.

16-9-103. Imposition of tax; liability of user for tax; collection; uncollected amounts; discontinuing service prohibited.

(b) In accordance with the provisions of this subsection, and after a public hearing the governing body may, by ordinance in the case of cities and by resolution in the case of counties or special districts, impose a monthly uniform tax on service users within its designated 911 service area in an amount not to exceed seventy-five cents ($.75) per month on each local exchange access line, per wireless communications access or other technological device that under normal operation is designed or routinely used to access 911. Only one (1) governing body may impose a 911 emergency tax for each 911 system. Except as provided by W.S. 16-9-109 for prepaid wireless communication access and regardless of the level at which the tax is set, if an assessment is made on both local exchange access facilities and wireless communications access, the amount of the tax imposed per local exchange access facility and the amount of the tax imposed per wireless communications access or access by other technological device that under normal operation is designed or routinely used to access 911, shall be equal. Except as provided by W.S. 16-9-109, the proceeds of the 911 emergency tax shall be set aside in an enterprise fund or other separate accounts from which the receipts shall be used to pay for the 911 system costs authorized in W.S. 16-9-105, and may be imposed at any time following the execution of an agreement with the provider of the service at the discretion of the governing body.

(d) Collection of any 911 emergency tax from a service user pursuant to this ~~chapter~~ <u>act</u> shall commence at the time specified by the governing body in accordance with this act. Taxes imposed under this ~~chapter~~ <u>act</u> and required to be collected by the service supplier shall be added to and stated separately in the billings to the service user.

(e) Every billed service user shall be liable for any 911 emergency tax imposed under this ~~chapter~~ <u>act</u> until it has been paid to the service supplier or governing body.

(g) Any 911 emergency tax imposed under this ~~chapter~~ <u>act</u> shall be collected at the time charges for the telecommunications are collected under the regular billing practice of the service supplier.

<u>(k) Effective January 1, 2015, and every fiscal year through June 30, 2019, the governing body primarily responsible for the expenditure of revenues collected pursuant to this act shall file with the Wyoming public service commission a statement of its gross receipts and expenditures authorized by this act for the prior fiscal year. The Wyoming public service commission is authorized</u>

to promulgate rules in consultation with the governing bodies to develop a statement of revenues and expenditures that, to the maximum extent possible, is uniform across governing bodies.

(m) This section shall not apply to the 911 emergency tax imposed on prepaid wireless communication access by W.S. 16-9-109.

16-9-104. Remittance of tax to the governing body; administrative fee; establishment of rate of tax.

(a) Except as provided in W.S. 16-9-109, any tax imposed under this ~~chapter~~ act and the amounts collected are to be remitted quarterly to the governing body. The amount of the tax collected in one (1) calendar quarter by the service supplier shall be remitted to the governing body no later than fifteen (15) days after the close of the calendar quarter. On or before the sixteenth day of each month following the preceding calendar quarter, a return for the preceding quarter shall be filed with the governing body in a form the governing body and service supplier agree upon. The service supplier required to file the return shall deliver the return together with the remittance of the amount of the tax payable to the governing body. The service supplier shall maintain a record of the amount of each tax collected pursuant to this ~~chapter~~ act. The record shall be maintained for a period of one (1) year after the time the tax was collected.

(b) Except as provided by W.S. 16-9-109, the service supplier remitting the taxes collected under this ~~chapter~~ act may deduct and retain one percent (1%) of the taxes collected as the cost of administration for collecting the taxes.

(c) At least once each calendar year, the governing body shall establish a rate of tax not to exceed the amount authorized. Amounts collected in excess of necessary expenditures within any fiscal year shall be carried forward to subsequent years and shall only be used for the purposes set forth in W.S. 16-9-105. The governing body shall fix the rate, publish notice of its new rate and notify by mail every local exchange access company at least ninety (90) days before the new rate becomes effective. The governing body may at its own expense require an annual audit of the service supplier's books and records concerning the collection and remittance of the ~~tax~~ taxes authorized by this ~~chapter~~ act.

(d) This section does not apply to the taxes authorized and collected for prepaid wireless communication access under W.S. 16-9-109.

16-9-105. Agreements or contract for 911 emergency reporting systems; use of funds collected.

(a) Any governing body imposing the tax authorized by this ~~chapter~~ act may enter into an agreement directly with any service supplier to the 911 system or may contract and cooperate with any public agency or any other state for the administration of a 911 system in accordance with law.

(b) Funds collected from the 911 emergency tax imposed pursuant to this ~~chapter~~ act shall be spent solely to pay for public safety answering point and service suppliers' equipment and service costs, installation costs, maintenance costs, monthly recurring charges and other costs directly related to the continued operation of a 911 system including enhanced wireless 911 service. Funds may also be expended for personnel expenses necessarily incurred by a public safety answering point. "Personnel expenses necessarily incurred" means expenses incurred for persons employed to:

(c) Funds collected from the charge pursuant to this ~~chapter~~ act shall be credited to a cash account separate from the general fund of the public agency, for payments for public safety answering points and service supplier costs pursuant to subsection (b) of this section. Any monies remaining in the cash account at the end of any fiscal year shall remain in the account for payments during any succeeding year. If any 911 system is discontinued, monies remaining in the account shall, after all payments to the service supplier pursuant to subsection (b) of this section, be transferred to the general fund of the public agency or proportionately to the general fund of each participating public agency.

Section 3. There is appropriated two hundred eighty-two thousand dollars ($282,000.00) from the general fund to the department of revenue. This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2017. This appropriation shall only be expended for the purpose of preparing for, administering and enforcing the tax authorized by this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2017.

Section 4. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)