

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 198
HOUSE BILL 2094

AN ACT

AMENDING SECTIONS 42-5251 AND 42-5252, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; RELATING TO PREPAID WIRELESS TELECOMMUNICATIONS E911 EXCISE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5251, Arizona Revised Statutes, is amended to
3 read:

4 42-5251. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Customer" means a person or entity in whose name telephone or
7 telecommunication services are rendered, as evidenced by a signature on an
8 application or contract for service or by receipt or payment of bills
9 regularly issued in the person's or entity's name.

10 2. "Emergency telecommunication services" means telecommunication
11 services or systems that use number 911 or a similarly designated telephone
12 number for emergency calls.

13 3. "Exchange access services" means telephone or telecommunication
14 exchange access lines or channels ~~which~~ THAT provide local access from the
15 premises of a customer to the local telecommunications network to effect the
16 transfer of information.

17 4. "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS WIRELESS
18 SERVICES THAT ALLOW A CALLER TO DIAL 911 TO ACCESS THE 911 SYSTEM UNDER A
19 SERVICE THAT IS PAID FOR IN ADVANCE AND THAT IS SOLD IN PREDETERMINED UNITS
20 OR DOLLARS OF WHICH THE NUMBER DECLINES WITH USE IN A KNOWN AMOUNT.

21 ~~4.~~ 5. "Provider" means ANY OF THE FOLLOWING:

22 (a) A public service corporation ~~offering~~ THAT OFFERS telephone or
23 telecommunications services pursuant to title 40, ~~which~~ AND THAT provides
24 exchange access services.

25 (b) A SUPPLIER OF WIRELESS SERVICES.

26 (c) A SUPPLIER OF ANY COMBINATION OF WIRE AND WIRELESS SERVICES.

27 ~~5. "Wireless provider" means a supplier of wireless services.~~

28 6. "Wireless services" means ~~two-way voice commercial mobile radio~~
29 ~~service as defined by the federal communications commission~~ A COMMERCIAL
30 MOBILE SERVICE, AS DEFINED BY 47 CODE OF FEDERAL REGULATIONS SECTION 20.3, AS
31 AMENDED.

32 Sec. 2. Section 42-5252, Arizona Revised Statutes, is amended to read:

33 42-5252. Levy of tax; applicability

34 A. A tax is levied on every provider in an amount as follows:

35 1. For the fiscal years beginning from and after June 30, 2001 and
36 ending before July 1, 2006, thirty-seven cents per month for each activated
37 wire and wireless service account for the purpose of financing emergency
38 telecommunication services.

39 2. For fiscal year 2006-2007, twenty-eight cents per month for each
40 activated wire and wireless service account for the purpose of financing
41 emergency telecommunication services.

42 3. For the fiscal years beginning from and after June 30, 2007, twenty
43 cents per month for each activated wire and wireless service account for the
44 purpose of financing emergency telecommunication services.

45 B. A tax is levied on every ~~provider~~ PUBLIC SERVICE CORPORATION at the
46 rate of 1.1 per cent of the ~~providers'~~ PUBLIC SERVICE CORPORATIONS' gross

1 proceeds of sales or gross income derived from the business of providing
2 exchange access services. Revenues from the tax shall be used for the
3 purpose of financing telecommunication devices for the deaf and the severely
4 hearing and speech impaired under the program established pursuant to section
5 36-1947. FOR THE PURPOSES OF THIS SUBSECTION, "PUBLIC SERVICE CORPORATION"
6 MEANS A PUBLIC SERVICE CORPORATION THAT OFFERS TELEPHONE OR
7 TELECOMMUNICATIONS SERVICES PURSUANT TO TITLE 40 AND THAT PROVIDES EXCHANGE
8 ACCESS SERVICES.

9 C. Each provider shall state on the invoice to customers a separate
10 line item stating the amount of tax levied pursuant to subsections A and B of
11 this section.

12 D. Unless the context otherwise requires, article 1 of this chapter
13 governs the administration of the tax imposed under this section.

14 E. THE TAX LEVIED UNDER THIS SECTION DOES NOT APPLY TO PREPAID
15 WIRELESS TELECOMMUNICATIONS SERVICE.

16 Sec. 3. Title 42, chapter 5, Arizona Revised Statutes, is amended by
17 adding article 9, to read:

18 ARTICLE 9. PREPAID WIRELESS TELECOMMUNICATIONS
19 E911 EXCISE TAX

20 42-5401. Definitions

21 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

22 1. "CONSUMER" MEANS A PERSON WHO PURCHASES PREPAID WIRELESS
23 TELECOMMUNICATIONS SERVICE IN A RETAIL SALE OF PREPAID WIRELESS
24 TELECOMMUNICATIONS SERVICE.

25 2. "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS A COMMERCIAL
26 MOBILE RADIO SERVICE, AS DEFINED BY 47 CODE OF FEDERAL REGULATIONS SECTION
27 20.3, AS AMENDED, THAT ALLOWS A CALLER TO DIAL 911 TO ACCESS THE 911 SYSTEM
28 UNDER A SERVICE THAT IS PAID FOR IN ADVANCE AND THAT IS SOLD IN PREDETERMINED
29 UNITS OR DOLLARS OF WHICH THE NUMBER DECLINES WITH USE IN A KNOWN AMOUNT.

30 3. "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER" MEANS A
31 PERSON THAT PROVIDES PREPAID WIRELESS TELECOMMUNICATIONS SERVICE PURSUANT TO
32 A LICENSE THAT IS ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION.

33 4. "RETAIL SALE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS
34 A SALE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE BY A SELLER FOR ANY
35 PURPOSE OTHER THAN RESALE.

36 5. "SELLER" MEANS A PERSON WHO SELLS PREPAID WIRELESS
37 TELECOMMUNICATIONS SERVICE TO ANOTHER PERSON.

38 6. "WIRELESS SERVICES" MEANS A COMMERCIAL MOBILE SERVICE, AS DEFINED
39 BY 47 CODE OF FEDERAL REGULATIONS SECTION 20.3, AS AMENDED.

40 42-5402. Levy of tax

41 A. A PREPAID WIRELESS TELECOMMUNICATIONS E911 EXCISE TAX IS LEVIED ON
42 EVERY SELLER IN AN AMOUNT OF EIGHT TENTHS OF ONE PER CENT OF THE GROSS
43 PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE RETAIL SALE OF PREPAID
44 WIRELESS TELECOMMUNICATIONS SERVICE.

45 B. THE SELLER IS LIABLE FOR THE TAX IMPOSED UNDER THIS SECTION. THE
46 AMOUNT OF TAX MAY BE SEPARATELY STATED ON THE INVOICE, RECEIPT OR OTHER

1 SIMILAR DOCUMENT THAT IS PROVIDED TO THE CONSUMER BY THE SELLER OR OTHERWISE
2 DISCLOSED TO THE CONSUMER. THE SELLER MAY RETAIN THREE PER CENT OF THE
3 AMOUNT OF TAX COLLECTED BEFORE REMITTING THE TAX TO THE DEPARTMENT.

4 C. FOR THE PURPOSE OF DETERMINING THE LOCATION OF A RETAIL SALE OF
5 PREPAID WIRELESS TELECOMMUNICATIONS SERVICE UNDER THIS ARTICLE, A RETAIL SALE
6 OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE OCCURS IN THIS STATE IF:

7 1. THE RETAIL SALE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IS
8 COMPLETED IN PERSON AT A BUSINESS LOCATION IN THIS STATE.

9 2. IF PARAGRAPH 1 OF THIS SUBSECTION DOES NOT APPLY, THE PRODUCT IS
10 DELIVERED TO THE CONSUMER AT AN ADDRESS IN THIS STATE.

11 3. IF PARAGRAPHS 1 AND 2 OF THIS SUBSECTION DO NOT APPLY, THE SELLER'S
12 RECORDS THAT ARE MAINTAINED IN THE ORDINARY COURSE OF BUSINESS INDICATE THAT
13 THE CONSUMER'S ADDRESS IS LOCATED IN THIS STATE AND THE SELLER'S RECORDS ARE
14 NOT MADE OR KEPT IN BAD FAITH.

15 4. IF PARAGRAPHS 1, 2 AND 3 OF THIS SUBSECTION DO NOT APPLY, THE
16 CONSUMER GIVES THE SELLER AN ADDRESS IN THIS STATE DURING THE COMPLETION OF
17 THE SALE, INCLUDING THE CONSUMER'S PAYMENT INSTRUMENT IF NO OTHER ADDRESS IS
18 AVAILABLE, AND THE ADDRESS IS NOT GIVEN IN BAD FAITH.

19 5. IF PARAGRAPHS 1 THROUGH 4 OF THIS SUBSECTION DO NOT APPLY, THE
20 WIRELESS TELEPHONE NUMBER IS ASSOCIATED WITH A LOCATION IN THIS STATE.

21 D. THE AMOUNT OF TAX THAT IS PAID BY A SELLER SHALL NOT BE INCLUDED IN
22 THE TAX BASE FOR COMPUTING ANY TRANSACTION PRIVILEGE, SALES, USE, FRANCHISE
23 OR OTHER SIMILAR TAX OR FEE, HOWEVER DENOMINATED, THAT IS IMPOSED BY THIS
24 STATE, ANY POLITICAL SUBDIVISION OF THIS STATE OR ANY INTERGOVERNMENTAL
25 AGENCY.

26 E. THE TAX LEVIED UNDER THIS SECTION SHALL BE THE ONLY E911 FUNDING
27 OBLIGATION FOR PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IN THIS STATE.
28 THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE OR ANY INTERGOVERNMENTAL
29 AGENCY SHALL NOT LEVY ANY OTHER SIMILAR TAX OR FEE, HOWEVER DENOMINATED, ON
30 ANY SELLER OR CONSUMER FOR THE SALE, PURCHASE, USE OR PROVISION OF PREPAID
31 WIRELESS TELECOMMUNICATIONS SERVICE FOR THE PURPOSE OF FUNDING E911 SERVICE.

32 42-5403. Administration of tax; distribution of revenues

33 A. UNLESS THE CONTEXT OTHERWISE REQUIRES, ARTICLE 1 OF THIS CHAPTER
34 GOVERNS THE ADMINISTRATION OF THE TAX IMPOSED BY THIS ARTICLE.

35 B. A SEPARATE BOND IS NOT REQUIRED OF EMPLOYEES OF THE DEPARTMENT IN
36 ADMINISTERING THIS ARTICLE.

37 C. THE PROCEDURES FOR A SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS
38 SERVICE TO DOCUMENT A SALE THAT IS NOT A RETAIL SALE OF PREPAID WIRELESS
39 TELECOMMUNICATIONS SERVICE SHALL BE SUBSTANTIALLY SIMILAR TO THE PROCEDURES
40 FOR DOCUMENTING SALE FOR RESALE TRANSACTIONS UNDER THE RETAIL CLASSIFICATION
41 PURSUANT TO SECTIONS 42-5009 AND 42-5061.

42 D. THE DEPARTMENT SHALL SEPARATELY ACCOUNT FOR THE MONIES PAID UNDER
43 THIS ARTICLE AND SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, THE
44 NET REVENUES COLLECTED UNDER THIS ARTICLE IN THE EMERGENCY TELECOMMUNICATIONS
45 SERVICES REVOLVING FUND ESTABLISHED BY SECTION 41-704.

46 42-5404. Liability

1 A. NOTHING IN THIS ARTICLE CREATES A CAUSE OF ACTION OR RIGHT TO BRING
2 AN ACTION AGAINST A SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR
3 LIABLE DAMAGES TO ANY PERSON RESULTING FROM OR INCURRED IN CONNECTION WITH
4 THE PROVISION OF, OR FAILURE TO PROVIDE, 911 OR E911 SERVICE, OR FOR
5 IDENTIFYING, OR FAILING TO IDENTIFY, THE TELEPHONE NUMBER, ADDRESS, LOCATION
6 OR NAME ASSOCIATED WITH ANY PERSON OR DEVICE THAT IS ACCESSING OR ATTEMPTING
7 TO ACCESS 911 OR E911 SERVICE.

8 B. NOTHING IN THIS ARTICLE CREATES A CAUSE OF ACTION OR RIGHT TO BRING
9 AN ACTION AGAINST A SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR
10 DAMAGES TO ANY PERSON RESULTING FROM, OR INCURRED IN CONNECTION WITH, ANY
11 LAWFUL INVESTIGATION BY A LAW ENFORCEMENT OFFICER OF THE UNITED STATES, THIS
12 STATE, ANY OTHER STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE OR ANY
13 OTHER STATE.

14 Sec. 4. Department of revenue; exemption from rule making

15 The department of revenue is exempt from the rule making requirements
16 of title 41, chapter 6, Arizona Revised Statutes, for the purposes of
17 implementing this act.

18 Sec. 5. Effective date

19 This act is effective and applies to taxable periods beginning from and
20 after December 31, 2013.

APPROVED BY THE GOVERNOR APRIL 5, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2012.