

Department of Finance and Administration

Legislative Impact Statement

Bill: SB500

As Engrossed: 3/13/2013

Bill Subtitle: TO ASSIST THE ADMINISTRATION AND COLLECTION OF 911 EMERGENCY PHONE SYSTEM CHARGES; AND TO REGULATE CONTRIBUTIONS FROM PREPAID WIRELESS PHONE USERS.

Basic Change :

Senator J. Woods

Representative Neal

Engrossment 03/13/13 --- Senate Amendment 1 --- Amends the bill to make technical changes.

Original Bill ---The proposal would amend Arkansas Code provisions to require DFA to collect the existing E911 service charges levied on sales of prepaid wireless mobile radio (cell phone) telecommunications services. The service charges are levied by authority of the Arkansas Public Safety Communications Act of 1985 and are currently collected by the Arkansas Emergency Telephone Service Board. The Arkansas Emergency Telephone Service Board would continue to collect the 911 fees from sellers of monthly billed cell phone services and sellers of voice over internet protocol telephone services.

The fee is levied on prepaid wireless telephone service sold by a retailer and is currently imposed at the rate of sixty-five cents (\$0.65) per retail transaction. The fee is collected by the retailer on each recharge of the prepaid cell phone. The bill requires retailers to collect the fee on prepaid wireless services at point of sale and remit the fee collections to DFA. The receipts are to be remitted by DFA to the Arkansas Emergency Telephone Services Board. The proposal provides an effective date of January 1, 2014.

Revenue Impact :

Unknown change in amount of existing 911 fees collected

911 service charges on prepaid wireless telephone services are currently collected by the Arkansas Emergency Telephone Service Board and reported by the providers of the mobile telecommunications services. FCC data reflected that approximately 490,000 Arkansas citizens used prepaid wireless devices in 2010. The fees are levied at the rate of sixty-five cents (65¢) per month per service connection and are collected from the subscriber as a reduction in their account balance. An alternative calculation method is provided in law and available for use by the service providers when reporting the fees.

The proposal changes the collection of the fees to a point of sale method and retailers instead of the service providers would collect and report the fees. The fee would be collected on each purchase of the prepaid wireless services versus the current monthly fee. The change in the amount of fees collected would be dependent on the number of recharges sold, the frequency of the sales, and the compliance of reporting from Arkansas retailers who do not currently sell telecommunications services and do not collect similar fees or charges on their retail sales. Current fee collections may also be impacted if Arkansas consumers purchase recharges of prepaid wireless communications from retailers located outside of Arkansas that do not have nexus with the state and are not required to collect Arkansas taxes and fees.

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Taxpayer Impact :

Sellers of prepaid wireless cell phone services would change the accounting, cash register and tax reporting procedures for reporting and making remittance of the fees collected from their customers.

Resources Required :

Collection of the fee will require redesign of existing DFA tax registration forms, monthly tax reporting forms and instructions sets. Modifications to DFA's tax reporting system will be required to establish this fee type within the tax system with the related interfaces to the state accounting system. Modifications will also be required within the Revenue Division's cash control computer systems, processes and accounting functions.

Time Required :

Adequate time is provided in the proposal to make necessary computer system changes and modifications to tax forms.

Procedural Changes :

Development and promulgation of Rules will be required to implement the procedures for reporting and remittance of the fee. Education of taxpayer assistance telephone support staff personnel and field tax audit personnel will be required.

Legal Analysis :

Amendment S1 was drafted to address various concerns identified by DFA after review of the original bill. The amendment was drafted by prepaid telecommunications industry representatives and submitted to the Bureau for completion. Though the bill addressed a number of DFA's concerns, there are some concerns that were not addressed. Those are as follows:

1. Amendment S1 did not correct the fact that the bill provides a definition of "wireless telecommunications service" which conflicts with the amended definition of "prepaid wireless telecommunications service" adopted in section 1 of the bill. The term "wireless telecommunications service" is not used anywhere in section 7 of the bill. Instead, the term "prepaid wireless telecommunications service" is used.
2. Amendment S1 does not address the concern over how to document that the E911 service charge is separately stated for purposes of calculation of sales tax. Under the bill, the charge shall be excluded from the calculation of tax if it is separately stated on an invoice, receipt, or other documentation provided to a customer. However, customers generally do not receive actual documents when refilling minutes on their phone. Usually, the customer receives an email or a text message confirming the refill and the amount of the refill.
3. Amendment S1 does not address the concern that subsection 326(i)(2), which provides that "a tax, fee surcharge, or other charge shall not be imposed by the state, a political subdivision of the state, or an intergovernmental agency for E911 funding purposes upon a provider, seller, or consumer for the sale, purchase, use, or provision of prepaid wireless telecommunications service," is somewhat

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unclear. The intent of this language seems to be to prohibit the levy of any other tax, charge, or fee to implement and support emergency telephone services, but this is not as clear as it could be.

4. Amendment S1 does not address the fact that the state tax procedure act definition of "state tax" at 26-18-104(13) will need to be amended to include any fee or charge payable to, collected by, or administered by the revenue division.

In addition to these concerns, it should be noted that the amendment removes the provision that DFA shall be authorized to retain a percentage of E911 services fees received from a taxpayer for reimbursement of costs of administration. Additionally, the amendment contains some drafting errors. Specifically, it amends page 8 of the bill to delete lines 5 through 36 and substitute new language. The amendment should delete line 5 through 35. Line 36 is where what is now section 326(g)(1) begins. Also, subdivision (c) of the new language, which provides that a sale of 10 minutes or less or \$5.00 or less with a prepaid wireless device for a single nonitemized price shall not be subject to the E911 service charge, is somewhat unclear. I think the intent is that the device be subject to the charge but the minutes or airtime sold with the device shall not be a separate transaction also subject to the charge, but this is not clear as written. Lastly, subdivision (d)(1) of the new language cites to the wrong provision of the gross receipt tax act, 26-52-201 concerning permitting, and should be amended to provide that "a seller shall report and remit prepaid wireless E911 charges pursuant to the provisions of Ark. Code Ann. §26-52-501."

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