

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-5-.36.01

Rule Title: Sales of Prepaid Wireless Service

XX New; ___ Amend; ___ Repeal; ___ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

Yes

Is there another, less restrictive method of regulation available that could adequately protect the public?

No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?

N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

Yes

Does the proposed rule have any economic impact?

Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date 11/18/14

APA-6
10/96

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-5-.36.01

Rule Title: Sales of Prepaid Wireless Service

X New _____ Amend _____ Repeal _____ Adopt by Reference _____

- NO
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**
The legislation, Act 2014-336, amended the definitions of prepaid calling cards, which are subject to sales tax. It also clarified that real time downloads and other mediums used to reload the cards are taxable. This will allow all sellers of prepaid calling cards and prepaid wireless services to know what is and is not taxable.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**
3. **EFFECT OF THIS RULE ON COMPETITION:**
4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**
6. **SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:**
7. **THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON**

AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

APA-2
11/96

ALABAMA DEPARTMENT OF REVENUE
Sales & Use Tax Division

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-5-.36.01 Sales of Prepaid Wireless Service

INTENDED ACTION: Adopt new rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above rule to comply with the provisions of Act 2014-336 as it relates to the taxation of Prepaid Calling Cards.

RULE NO. & TITLE

810-6-3-.67.04 Certificate of Exemption - Fuel and/or Supplies Purchased for Use
or Consumption Aboard Vessels Engaged in Foreign or
International Commerce or in Interstate Commerce

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to make grammatical changes.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 1:30 p.m. on Wednesday, January 7, 2015, Room 1203, First Floor, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at ww.revenue.alabama.gov/rulehear.html.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, January 7, 2015

CONTACT PERSON AT AGENCY:

Patricia Toles
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380

A handwritten signature in black ink, appearing to read "Michael D. Gamble", written over a horizontal line.

Michael D. Gamble, Secretary
Alabama Department of Revenue

0948APC.INT

810-6-5-.36.01 Sales of Prepaid Wireless Service. (NEW RULE)

(1) The sale of prepaid wireless service constitutes the sale of tangible personal property subject to sales or use tax.

(2) The term "prepaid wireless service" as used in this rule shall mean, the right to use mobile telecommunications service, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount, and which may include rights to use non-telecommunications services or to download digital products or digital content.

(3) The definition of the term "mobile telecommunications service" contained in Section 40-21-120, Code of Alabama 1975, is incorporated by reference herein.

(4) Sales of prepaid telephone calling cards, prepaid authorization numbers, or both, constitute sales of tangible personal property subject to sales or use tax.

(a) The sale of prepaid wireless service that is evidenced by a physical card constitutes the sale of a prepaid telephone calling card, and

(b) The sale of prepaid wireless service that is not evidenced by a physical card constitutes the sale of a prepaid authorization number, including but not limited to, real time downloads, real time reloads, recharges, or other means that may be manually, electronically, or otherwise entered.

(5) For transactions that occurred prior to July 1, 2014, for which the consumer did not receive from the retailer either an authorization number or a physical card, neither the Department nor local tax officials may seek payment for sales tax not collected. This provision does not apply to audits that began or assessments that were entered prior to July 1, 2014. With regard to such transactions in which sales tax was collected and remitted, neither the taxpayer nor the entity remitting sales tax shall have the right to seek a refund of such tax.

Author: Ginger Buchanan
Authority: Sections 40-2A-7(a)(5), 40-23-1 and 40-23-31, Code of Alabama 1975 and Act 2014-336
History: