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Comments Due by: **August 29, 2019**

SC REVENUE RULING #19-x [DRAFT - 8/15/19]

SUBJECT: Universal Service Fund Surcharge, Dual Party Relay Charge, and 911 Service Charge
(Sales and Use Tax)

EFFECTIVE DATE:

SUPERSEDES: SC Revenue Ruling #03-1 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 12-36-90 (2014)
S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-1310 (2014)
S.C. Code Ann. Section 58-9-280 (2015; Supp. 2018)
S.C. Code Ann. Section 58-9-2530 (2015; Supp. 2018)
S.C. Code Ann. Section 23-47-10 (Supp. 2018)
S.C. Code Ann. Section 23-47-40 (Supp. 2018 as amended by Act 60 (2019))
S.C. Code Ann. Section 23-47-50 (Supp. 2018 as amended by Act 60 (2019))
S.C. Code Ann. Section 23-47-67 (Supp. 2018)
S.C. Code Ann. Section 23-47-68 (Supp. 2018)
SC Regulation 117-329.4

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Purpose of Update

Telephone service is provided by Local Exchange Carriers, Voice over Internet Protocol providers, Prepaid Wireless sellers, and Commercial Mobile Radio Service ("CMRS") providers. These companies providing telephone service in South Carolina and bill their customers for a Universal Service Fund Surcharge, a Dual Party Relay Charge, or a 911 Service Charge. Customers frequently inquire why these charges are imposed and if they are taxes. These fees are imposed by South Carolina on telephone service providers for specific purposes. Although these fees are not taxes, customers often contact the Department for explanation of the charges and any associated taxes imposed.

PUBLIC DRAFT

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SC Revenue Ruling #03-1 addressed whether the Universal Service Fund Surcharge billed by the telephone providers to their customers were part of the gross proceeds of the charges for communication services and subject to sales and use tax.¹ The purpose of this advisory opinion is to expand the scope of SC Revenue Ruling #03-1 to address the applicability of the sales and use tax to the Dual Party Relay Charge and the 911 Service Charge on customer's telephone bills.

Questions

1. Is the Universal Service Fund Surcharge billed by a telephone service provider to its customer, as described in the facts, part of the gross proceeds of sales of the telephone service provider and subject to sales and use tax?
2. Is the Dual Party Relay Charge billed by a telephone service provider to its customer, as described in the facts, part of the gross proceeds of sales of the telephone service provider and subject to sales and use tax?
3. Is the 911 Service Charge billed by a telephone service provider to its customer, as described in the facts, part of the gross proceeds of sales of the telephone service provider and subject to sales and use tax?

Conclusions

1. The Universal Service Fund Surcharge billed by a Local Exchange Carrier, Voice over Internet Protocol provider, or Commercial Mobile Radio Service provider to its customer is part of the "gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages," and therefore is subject to sales and use tax.

Exception: Any portion of the Universal Service Fund Surcharge based on charges for telephone services that are exempt from the sales and use tax under Code Section 12-36-2120 (e.g., sales to the federal government, long distance charges, or certain access charges), or are otherwise nontaxable, are part of the gross proceeds accruing or proceeding from the charges for an exempt service or nontaxable charge and therefore are not subject to sales and use tax.

The Universal Service Fund Surcharge billed by a Prepaid Wireless seller to its customer is not subject to sales and use tax pursuant to Code Section 58-9-280(E)(2)(d)(ii).

2. The Dual Party Relay Charge billed by a telephone service provider to its customer, as described in the facts, is not subject to sales and use tax specifically by statute. See, Code Section 58-9-2530(A).

¹ Telephone companies began adding the Universal Service Fund surcharge to customer bills beginning October 1, 2001.

PUBLIC DRAFT

Circulated for Public Comments

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3. The 911 Service Charge billed by a telephone service provider to its customer, as described in the facts, is not subject to sales and use tax specifically by statute. See, Code Section 23-47-50(C), (F) and (G); Code Sections 23-47-67 and 23-47-68.

Note: See Exhibit A for a chart summarizing the application of the sales and use tax to the Universal Service Fund Surcharge, Dual Party Relay Charge, and 911 Service Charge by type of service provider.

Facts

Telephone services are provided to customers in different ways and by different types of providers. Depending on the provider selected, a customer can make calls as follows: (1) over standard communication lines, usually through telephone wires operated by Local Exchange Carriers, (2) through the internet provided by Voice over Internet Protocol providers, (3) through cell phones using communication networks provided by Commercial Mobile Radio Service providers, or (4) through the purchase of Prepaid Wireless plans issued by Prepaid Wireless sellers where a customer purchases Commercial Mobile Radio Service in advance.

Telephone service providers are permitted by federal and state governments to add certain charges to a customer's bill to defray certain fees and service costs imposed on the service provider. Customers frequently inquire why these charges are imposed and if they are taxes. Although these charges are not taxes, customers often contact the Department for an explanation of the charges and any associated taxes imposed. Below is a brief description of the charges imposed by South Carolina on telephone service providers.

Universal Service Fund Surcharge. A charge imposed to establish a fund to ensure universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and cost recovery with costs.

Dual Party Relay Charge. A charge imposed to provide telephone access to persons who are Deaf, speech or hearing impaired.

911 Service Charge. A charge imposed for certain 911 service costs of a service supplier.

Law and Discussion

Code Sections 12-36-910(B)(3)(a) and 12-36-1310(B)(3)(a) impose the sales and use tax upon communications, and read, in part:

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. ...

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **August 29, 2019**

SC Regulation 117-329.4 provides that telephone services, including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (“PSTN”), a wireless transmission system, a Voice over Internet Protocol (“VoIP”), or any other method are examples of communication services that are subject to sales and use tax (unless otherwise listed as non-taxable in SC Regulation 117-329.5 or otherwise exempt or excluded under the law).

The sales and use taxes imposed upon communications services are imposed upon the retailer’s “gross proceeds of sales.” Code Section 12-36-90 defines gross proceeds of sales, in part, as the value accruing from the sale of tangible personal property² without any deduction for the cost of materials, labor, service or any other expenses.

Accordingly, the “gross proceeds of sales” associated with providing telephone services are subject to sales and use tax. The specific issues to be addressed are whether the Universal Service Fund Surcharge, the Dual Party Relay Charge, and the 911 Service Charge imposed on the service provider and passed on to the consumer are part of “gross proceeds of sales” of the provider, and therefore subject to sales and use tax.

Generally, unless a fee, tax or charge is specifically exempt, the determination of whether it is includable in gross proceeds of sales will depend on whether the fee, tax or charge is imposed on the retailer or whether it is imposed on the consumer and the retailer merely collects the fee, tax, or charge on behalf of the governmental entity. South Carolina Revenue Ruling #97-20 addresses this distinction. When the fee or tax is imposed on the retailer and the retailer chooses to pass the fee or tax on to his customer, the fee or tax is a receipt of the retailer upon collection and an expense upon payment to the local government. Therefore, when local fees, taxes and charges are imposed on the retailer and passed on to the consumer, they are part of gross proceeds of sales and subject to sales and use tax. However, when local fees, taxes and charges are imposed upon the retailer’s customers, the retailer is merely a collection agent for the local government, and the fee, tax or charge is not included in “gross proceeds of sales” and not subject to sales and use tax.

Below is an overview of the imposition and collection provisions of the Universal Service Fund Surcharge, the Dual Party Relay Charge, and the 911 Service Charge.

Universal Service Fund Surcharge

Code Section 58-9-280 provides in relevant part:

(E) In continuing South Carolina’s commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and cost recovery with costs, and consistent with applicable

² Communication services are “tangible personal property” under Code Section 12-36-60.

PUBLIC DRAFT

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federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier of last resort.

* * * *

(2) The commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.³

* * * *

(b) USF contributions for service defined in Section 58-9-2510(17) [i.e., prepaid wireless services] must be collected pursuant to Section 58-9-280(E) from consumers, as defined in Section 58-9-2510(13), by persons or entities defined in Section 58-9-2510(16) [i.e., prepaid wireless seller].

* * * *

(d)(ii) ... The amount of the USF contribution collected by a person or entity defined in Section 58-9-2510(16)[prepaid wireless seller], whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer defined in Section 58-9-2510(13), may not be included in the base for measuring any tax, fee, USF contribution, or other charge that is imposed by this State, any political subdivision of this State, or any intergovernmental agency. This amount may not be considered revenue of the person or entity defined in Section 58-9-2510(16).

(iii) The department shall establish procedures by which a person or entity defined in Section 58-9-2510(16) may document that a sale is not a retail transaction defined in Section 58-9-2510(15), which procedures shall substantially coincide with the procedures for documenting sale for resale transactions pursuant to Section 12-36-950.

(e) The USF contribution required to be remitted to the department must be administered and collected by the department in the same manner as taxes as

³ Under Section 58-9-280(E)(2)(a), entities that provide service pursuant to a certificate issued by the Public Service Commission must remit contributions to the Office of Regulatory Staff. All other entities must remit these contributions to the Department. Once a month, the Department shall assess each provider that does not have such a certificate, the provider's contribution to the Universal Service Fund. The Office of Regulatory Staff shall certify to the Department the Universal Service Fund factor and the amounts to be assessed. The Universal Service Fund assessments, less the Department's actual incremental increase in the cost of administration, must be transferred to the Universal Service Fund administered by the Office of Regulatory Staff or third party administrator designated by the Office of Regulatory Staff.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **August 29, 2019**

defined in Section 12-60-30(27) are administered and collected by the department under the provisions of Title 12. [Emphasis added].

Based on the above, the Universal Service Fund Surcharge is imposed on the Local Exchange Carrier, Voice over Internet Protocol provider, or Commercial Mobile Radio Service provider; it is not imposed on the consumer. When the retailer chooses to collect the Universal Service Fund Surcharge from its customer, it is a receipt of the retailer; it is an expense of the retailer when paid to the government entity. Therefore, the Universal Service Fund Surcharge is includable in the “gross proceeds of sales” of a Local Exchange Carrier, Voice over Internet Protocol provider, or Commercial Mobile Radio Service provider, and is subject to the sales and use tax.⁴

In contrast, Code Section 58-9-280(E)(2)(b) cited above provides that a Prepaid Wireless seller must collect the Universal Service Fund Surcharge from its customers. Code Section 58-9-280(E)(2)(d)(ii) specifically provides that the amount of the Universal Service Fund contribution collected by a Prepaid Wireless seller may not be included in the base for measuring any tax imposed by South Carolina. Accordingly, the Universal Service Fund Surcharge collected by a Prepaid Wireless seller is not included in the “gross proceeds of sales” and is not subject to sales and use tax.

Dual Party Relay Charge

With respect to the Dual Party Relay Charge, Code Section 58-9-2530(A) provides, in part:

The commission may require each local exchange provider, CMRS provider, and VoIP provider operating in this State to impose a monthly dual party relay charge not to exceed ten cents, and each prepaid wireless seller to impose a dual party relay charge of the same amount on each wireless retail transaction, as necessary to fund the establishment and operation of a dual party relay system and a distribution system of TTY’s and other related communications devices in this State....The dual party relay charge collected and remitted in accordance with this article is not subject to any tax, fee, or assessment, nor may it be considered revenue of a local exchange provider, CMRS provider, VoIP provider, prepaid wireless provider, or prepaid wireless seller. (Emphasis added.)

⁴ Code Section 12-36-2120 exempts from sales and use tax certain charges for telecommunications services. For example, Code Section 12-36-2120(2) exempts sales to the federal government and Code Section 12-36-2120(11) exempts toll charges for the transmission of voice or messages between telephone exchanges (long distance). If any portion of the Universal Service Fund Surcharge is based on charges for telecommunication services that are exempt from the sales and use tax under Code Section 12-36-2120 (e.g., sales to the federal government, long distance charges) or are otherwise nontaxable, the portion of the Universal Service Fund Surcharge attached to those communication services is also not subject to sales and use tax.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **August 29, 2019**

Code Section 58-9-2530 specifically provides that the Dual Party Relay Charge collected by a local exchange provider, Commercial Mobile Radio Service provider, Voice over Internet Protocol provider, Prepaid Wireless provider, or Prepaid Wireless seller is not subject to any tax. Accordingly, the Dual Party Relay Charge is not subject to sales and use tax.

911 Service Charge

Code Section 23-47-10 defines “911 Charge” and service supplier. The terms are defined as follows:

(1) “911 charge” means a fee for the 911 service start-up equipment costs, subscriber notification costs, addressing costs, billing costs, and nonrecurring and recurring installation, maintenance service, and network charges of a service supplier providing 911 service as provided in this chapter.

(31) “Service supplier” means any person, company, or corporation, public or private, providing exchange telephone service, CMRS service, or VoIP service to end users.

With respect to Local Exchange Carriers and Commercial Mobile Radio Service providers, Chapter 47 of Title 23 establishes the system requirements and funding of the 911 service by imposing a 911 Service Charge collected from customers. See Code Sections 23-47-40 and 23-47-50.

With respect to the 911 Service Charge collected by Local Exchange Carriers and Commercial Mobile Radio Service providers, Code Section 23-47-50(C) provides that the 911 Service Charge is not subject to any state or local taxes or any other fee, tax, or assessment. In addition, Code Section 23-47-50(F) and (G) provide that the 911 Service Charge is not considered revenue of the service supplier.

With respect to Voice over Internet Protocol providers, Code Section 23-47-67 provides, in part:

(A) There is hereby imposed a VoIP 911 charge in an amount identical to the amount of the 911 charge imposed on each local exchange access facility pursuant to Section 23-47-40(A) and 23-47-50(A).

* * * *

(C)... The provisions of Section 23-47-50(B), (C), (D), (E), and (G) apply with equal force with regard to the VoIP 911 charge.⁵ [Emphasis added].

⁵ These subsections provide that 911 Service Charges are not subject to any tax, fee, or assessment, nor are they considered revenue of the service supplier.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **August 29, 2019**

With respect to Prepaid Wireless Sellers, Code Section 23-47-68 provides, in part:

(A) There is hereby imposed a prepaid wireless 911 charge in the amount equal to the average 911 charges calculated pursuant to Section 23-47-50(F).

* * * *

(E) The amount of the prepaid wireless 911 charge collected by a prepaid wireless seller from a prepaid wireless consumer, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the prepaid wireless consumer by the prepaid wireless seller, shall not be included in the base for measuring any tax, fee, prepaid wireless 911 charge, or other charge that is imposed by this State, any political subdivision of this State, or any intergovernmental agency. This amount shall not be considered revenue of the prepaid wireless seller. (Emphasis added.)

Based upon the specific code sections above, the 911 Service Charge collected by Local Exchange Carriers, Voice over Internet Protocol providers, Prepaid Wireless sellers, and Commercial Mobile Radio Service providers is not to be included in the base for measuring any tax imposed by South Carolina. Accordingly, the 911 Service Charge is not subject to sales and use tax.

Exhibit A contains a chart summarizing the application of the sales and use tax to the Universal Service Fund Surcharge, Dual Party Relay Charge, and 911 Service Charge by type of service provider.

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EXHIBIT A

APPLICATION OF SALES AND USE TAX TO THE UNIVERSAL SERVICE FUND SURCHARGE, DUAL PARTY RELAY CHARGE, AND 911 SERVICE CHARGE

Type of Charge	Type of Provider	Taxable*	Not Taxable	Exemption Code Section
Universal Service Fund Surcharge (Title 58, Chapter 9)				
	Local Exchange Carrier (LEC)	X		
	Voice over Internet Protocol (VoIP)	X		
	Commercial Mobile Radio Service (CMRS)	X		
	Prepaid Wireless (PPW)		X	58-9-280(E)(2)
Dual Party Relay Charge (Title 58, Chapter 9)				
	Local Exchange Carrier (LEC)		X	58-9-2530(A)
	Voice over Internet Protocol (VoIP)		X	58-9-2530(A)
	Commercial Mobile Radio Service (CMRS)		X	58-9-2530(A)
	Prepaid Wireless (PPW)		X	58-9-2530(A)
911 Service Charge (Title 23, Chapter 47)				
	Local Exchange Carrier (LEC)		X	23-47-50(C),(F) and (G)
	Voice over Internet Protocol (VoIP)		X	23-47-67(C)
	Commercial Mobile Radio Service (CMRS)		X	23-47-50(C), (F) and (G)
	Prepaid Wireless (PPW)		X	23-47-68(E)

Definitions of Charges:

Universal Service Fund Surcharge: A charge imposed to establish a fund to ensure universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs.

Dual Party Relay Charge: A charge imposed to provide telephone access to persons who are speech and hearing impaired.

911 Charge: A charge imposed for certain 911 service costs of a service supplier providing 911 services.

*The items listed as taxable assume no exemptions apply.