

SC REVENUE RULING# 04-4

**SUBJECT:** Telephone Calling Cards  
(Sales Tax)

**EFFECTIVE DATE:** Applies to all periods open under the statute.

**SUPERSEDES:** SC Revenue Ruling #97-23 and all previous documents and any oral directives in conflict herewith.

**REFERENCES:** S. C. Code Ann. Section 12-36-910 (Supp. 2000, Supp. 2003)  
S. C. Code Ann. Section 12-36-60 (Supp. 2000)  
S. C. Code Ann. Section 12-36-100 (Supp. 2000)  
S. C. Code Ann. Section 12-36-2120(11) (Supp. 2000)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)  
SC Revenue Procedure #03-1

**SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. A Revenue Ruling is an advisory opinion; it does not have the force or effect of law and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Question:

Is the sale or recharge at retail of a prepaid telephone calling card, as described in the facts, for use in making local, long distance, or international telephone calls subject to South Carolina sales tax?

Conclusion:

**Prepaid Telephone Calling Card for Use with Land-Based Phones<sup>1</sup>:** The sale or recharge at retail of a prepaid telephone calling card as described in the facts for use in making local, long distance, or international telephone calls, that can be used to make a call from a land-based phone, is not subject to sales tax since this transaction is not a sale of tangible personal property. The transaction is merely the exchange of money for an intangible evidence of debt - a future right to telephone service.

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<sup>1</sup> For purposes of this advisory opinion, a "land-based" phone is a non-wireless phone.

The taxable transaction takes place when the telephone calling card is used. South Carolina imposes a sales tax on local telephone calls made in South Carolina. Since South Carolina exempts from sales tax any charges for long distance telephone calls, the provider of long distance or international telephone calls originating in South Carolina is not liable for sales tax on the use of a prepaid telephone calling card.

The provider of the local telephone call is liable for the 5% sales tax on local calls made with the calling card. If, however, the provider is a customer owned coin-operated telephone (COCOT) provider, the sales tax on the local call is due when the COCOT purchases the local service from the local exchange companies pursuant to Code Section 12-36-110(1)(k).

**Prepaid Telephone Calling Cards for Use Exclusively with Wireless Phones or Other Wireless Devices:** The sale or recharge at retail of a prepaid telephone calling card for use in making local, long distance, or international telephone calls as described in the facts, that can only be used with a wireless phone or other wireless device, is subject to South Carolina sales tax at the time of purchase.

Note: The provisions of Code Section 12-36-910(A)(5) concerning “prepaid wireless calling arrangements” are not limited to prepaid telephone calling cards. The provisions of Code Section 12-36-910(A)(5) apply to all other communication services coming within the statutory definition of “prepaid wireless calling arrangements.”

**Facts:**

Telephone calling cards are sold by telephone companies, convenience stores, and other retail outlets. These cards allow purchasers to originate telephone calls, whether local, long distance, or international calls, by using an access number, authorization code, or other means entered manually or electronically. Depending on the calling card, the purchaser can use the card for calls which cost a certain amount, or for a predetermined number of minutes or other units, which decline with use in a known amount. Some of these cards can be used with either a land-based telephone or a wireless phone or device while, others can only be used with a wireless phone or device. In addition, the purchaser can also recharge the card - purchase additional minutes or units for the card at a later date. A telecommunications company will provide the local or long distance service.

The question has arisen as to whether the sale or recharge at retail of prepaid calling cards, or the subsequent use by the cardholder, is a sale of tangible personal property subject to South Carolina sales tax.

**Discussion:**

The application of the sales tax to prepaid telephone calling cards will depend on the type of calling card sold. Under the sales and use tax code, prepaid telephone calling cards that can be used to make a call from a land-based phone are taxed differently from prepaid telephone calling cards that can only be used to make a call from a wireless phone or other wireless communications device. The following will discuss the application of the sales and use tax to both types of cards.

### **Prepaid Telephone Calling Card for Use with Land-Based Phones:**

Code Section 12-36-910(A) imposes a 5% sales tax on every person engaged in the business of selling tangible personal property in South Carolina at retail.

The terms “sale” and “purchase” are defined in Code Section 12-36-100 as “any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration...” The term “tangible personal property” is defined in Code Section 12-36-60 and includes telephone and other services and intangibles, but does not include evidences of debt.

Although the term “consideration” is not defined in the statute, the Department has reviewed the meaning of the term in an analogous situation concerning hotel travel points that could be purchased and redeemed at various resort facilities for accommodations, meals, green fees, and the like. In SC Private Letter Ruling #90-8, the Department determined that consideration is not limited to a money consideration and concluded that the transfer of tangible personal property or accommodations takes place when the travel points are redeemed.

Other similar nontaxable transactions include the sale of gift certificates or traveler’s checks. The taxable transaction occurs at the time the gift certificate or traveler’s check is redeemed.

Based upon the above, the sale or recharge at retail of a telephone calling card as described in the facts, that can be used to make a call from a land-based phone, is not a taxable transaction since the transaction is merely an exchange of money for an evidence of debt - an intangible future right to telephone service. In addition, since the card can be used to make a call from a land-based phone, it does not come within the definition of “prepaid wireless calling arrangements” found in Code Section 12-36-910(A)(5).

The taxable transfer of tangible personal property takes place when the calling card is used since the purchaser is exchanging a future right to telephone service for the telephone service (defined by Code Section 12-36-60 to be tangible personal property and subject to taxation under Code Section 12-36-910(B)(3).) The use of the calling card for long distance or international calls is not subject to South Carolina sales tax since South Carolina exempts any charges for long distance telephone calls pursuant to Code Section 12-36-2120(11). The use of the calling card for local calls, however, is not exempt from South Carolina’s 5% sales tax.

Note: The Department issued an advisory opinion in 1997, SC Revenue Ruling #97-23, outlining the above position.

### **Prepaid Telephone Calling Cards for Use Exclusively with Wireless Phones or Other Wireless Devices:**

Code Section 12-36-910(B)(5) imposes the sales tax on:

- (5) gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements.
  - (a) “Prepaid wireless calling arrangements” means communication services that:
    - (i) are used exclusively to purchase wireless telecommunications;

- (ii) are purchased in advance;
  - (iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and
  - (iv) are sold in units or dollars which decline with use in a known amount.
- (b) All charges for prepaid wireless calling arrangements must be sourced to the:
- (i) location in this State where the over-the-counter sale took place;
  - (ii) shipping address if the sale did not take place at the seller's location and an item is shipped; or
  - (iii) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller's location and no item is shipped.

Based on the above, the sale or recharge at retail of a prepaid telephone calling card as described in the facts, that can only be used with a wireless phone or other wireless device, is subject to the sales tax at the time of purchase.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III  
Burnet R. Maybank, Director

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Columbia, South Carolina