

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2015-17ST
March 17, 2016

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ISSUE

Sales and Use Tax - Prepaid Phone Cards & Services

Authority: [IC 6-2.5-1-22.4](#); [IC 6-2.5-2-1](#); [IC 6-2.5-3-1](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-13](#); [IC 36-8-16.6](#) et seq.; [IC 36-8-16.6-7](#).

A company ("Taxpayer") is seeking an opinion as to the following issues:

1. Is the sale of traditional prepaid telephone cards subject both to sales tax and the enhanced prepaid wireless charge?
2. Is the sale of international prepaid phone service subject both to sales tax and the enhanced prepaid wireless charge?

STATEMENT OF FACTS

Taxpayer is a grocery store. Taxpayer sells "traditional prepaid telephone calling cards" and "international prepaid phone service." Taxpayer provides the following additional details concerning these products:

These products are mainly used by foreign nationals and legal permanent residents and sold for a one-time use. When a customer purchases one of our phone cards, it does not provide the user access to nine-one-one emergency service, nor is it intended to.

Traditional prepaid telephone calling cards [the "traditional phone cards"] are a product provided by various telecom companies that sell their service in advance. When you buy a prepaid traditional telephone calling card you are paying for connection time in advance. When you make calls using the phone card, the card's value is deducted based on connection fee, duration of connection, surcharges and any maintenance charges associated with the phone card. Traditional prepaid telephone calling cards are preloaded with a set dollar amount that is used for minutes or units of airtime. The traditional prepaid telephone calling cards that we sell are not reusable, are not rechargeable and are thrown away after the first use. These cards are a physical tangible card. For example a typical traditional prepaid telephone calling card is used as follows[:] [a] customer purchases the card[,] then dials a toll free number located on the back of the card[,] then is prompted to enter a PIN number located on the card[,] then dial the number they wish to reach.

The traditional prepaid telephone calling cards can be used on land lines, payphones, or mobile phones.

The international prepaid phone service [the "international phone service"] that we sell is referred to as an International Top-Up. We acquire this product for resale from Boss Revolution, which is a subsidiary of IDT Corporation. They provide multiple International Calling and Mobile Top-up services in the USA, Canada, UK, Spain, Germany, Hong Kong[,] Singapore[,] and Australia[.] Its service consists [of] a PIN-less international prepaid calling service that can be accessed by the customers through the phone dialing a local access number or through a Mobile App available on Google Play and AppStore. This is a relatively new service.

For example an international prepaid phone service is used as follows. A customer purchases the service then identifies the international phone number, confirms the mobile carrier, and then determines the amount of funds they wish to load. See the following link for a more detailed description
<https://www.bossrevolution.com/services/international-mobile-topup>

Neither of these products are prepaid wireless service. To be considered a prepaid wireless service requires the use of a specific wireless network such as Verizon, Sprint or T-Mobile. The products that we sell can be

used on any existing network. All cards sold only work if you have existing service on a network. Both products we sell are useless unless the end user has service in place already with an existing network. The service for the existing network is charging the enhanced prepaid wireless telecommunications service charge if applicable.

DISCUSSION

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." [IC 6-2.5-3-2\(a\)](#).

[IC 6-2.5-4-1](#) provides in pertinent part:

- (a) A person is a retail merchant making a retail transaction when the person engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of the person's regularly conducted trade or business, the person:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
 - (1) the property is transferred in the same form as when it was acquired;
 - (2) the property is transferred alone or in conjunction with other property or services; or
 - (3) the property is transferred conditionally or otherwise.

Additionally, [IC 6-2.5-4-13](#) states:

A person is a retail merchant making a retail transaction when a person sells:

- (1) **a prepaid calling service or prepaid wireless calling service at retail;**
- (2) a prepaid calling service authorization number or prepaid wireless calling service authorization number at retail;
- (3) **the reauthorization of a prepaid calling service or prepaid wireless calling service;** or
- (4) the reauthorization of a prepaid calling service authorization number or prepaid wireless calling service authorization number. (**Emphasis added**).

[IC 6-2.5-12-11](#) defines "prepaid calling service" as:

. . . the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

[IC 6-2.5-1-22.4](#) defines "prepaid wireless calling service" to mean a telecommunications service that:

- (1) provides the right to use mobile wireless service as well as other nontelecommunications services, including:
 - (A) the download of digital products delivered electronically; and
 - (B) content and ancillary services;
- (2) must be paid for in advance; and
- (3) is sold in predetermined units or dollars of which the number declines with use in a known amount.

Pursuant to [IC 36-8-16.6](#) et seq., an enhanced prepaid wireless charge is imposed on retail transactions representing the purchases of prepaid wireless telecommunications service. [IC 36-8-16.6-7](#) defines "prepaid wireless telecommunications service" to mean "a prepaid wireless calling service (as defined in [IC 6-2.5-1-22.4](#)) that allows a user of the service to reach emergency services by dialing the digits nine (9) one (1) one (1)."

Based on the foregoing facts, the traditional phone cards meet the statutory definition of a "prepaid calling service" as set out in [IC 6-2.5-12-11](#), as it grants the user the right to exclusively access telecommunication services, which are paid for in advance and in predetermined amounts, and which are accessed via an access number. This means that Taxpayer is acting as a retail merchant when it sells the cards, and therefore must charge sales tax on the transaction. However, the traditional phone cards do not meet the definition of a "prepaid wireless calling service," because these cards do not provide the right to use nontelecommunications services,

and therefore they are not subject to the enhanced prepaid wireless charge. Taxpayer does not state whether it also sells phone cards that do provide the right to broadband access (which would constitute nontelecommunications per [IC 6-2.5-1-22.4\(a\)](#)) in addition to telecommunication services. Those types of cards would be subject to sales tax, as it constitutes a prepaid wireless calling service, and the prepaid wireless charge.

With regards to the international phone service, as the Department understands it, the card is purchased, and after the transaction is complete, the purchaser enters into a separate transaction where they can add a specific number of minutes to a prepaid international mobile phone account. The Department interprets this product to be neither a "prepaid calling service" nor a "prepaid wireless calling service" because the product does not grant the user the right to access telecommunications services or use mobile wireless service, respectively, on its own. The prepaid mobile phone account itself possibly allows the user to access those services, but the international phone service card on its own allows no access to these services. It merely allows the purchaser access to a service to purchase additional minutes for an international prepaid phone account.

However, the international phone service would be considered a "reauthorization of a prepaid calling service," so the plastic card itself is subject to sales and use tax if there is a charge for the card. As for the transaction for adding minutes, if it is as described above, it is a separate transaction involving the purchaser and a third party, and the Taxpayer is not responsible for collecting Indiana sales or use tax. Further, since the international phone service is not a "prepaid wireless calling service," it is not subject to the enhanced prepaid wireless charge.

Having said that, if the international phone service card does include a predetermined amount of minutes (and no other right to access nontelecommunication services) as part of the initial transaction, the international phone service would be considered a "prepaid calling service," as it is essentially the same type of product as the traditional phone card. In that case, the transaction would be subject to Indiana sales or use tax. Even though it is an international number, the transaction would still be sourced to Indiana per [IC 6-2.5-13-1](#). However, the international phone service would still not be subject to the enhanced prepaid wireless charge.

RULING

1. The traditional prepaid telephone cards are subject to Indiana sales and use tax, but not the enhanced prepaid wireless charge.
2. If the card purchased as part of the transaction for the international prepaid phone service is sold without any predetermined units or dollars, the amount charged for the card is subject to Indiana sales and use tax. However, if it is sold with predetermined units or dollars, that amount would be subject to Indiana sales and use tax as well. In either case, the product is not subject to the enhanced prepaid wireless charge.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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