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**IDAPA 35
TITLE 01
CHAPTER 14**

35.01.14 – PREPAID WIRELESS E911 FEE ADMINISTRATIVE RULES

000. LEGAL AUTHORITY.

In accordance with Sections 63-105 and 31-4813, Idaho Code, the Tax Commission has the authority to promulgate rules implementing and administering the prepaid wireless E911 fee. (3-20-14)

001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 35.01.14, “Prepaid Wireless E911 Fee Administrative Rules.” (3-20-14)

02. Scope. These rules will be construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a fee on all sales of prepaid wireless communications service in Idaho. (3-20-14)

002. WRITTEN INTERPRETATIONS.

This agency has written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential by statute or rule, the documents are available for public inspection and copying at the main office of the State Tax Commission. See Rule 005 of these rules for the main office address. (3-20-14)

003. ADMINISTRATIVE APPEALS.

This chapter allows administrative relief as provided in Sections 31-4813, 63-3631, 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. (3-20-14)

004. INCORPORATION BY REFERENCE.

These rules incorporate IDAPA 35.01.02, “Idaho Sales and Use Tax Administrative Rules,” and IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.” (3-20-14)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Main Office. The Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is <http://www.tax.idaho.gov>. The phone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the fax number is (208) 334-7846. The e-mail address is “taxrep@tax.idaho.gov.” All offices are open from 8 a.m. to 5 p.m. Monday through Friday except for legal holidays. (3-20-14)

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 1, Title 74, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 74-101 through 74-126, Idaho Code. (3-20-14)

007. -- 099. (RESERVED)

100. IMPOSITION OF THE PREPAID WIRELESS E911 FEE.

The prepaid wireless E911 fee is only imposed on a sale of prepaid wireless telecommunications service at two and one-half percent (2.5%) of the sales price. The prepaid wireless E911 fee is not imposed on a sale of any device, such as a cell phone, that utilizes the prepaid wireless telecommunications service. However, the sale of the device will be subject to the fee if all of the following apply: (3-20-14)

01. Separately State the Cost. The seller does not separately state the cost of the prepaid wireless telecommunications service from the rest of the transaction, (3-20-14)

02. Service Sold Exceeds. The amount of the prepaid wireless telecommunications service sold exceeds ten (10) minutes or five dollars (\$5.00), and (3-20-14)

03. Portion of the Sale. The seller cannot show from its records the portion of the sale that should properly be applied to the sale of the prepaid wireless telecommunications service. (3-20-14)

101. -- 199. (RESERVED)

200. SELLERS REQUIRED TO COLLECT THE PREPAID WIRELESS E911 FEE.

01. Requirements to Collect. If any of the following apply to a seller making sales of prepaid wireless telecommunications service in Idaho, the seller must register for a prepaid wireless E911 fee permit and collect the prepaid wireless E911 fee: (3-20-14)

a. The seller is legally required to hold an Idaho sales tax permit, (3-20-14)

b. The seller already holds an Idaho sales tax permit, whether it is legally required or not, or (3-20-14)

c. The seller has a physical presence in Idaho. (3-20-14)

02. Sales into Idaho by an Out-of-State Seller. If a seller does not meet any of the above requirements, the seller does not need to collect the prepaid wireless E911 fee even if making sales to Idaho customers. (3-20-14)

201. -- 299. (RESERVED)

300. OUT-OF-STATE SALES.

01. Prepaid Wireless Telecommunications Service Cards. As part of a sale of prepaid wireless telecommunications service, a seller may transfer to the customer a physical card or similar object containing a code required for activation or extension of the prepaid wireless telecommunications service. If the seller mails the card or similar object to a customer at an out-of-state address, the sale is not subject to the prepaid wireless E911 fee. (3-20-14)

02. Sales by Phone or Over the Internet. If a seller completes a sale of prepaid wireless telecommunications service by phone or over the internet without transferring any physical object to the customer, the seller must rely on the billing address of the customer to determine whether the sale is subject to the prepaid wireless E911 fee. If the billing address is in the state of Idaho, the seller must charge the prepaid wireless E911 fee. If the billing address is outside the state of Idaho, the seller does not have to charge the prepaid wireless E911 fee. (3-20-14)

03. Seller Relies on the Billing Address. If a seller relies on the billing address to determine whether the prepaid wireless E911 fee applies to a sale, the seller must retain documentation of the billing address. If a seller that holds or is required to hold a prepaid wireless E911 fee permit makes a sale of prepaid wireless telecommunications service without charging the fee and does not retain documentation of the billing address, the Tax Commission may hold the seller liable for the prepaid wireless E911 fee on that sale. (3-20-14)

301. -- 999. (RESERVED)

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