

Application of Sales Tax to Prepaid Telephone Calling Services Including Prepaid Telephone Calling Cards

On December 29, 1999, legislation was enacted to amend the Tax Law regarding the imposition of sales and compensating use tax on prepaid telephone calling services. Under this legislation, tax is imposed on sales of **prepaid telephone calling services** whether or not accompanied by the transfer of tangible personal property, such as a prepaid telephone calling card. Accordingly, sales tax is imposed at the time prepaid telephone calling cards are sold. The “recharging” of prepaid telephone calling cards is also taxable at the time of sale. Prior to this change, tax was imposed at the time a taxable telephone call was made. The legislation takes effect March 1, 2000.

“Prepaid telephone calling service” is an enumerated service subject to sales tax under section 1105(b) of the Tax Law. Section 1101(b) of the Tax Law, defines this service as follows:

“Prepaid telephone calling service” means the right to exclusively purchase telecommunication services, that must be paid for in advance and enable the origination of one or more intrastate, interstate or international telephone calls using an access number (such as a toll free network access number) and/or authorization code, whether manually or electronically dialed, for which payment to a vendor must be made in advance, whether or not that right is represented by the transfer by the vendor to the purchaser of an item of tangible personal property. In no event shall a credit card constitute a prepaid telephone calling service. If the sale or recharge of a prepaid telephone calling service does not take place at the vendor’s place of business, it shall be conclusively determined to take place at the purchaser’s shipping address or, if there is no item shipped, at the purchaser’s billing address or the location associated with the purchaser’s mobile telephone number.

The following two examples illustrate how the tax will be imposed with respect to sales of prepaid telephone service represented by prepaid telephone calling cards:

Example 1: An individual purchases a prepaid telephone calling card for \$20 from a merchant located in an 8% taxing jurisdiction (4% state and 4% local tax rate). The entire \$20 charge is subject to tax at the 8% rate. The merchant must collect the tax from the customer and remit the tax on its sales tax return. The merchant may purchase these cards tax exempt because the service is for resale.

Example 2: A New York State merchant allows a vending machine operator to place a prepaid telephone calling card vending machine within its premises. The cards may be purchased in various denominations (for example, \$5, \$10, \$20) by inserting the correct dollar value. The sales are subject to tax and the vending machine owner must be registered for sales tax purposes. Since the customer is not given any written receipt, the vending machine owner may choose to use the unit

price method whereby a placard must be visibly displayed on the vending machine stating that all prices include sales tax. Where no placard is placed on the vending machine, the vending machine owner will be liable for the tax on the total charge.

Prepaid telephone calling services purchased or used for promotional purposes

Prepaid telephone calling services (including services represented by telephone calling cards) purchased and given away without charge, such as for promotional or advertising purposes, are not purchased for resale. The sale is a retail sale to the purchaser of the prepaid telephone calling services and subject to sales tax at the time of purchase. The exemption for promotional materials in section 1115(n) of the Tax Law does not apply to such prepaid telephone calling services.

Telephone service used in connection with prepaid telephone calling services

Under the legislation, receipts from calls made under a prepaid telephone calling service (for instance, when a prepaid telephone calling card is used to make a telephone call) are excluded from the tax. In addition, a sale of telephony or telephone service to a vendor that resells such telephony or telephone service as a component of a prepaid telephone calling service shall be deemed a sale for resale of telephony or telephone service for purposes of the resale exclusion from sales tax.

Compensating use tax

Section 1110 of the Tax Law, as amended, provides that, except to the extent that property or services have already been, or will be, subject to sales tax, a use tax is imposed on every person for the use within this State of any prepaid telephone calling service.

Transitional provisions relating to prepaid telephone calling services

These amendments take effect on March 1, 2000, and shall apply to receipts and consideration paid for services sold on or after such date, although made under a prior contract. However, where bills are for prepaid telephone calling services, the tax shall apply to all receipts and consideration on such bills dated on or after March 1, 2000, for which no previous bill was rendered, except, however, charges for services furnished before the date of the first of such bills.