

HB 2075

Co-Chairs Berger and Barnhart and Committee members.

My name is Brigadier General Mike Caldwell, Deputy Director of the Oregon Military Department and Interim Director of the Office of Emergency Management.

HB 2075 was crafted by our agency with the goal in mind of maintaining the equity of taxation for the 9-1-1 excise tax on all instruments capable of reaching 9-1-1 for emergency services in Oregon. The current ORS states:

403.200 Imposition of tax; rate. (1) There is imposed on each paying retail subscriber who has telecommunication services with access to the 9-1-1 emergency reporting system a tax equal to 75 cents per month.

It goes on to say:

... For cellular, wireless or other radio common carriers, the tax applies on a per instrument basis and only if the subscriber's place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.

The 9-1-1 tax was initiated to provide for supporting the emergency response system to the citizens and visitors of Oregon. The use and distribution of these taxes is vital to those 9-1-1 centers or Public Service Answering Points (PSAP's) to deliver critical life safety services. The distribution of the tax as defined in statute, is 60.5% to the PSAP's, 35% maintained by the Office of Emergency Management to maintain the equipment and upgrade for future technologies (NEXTGEN), and the remaining 4.5% for administration (OEM and DOR). Although the distribution is 60.5%, these amounts actually only support approximately 25-30% of the total cost of providing for a typical 9-1-1 center/PSAP. The remaining costs associated with this function and the dispatch of first responders is covered by local governments and their local tax base. The 35% Equipment Replacement Account that OEM manages, pays to maintain the infrastructure backbone of this statewide system. It is mainly payments to various phone companies for use of their T-1 lines etc. Approximately 15 to 20%, of this fund is used to replace the equipment in the 49 separate PSAP's in Oregon.

When the Legislature adopted the present 75 cent per month tax for all such instruments, prepaid wireless services were not part of the business model utilized in the market place. What has occurred since is a significant increase in usage of this particular method of cell phone communication. Prepaid cell phone usage is now estimated to make up anywhere between 10% to in excess of 20% of all cell phone use in Oregon. According to our estimates, the 911 program state wide could conceivably have between \$3 to \$6 million dollars of 9-1-1 excise tax revenue per biennium that is not being collected.

After this bill was produced at our request, several of the cell phone carriers approached me with concerns about the language. The biggest concern was the provision that requires cell phone companies to collect the tax, as they do presently with the Post Paid

services. We asked the representatives of these companies to meet with us in an attempt to find a solution that would be workable for all parties. The wireless carrier industry, who has representatives here today, and will testify later, all indicated they preferred that the law require Point of Sale collection of the Pre-Paid cell phone tax.

As you might suspect, if the law requires Point of Sale collection, we will then have other interest groups that will undoubtedly express their opinion to such a process.

The Military Department is concerned that by enacting a Point of Sale tax that not only will we create some immediate push back from business interests but also we do not have a fiscal model from the Department of Revenue that we can bring to you today to discuss the costs of collecting the tax.

With these difficulties in mind, it is my hope that we can offer to you some potential courses of action that you can consider and then advise us on which of these or perhaps some other course of action we have not considered so we can work with the stakeholders to craft a workable solution.

We have four basic options regarding this bill :

- 1. Point of Sale method:** We envision any retailer who sells more than \$1,000 per month of prepaid phones and minutes, based on the retail price, collecting and remitting the tax. Making use of the point of sale method would entail developing and putting in place the mechanism to collect the tax and remit the tax to the state, by a retailer. If we adopt a POS method, which the carriers would prefer, the cost of collection and compliance is unknown. Based upon The Department of Revenue's efforts to gain compliance with the tobacco taxes from the retailers in the state, they had to employ 8 FTE. I suggest that the number could be greater, in order to gain compliance from the retailers, as this state has no sales tax, this would cause POS collection to be that much more difficult. Over time, I suspect that like the DOR tax collection efforts on tobacco, the number of compliance officers would diminish, but I don't have any numbers to present today. The wireless carriers provided great detail in recommending POS taxing in other states with a sales tax. Perhaps they could provide instances where POS tax for prepaid was developed by states without a sales tax in place?
- 2. Tax the wholesaler's:** This would entail having any wholesale distributor that distributes prepaid phones and cards to any retailer for resale within the state. The distributor would then pay the tax based on 1.5% of the wholesale price and remit the tax to DOR. This tax would be passed along to the retailers for payment of the tax by the end user. As the tax would be both on the phones and the "minutes" cards that are sold, the percentage method was developed. The 1.5% tax was

arrived at by dividing the current \$0.75 by the wireless industry's estimate of the average monthly wireless phone bill. This approach is more manageable from the Dept of Revenue standpoint as they currently have a working relationship with the instate Wholesalers/Distributors in regards to the tobacco tax.

We also asked the wireless providers to give us an estimate of the number of "Wholesalers" they work with to distribute their phones and cards that allow someone to re-charge the minutes on their Prepaid Phone. They responded that this was "a difficult question to answer because the distribution models are so varied and complex." As the wireless providers themselves distribute their prepaid cards in bulk to retailers like Wal-Mart, Target, Best Buy, etc. they are the wholesalers. As well these retailers may also end up "re-selling" these products to other distributors and wholesalers, we particularly see this possible with Costco as an example. As such they would be unsure who would be the actual wholesaler responsible for the collection and payment of the tax.

3. **Amend the current bill to add % of taxes collected to the industry for additional costs incurred to collect the Pre-Paid taxes:** While the Bill as written has opposition from the wireless providers, we could offer an amendment that would allow for some administrative fee support for collecting this tax. As I understand the system now, no wireless phone can be used without activation by the wireless carriers. At that time it would seem to me that the tax could be applied at the time of activation. It would not matter where the phone was purchased it would be the end user who would have to contact the carrier to have the phone's account activated or have minutes added to the account to continue service. The customer would have to provide the zip code where the phone would be enabled. If that zip code is in Oregon, then the tax could be applied by the carriers and remitted to the state.

The carriers make the point that they have no idea where the phone or minutes card may be sold and have no way of controlling or knowing where the phone or minutes card will be used. However the carrier's own spokesperson in a reply email stated (QUOTE) **"The carrier does not know where the card is sold until the customer activates the card- by then the money has already changed hands."** As such the carrier knows exactly where the customer activates a phone or card and if that location is in the state, then the tax can be applied.

I think the industry will tell you that this will create a significant burden on their present business model by which if a small percentage of this revenue should be provided for this additional cost. We have not fully discussed this approach with the representatives of the industry since we last met but I did give them my testimony this morning and I suspect they will have a response in their testimony.

The final option is the least desirable but it is an option.

Table the bill and not require a tax on pre-paid wireless. This option essentially states that if you choose a certain business model for your personal cell phone use, you are exempt from supporting the Emergency Response system in Oregon. I don't think this is the right way to approach this but it is an option to kick this can down the road another year or two.

I wish I could have come to you today with a solution that not only works with respect to the complexity of the tax collection system in Oregon but also worked with the industry, but at this stage we are not able to provide that outcome. I would ask that the committee give us some direction on how you would like us to proceed, once you have had the opportunity to listen to the other interested parties. I think there is a way to tackle this issue and find a workable solution, but we do not have that for you today.

At the end of the day, this is about equity for all users to help sustain the 911 emergency systems. With more and more Oregonians selecting this business model for their cell phone use, it is simply unfair for select group of users to not comply with the legislative intent that phone users will help support this system.

Co-Chairs, this concludes my testimony.