
MEMORANDUM

Legislative Fiscal Office
900 Court St. NE, Room H-178
Salem, Oregon 97301
Phone 503-986-1828
FAX 503-373-7807

To: *Public Safety Subcommittee*

From: *John Borden, Legislative Fiscal Office*
(503) 986-1842

Date: June 24th, 2013

Subject: *HB 3317*
Public Hearing

House Bill 3317-A relates to the emergency communications tax. The extension of this tax requires approval by a three-fifths majority of each chamber. The measure would take effect on the 91st day after the day of which the Legislature adjourns.

The measure was referred to Joint Committee on Ways and Means by order of the Speaker after receiving hearings in the House Committee on Veterans' Services and Emergency Preparedness and House Committee on Revenue.

The measure had a public hearing in this Subcommittee on May 9th, 2013.

The measure, staff measure summary, revenue impact statement, and fiscal impact statement are available on the Oregon Legislative Information System (OLIS) along with other submitted materials and public testimony.

Attached is a -A17 amendment to the measure for discussion purposes.

Background

The current tax is set to expire on January 1, 2014. There have been six sunset extensions of this tax since 1981.

The tax rate is \$0.75 cent per month per device capable of accessing 9-1-1 services, with the exception that federal, state, and local governments are tax exempt. The tax rate is set in statute and has been unchanged at \$0.75 since 1995.

The tax is collected by phone companies and wireless providers each month and then remitted to the Department of Revenue. Under current law the tax is anticipated to generate \$77 million per biennium, according to the Legislative Revenue Office.

Under current law, the tax is used to pay for the Department of Revenue's collect costs (up to one half of one percent), the Office of Emergency Management program's administrative costs and 91-1-1 training conducted by the Department of Public Safety Standards and Training (up to 4%); and statewide equipment and circuit charges (35%). The remaining revenue is distributed primarily to cities and counties on a quarterly basis to fund over 45 Public Safety Answering Points across the state (60.5%). Funds are distributed on a per capita basis; however, each county must receive a minimum of one percent of the net account balance.

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3317**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert
2 “403.105, 403.110, 403.200, 403.210, 403.215, 403.220, 403.225, 403.230 and”.

3 After line 5, insert:

4 **“SECTION 1.** ORS 403.105 is amended to read:

5 “403.105. As used in ORS 305.823 and 403.105 to 403.250, unless the context
6 requires otherwise:

7 “(1) ‘Account’ means the Emergency Communications Account.

8 “(2) ‘Central office’ means a utility that houses the switching and trunk-
9 ing equipment serving telephones in a defined area.

10 **“(3) ‘Consumer’ means a person who purchases prepaid wireless**
11 **telecommunications service in a retail transaction.**

12 “[~~(3)~~] (4) ‘Department’ means the Department of Revenue.

13 “[~~(4)~~] (5) ‘Emergency call’ means a telephone request that results from a
14 situation in which prompt service is essential to preserve human life or
15 property.

16 “[~~(5)~~] (6) ‘Enhanced 9-1-1 telephone service’ means 9-1-1 telephone service
17 consisting of a network, database and on-premises equipment that provides
18 automatic display of the incoming telephone number and address in the des-
19 ignated public safety answering point at the time of receiving an incoming
20 9-1-1 call.

21 “[~~(6)~~] (7) ‘Exchange access services’ means:

22 “(a) Telephone exchange access lines or channels that provide local access

1 by a **consumer or** subscriber in this state to the local telecommunications
2 network to effect the transfer of information; and

3 “(b) Unless a separate tariff rate is charged therefor, any facility or ser-
4 vice provided in connection with the services described in paragraph (a) of
5 this subsection.

6 “[~~(7)~~] (8) ‘Governing body’ means the board of county commissioners of
7 a county, city council of a city, other governing body of a city or county,
8 board of directors of a special district or a 9-1-1 jurisdiction.

9 “[~~(8)~~] (9) ‘Local government’ has the meaning given that term in ORS
10 190.710.

11 “(10) **‘Prepaid wireless telecommunications service’ means wireless**
12 **telecommunications service that must be paid for in advance and that**
13 **is sold in predetermined units or dollars.**

14 “[~~(9)~~] (11) ‘Provider’ means a utility or other vendor or supplier of tele-
15 communications service or equipment that provides telecommunications with
16 access to the 9-1-1 emergency reporting system through local exchange ser-
17 vice, cellular service or other wired or wireless means.

18 “[~~(10)~~] (12) ‘Public or private safety agency’ means any unit of state or
19 local government, a special-purpose district or a private firm that provides
20 or has authority to provide fire-fighting, police, ambulance or emergency
21 medical services.

22 “[~~(11)~~] (13) ‘Public safety answering point’ means a 24-hour communi-
23 cations facility established as an answering location for 9-1-1 calls originat-
24 ing within a given service area. A ‘primary public safety answering point’
25 receives all calls directly from the public. A ‘secondary public safety an-
26 swering point’ only receives calls from a primary public safety answering
27 point on a transfer or relay basis.

28 “(14) **‘Retail transaction’ means the purchase of prepaid wireless**
29 **telecommunications service from a seller for any purpose other than**
30 **resale.**

1 “(15) **‘Seller’ means a person who sells prepaid wireless telecom-**
2 **munications service to a consumer.**

3 “[(12)] (16) **‘Subscriber’ means a person who has telecommunication access**
4 **to the 9-1-1 emergency reporting system through local exchange service, cel-**
5 **lular service or other wired or wireless means. ‘Subscriber’ does not in-**
6 **clude a person who uses prepaid wireless telecommunications service.**

7 “[(13)] (17) **‘TTY’ means a telephone-typewriter used by an individual with**
8 **a hearing or speech impairment to communicate with another device or in-**
9 **dividual.**

10 “[(14)] (18) **‘Utility’ means a utility, as defined in ORS 759.005, a tele-**
11 **communications carrier, as defined in ORS 133.721, a municipality or any**
12 **provider of exchange access services.**

13 “[(15)] (19) **‘Vendor’ means a person providing telephone customer prem-**
14 **ises equipment or equipment specific to the operation of enhanced 9-1-1**
15 **telephone service.**

16 “(20) **‘Wireless telecommunications service’ means commercial mo-**
17 **bile radio service, as defined in 47 C.F.R. 20.3.**

18 “[(16)] (21) **‘9-1-1 emergency reporting system’ means a telephone service**
19 **that provides the users of a public telephone system the ability to reach a**
20 **primary public safety answering point by calling 9-1-1.**

21 “[(17)] (22) **‘9-1-1 jurisdiction’ means:**

22 “(a) **An entity created under ORS chapter 190;**

23 “(b) **A county service district established under ORS chapter 451 to pro-**
24 **vide an emergency communications system;**

25 “(c) **An emergency communications district created under ORS 403.300 to**
26 **403.380; or**

27 “(d) **A group of public or private safety agencies who have agreed in**
28 **writing to jointly plan the installation, maintenance, operation or improve-**
29 **ment of a 9-1-1 emergency reporting system.**

30 “[(18)] (23) **‘9-1-1 service area’ means the geographical area that contains**

1 the entire central office serving area from which the primary public safety
2 answering point will have the capability to answer calls placed to 9-1-1.

3 **“SECTION 2.** ORS 403.110 is amended to read:

4 “403.110. (1) A provider or a 9-1-1 jurisdiction or the employees or agents
5 of a provider or a 9-1-1 jurisdiction may be held civilly liable for the instal-
6 lation, performance, provision or maintenance of a 9-1-1 emergency reporting
7 system or enhanced 9-1-1 telephone service if the provider or the 9-1-1 juris-
8 diction or the employees or agents of the provider or the 9-1-1 jurisdiction
9 act with willful or wanton conduct. This section does not affect any liability
10 a 9-1-1 jurisdiction may have for operator or operator-supervisor negligence
11 in receiving calls from the public and dispatching emergency services to the
12 public.

13 **“(2) A provider or seller is not liable for damages that result from**
14 **providing or failing to provide access to the 9-1-1 emergency reporting**
15 **system or from identifying or failing to identify the telephone number,**
16 **address, location or name associated with any person or device ac-**
17 **cessing or attempting to access the 9-1-1 emergency reporting system.**

18 **“SECTION 3.** ORS 403.200 is amended to read:

19 “403.200. (1) There is imposed on each **consumer or** paying retail sub-
20 scriber who has [*telecommunication services*] **telecommunications service**
21 with access to the 9-1-1 emergency reporting system a tax equal to 75 cents
22 per month **or, for prepaid wireless telecommunications service, 75 cents**
23 **per retail transaction. The tax shall be adjusted as provided in section**
24 **12 of this 2013 Act.** The tax must be applied on a telecommunications circuit
25 designated for a particular **consumer or** subscriber. One **consumer or**
26 subscriber line must be counted for each circuit that is capable of generating
27 usage on the line side of the switched network regardless of the quantity or
28 ownership of customer premises equipment connected to each circuit. For
29 providers of central office based services, the tax must be applied to each
30 line that has unrestricted connection to the switched network. Those central

1 office based service lines that have restricted connection to the switched
2 network must be charged based on software design in the central office that
3 restricts the number of station calls to and from the network. For cellular,
4 wireless or other radio common carriers, the tax applies to a subscriber on
5 a per instrument basis and only if the subscriber's place of primary use, as
6 defined and determined under 4 U.S.C. [116 to 126] 124, is within this state.

7 “(2) The **consumer or** subscriber is liable for the tax imposed by this
8 section.

9 “(3) The amounts of tax collected by the provider **or seller** are considered
10 as payment by the **consumer or** subscriber for that amount of tax.

11 “(4) **The tax imposed under this section, as it applies to prepaid**
12 **wireless telecommunications service, shall be collected by the seller**
13 **from the consumer with respect to each retail transaction occurring**
14 **in this state. The amount of the tax shall be separately stated on an**
15 **invoice, receipt or other similar document that the seller provides to**
16 **the consumer, or shall be otherwise disclosed to the consumer.**

17 “(5) **For purposes of this section, a retail transaction:**

18 “(a) **Occurs in this state if it is made in person by a consumer at**
19 **a business location of the seller;**

20 “(b) **If not made in person by a consumer at a business location of**
21 **the seller, occurs in this state if the consumer's shipping address,**
22 **payment instrument billing address, or other address provided by the**
23 **consumer for purposes of the transaction, is in this state; or**

24 “(c) **If insufficient information exists to determine whether para-**
25 **graph (a) or (b) of this subsection is accurate, occurs in this state if**
26 **the consumer's prepaid wireless telephone number is associated with**
27 **an Oregon location.**

28 “(6) **The tax imposed under this section is the only funding obli-**
29 **gation imposed upon prepaid wireless telecommunications service for**
30 **the 9-1-1 emergency reporting system, and no other tax, fee or the like**

1 **may be imposed upon any provider, seller or consumer for purposes**
2 **of the 9-1-1 emergency reporting system.**

3 “[~~(4)~~] (7) Any return made by the provider **or seller** collecting the tax
4 must be accepted by the Department of Revenue as evidence of payments by
5 the **consumer or** subscriber of amounts of tax so indicated upon the return.

6 **“SECTION 4.** ORS 403.215 is amended to read:

7 “403.215. (1) The provider **or seller** is responsible for collecting the tax
8 under ORS 403.200 and shall file a return with the Department of Revenue
9 on or before the last day of the month following the end of each calendar
10 quarter, reporting the amount of tax due for access to the 9-1-1 emergency
11 reporting system during the quarter. The department shall prescribe the form
12 of the return required by this section and ORS 403.210. The rules of the de-
13 partment must require that returns be made under penalties for false swear-
14 ing.

15 “(2) When a return of the tax is required under ORS 403.210 or subsection
16 (1) of this section, the provider **or seller** required to make the return shall
17 remit the tax due to the department at the time fixed for filing the return.

18 “(3) A provider **or seller** described in subsection (1) of this section may
19 elect to pay the tax based on either of the following:

20 “(a) The amount of tax actually collected during the quarter; or

21 “(b) The net amount of tax billed during the quarter. The net amount
22 billed equals the gross amount of tax billed less adjustments for uncollectible
23 accounts, refunds, incorrect billings and other appropriate adjustments.

24 “(4) Once a provider **or seller** has made an election under subsection (3)
25 of this section, the provider **or seller** may not change the method of payment
26 and reporting unless the provider **or seller** first obtains the permission of
27 the department.

28 “(5) **For the purpose of compensating sellers for expenses incurred**
29 **in collecting the tax imposed under ORS 403.200, each seller is per-**
30 **mitted to deduct and retain three percent of the amount of taxes that**

1 are collected by the seller from all retail transactions conducted by the
2 seller in this state.

3 **“SECTION 5.** ORS 403.215, as amended by section 4 of this 2013 Act, is
4 amended to read:

5 “403.215. (1) The provider or seller is responsible for collecting the tax
6 under ORS 403.200 and shall file a return with the Department of Revenue
7 on or before the last day of the month following the end of each calendar
8 quarter, reporting the amount of tax due for access to the 9-1-1 emergency
9 reporting system during the quarter. The department shall prescribe the form.
10 of the return required by this section and ORS 403.210. The rules of the de-
11 partment must require that returns be made under penalties for false swear-
12 ing.

13 “(2) When a return of the tax is required under ORS 403.210 or subsection
14 (1) of this section, the provider or seller required to make the return shall
15 remit the tax due to the department at the time fixed for filing the return.

16 “(3) A provider or seller described in subsection (1) of this section may
17 elect to pay the tax based on either of the following:

18 “(a) The amount of tax actually collected during the quarter; or

19 “(b) The net amount of tax billed during the quarter. The net amount
20 billed equals the gross amount of tax billed less adjustments for uncollectible
21 accounts, refunds, incorrect billings and other appropriate adjustments.

22 “(4) Once a provider or seller has made an election under subsection (3)
23 of this section, the provider or seller may not change the method of payment
24 and reporting unless the provider or seller first obtains the permission of the
25 department.

26 “(5) For the purpose of compensating sellers for expenses incurred in
27 collecting the tax imposed under ORS 403.200, each seller is permitted to
28 deduct and retain [*three*] **two** percent of the amount of taxes that are col-
29 lected by the seller from all retail transactions conducted by the seller in
30 this state.

1 “SECTION 6. ORS 403.220 is amended to read:

2 “403.220. (1) If the amount paid by the provider **or seller** to the Depart-
3 ment of Revenue under ORS 403.215 exceeds the amount of tax payable, the
4 department shall refund the amount of the excess with interest thereon at
5 the rate established under ORS 305.220 for each month or fraction of a month
6 from the date of payment of the excess until the date of the refund. The de-
7 partment may not make a refund to a provider **or seller** who fails to claim
8 the refund within two years after the due date for filing of the return with
9 respect to which the claim for refund relates.

10 “(2) A **consumer or** subscriber’s exclusive remedy in a dispute involving
11 tax liability is to file a claim with the department.

12 “SECTION 7. ORS 403.210 is amended to read:

13 “403.210. Every provider **or seller** responsible for the collection of the tax
14 imposed by ORS 403.200 to 403.230 shall keep records, render statements,
15 make returns and comply with rules adopted by the Department of Revenue
16 with respect to the tax. Whenever in the judgment of the department it is
17 necessary, the department may require the provider, **seller, consumer or**
18 subscriber, by notice served upon that person by first-class mail, to make
19 returns, render statements or keep records sufficient to show whether there
20 is tax liability under ORS 403.200 to 403.230.

21 “SECTION 8. ORS 403.225 is amended to read:

22 “403.225. (1) Every provider **or seller** required to collect the tax imposed
23 by ORS 403.200 to 403.230 is deemed to hold the same in trust for the State
24 of Oregon and for the payment thereof to the Department of Revenue in the
25 manner and at the time provided by ORS 403.215.

26 “(2) If the provider **or seller** required to collect the tax fails to remit any
27 amount deemed to be held in trust for the State of Oregon or if the **con-**
28 **sumer or** subscriber fails to pay the tax, the department may enforce col-
29 lection by the issuance of a distraint warrant for the collection of the
30 delinquent amount and all penalties, interest and collection charges accrued

1 thereon. The warrant is issued and proceeded upon in the same manner and
2 has the same force and effect as is prescribed with respect to warrants for
3 the collection of delinquent income taxes.

4 **“SECTION 9.** ORS 403.230 is amended to read:

5 “403.230. (1) Unless the context requires otherwise, the provisions of ORS
6 chapters 305, 314 and 316 as to the audit and examination of reports and
7 returns, determination of deficiencies, assessments, claims for refunds, pen-
8 alties, interest, jeopardy assessments, warrants, conferences and appeals to
9 the Oregon Tax Court, and procedures relating thereto, apply to ORS 403.200
10 to 403.230 the same as if the tax were a tax imposed upon or measured by
11 net income. The provisions apply to the **consumer or** subscriber liable for
12 the tax and to the provider **or seller** required to collect the tax. As to any
13 amount collected and required to be remitted to the Department of Revenue,
14 the tax is considered a tax upon the provider **or seller** required to collect
15 the tax and that provider **or seller** is considered a taxpayer.

16 “(2) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue
17 may disclose information received under ORS 403.200 to 403.230 to the Public
18 Utility Commission to carry out the provisions of chapter 290, Oregon Laws
19 1987.

20 “(3) The Public Utility Commission may disclose information obtained
21 pursuant to chapter 290, Oregon Laws 1987, to the Department of Revenue
22 to administer the tax imposed under ORS 403.200 to 403.230.”.

23 In line 6, delete “1” and insert “10”.

24 In line 10, before the period insert “, and to retail transactions made on
25 or after January 1, 2014, and before January 1, 2022.”.

26 On page 2, delete lines 2 through 22 and insert:

27 **“SECTION 11. Section 12 of this 2013 Act is added to and made a**
28 **part of ORS 403.200 to 403.230.**

29 **“SECTION 12. (1) As used in this section, ‘net revenue’ means rev-**
30 **enue received by the Department of Revenue from the tax imposed by**

1 ORS 403.200 on prepaid wireless telecommunications service, less the
2 costs of the department incurred for the administration of ORS 403.200
3 to 403.230, as applicable to prepaid wireless telecommunications ser-
4 vice.

5 “(2) It is the intent of the Legislative Assembly that the tax im-
6 posed by ORS 403.200 on prepaid wireless telecommunications service:

7 “(a) Generate at least \$1.5 million in net revenue during the
8 2013-2015 biennium; and

9 “(b) Generate at least \$1.9 million in net revenue during the
10 2015-2017 biennium.

11 “(3) Not later than October 1, 2015, the department shall determine
12 the amount of revenue generated by the tax imposed by ORS 403.200
13 on prepaid wireless telecommunications service provided during the
14 2013-2015 biennium, including payments for prepaid wireless telecom-
15 munications service provided during the final calendar quarter of the
16 biennium, and shall calculate the amount of net revenue generated
17 by the tax during the 2013-2015 biennium. The department shall also
18 calculate the projected net revenue from the tax for prepaid wireless
19 telecommunications service provided in the 2015-2017 biennium.

20 “(4) If the amount of the net revenue calculated by the department
21 under subsection (3) of this section for the 2013-2015 biennium is less
22 than \$1.5 million, the rate of tax imposed under ORS 403.200 on prepaid
23 wireless telecommunications service provided after January 1, 2016,
24 and before January 1, 2017, shall be increased by the least amount,
25 rounded to the next highest five-cent increment, that will generate
26 revenue during the 2015-2017 biennium sufficient to compensate for:

27 “(a) The amount by which the net revenue for the 2013-2015
28 biennium is less than \$1.5 million; and

29 “(b) The amount by which the projected net revenue for the
30 2015-2017 biennium is less than \$1.9 million.

1 **“(5) The adjustment required in subsection (4) of this section shall**
2 **be calculated by the department based upon the estimated number of**
3 **consumers liable for the tax at the close of the biennium.”.**

4 In line 23, delete “6” and insert “13”.

5 After line 31, insert:

6 **“(b) Administrative costs incurred during the preceding calendar quarter**
7 **by the Department of Revenue in carrying out ORS 403.200 to 403.230, as**
8 **applicable to prepaid wireless telecommunications service, in an amount that**
9 **does not exceed two percent of the amount that is collected under ORS**
10 **403.200 from consumers during the immediately preceding quarter.”.**

11 In line 32, delete “(b)” and insert “(c)”.

12 On page 4, delete lines 6 and 7 and insert:

13 **“SECTION 14. (1) The amendments to ORS 403.105, 403.110, 403.200,**
14 **403.210, 403.215, 403.220, 403.225 and 403.230 by sections 1 to 4 and 6 to 9**
15 **of this 2013 Act apply to telecommunications service provided on or**
16 **after January 1, 2014.**

17 **“(2) The amendments to ORS 403.215 by section 5 of this 2013 Act**
18 **apply to telecommunications service provided on or after October 1,**
19 **2015.**

20 **“(3) The amendments to ORS 403.240 by section 13 of this 2013 Act**
21 **apply to calendar quarters ending on or after the effective date of this**
22 **2013 Act.”.**

23 In line 8, delete “8” and insert “15”.

24