



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

May 18, 2023

Representative Tawna D. Sanchez
900 Court Street NE H273
Salem OR 97301

Re: Imposition of tax under A-engrossed House Bill 2757

Dear Representative Sanchez:

You have inquired about the operation of the tax imposed in A-engrossed House Bill 2757, which if enacted would expand the existing 9-1-1 tax to include funding for a coordinated crisis services system, sometimes referred to as the 9-8-8 hotline system. Specifically, you have asked that we review e-mails from Brant Wolf, in which Mr. Wolf asserts that “the bill as currently written does not include the wireless carriers.” The statement is incorrect—both the bill, namely HB 2757-A, and the existing tax which it expands are applicable to wireless telephone services. As discussed below, Mr. Wolf’s statement is based on an unrelated statute, rather than the applicable statutory text and context.

Initially, we note that HB 2757-A amends the provisions of the current emergency communications tax, commonly known as the 9-1-1 tax, which is imposed under ORS 403.200. Proceeds of this tax are used by the Oregon Department of Emergency Management to administer the mandatory statewide 9-1-1 system emergency reporting system. We note that this current tax is already imposed on wireless telephone services of all types and has been for years. As discussed below, this imposition is consistent with the relevant statutory provisions.

In interpreting a provision of law, Oregon courts employ a methodology that first examines text and context and then considers legislative history, if ambiguity remains and to the extent that the court elects to give weight to the legislative history.¹ Finally, if legislative intent remains unclear after examining the text, context and legislative history of a statute, general maxims of statutory construction may be used to resolve remaining uncertainty.² We believe that your question can be resolved through examination of the text and context of the relevant statutes, and that ORS 403.200 and HB 2757-A unambiguously apply to all wireless services.

ORS 403.200 provides that “[t]here is imposed on each consumer or paying retail subscriber who has telecommunications service or interconnected Voice over Internet Protocol service, with access to the emergency communications system a tax equal to \$1.25 per month or, for prepaid wireless telecommunications service, \$1.25 per retail transaction.”³ This tax is thus imposed on two types of persons, *consumers* and *subscribers*, who together make up all persons who have access to the 9-1-1 system. The duty to collect and remit the tax is imposed on the providers or sellers that provide telephone service to consumers and subscribers.

¹ *PGE v. BOLI*, 317 Or. 606, 610-611 (1993); *State v. Gaines*, 346 Or. 160, 171-172 (2009).

² *PGE*, 317 at 612.

³ ORS 403.200.

We examine the definitions found in ORS 403.105, because these apply to ORS 403.105 to 403.250. Consumer is defined to mean “a person that purchases prepaid wireless telecommunications service in a retail transaction.” The defined term “consumer” was incorporated into the statutes in 2014 to provide clarity around the collection and remittance of tax applicable to prepaid accounts.⁴ Next, the term “subscriber” includes all others subject to the tax; it is defined to mean “a person, *other than a consumer*, that has telecommunication access to the emergency communications system through local exchange service, *cellular service or other wired or wireless means*.” (Emphasis added.) Thus, by its own terms, ORS 403.200 plainly applies to all services with access to the 9-1-1 system, including cellular service and wireless service, both prepaid and otherwise.⁵ It currently imposes the 9-1-1 tax on all persons with access to the 9-1-1 system. The context of ORS 403.200 consists of the existing statutory scheme and the accompanying rules; all of this is consistent with the imposition of the 9-1-1 tax on wireless services of all types. For example, rules adopted by the Department of Revenue under ORS 403.105 to 403.250 explain that “[a] cellular telephone service company is a provider that provides access to 9-1-1 services through various switching mechanisms between cellular radio sites and exchanges access services.”⁶

Mr. Wolf also claims that “the bill does contemplate pre-paid wireless” and suggests that it does not apply to other types of wireless telephone service. In his e-mail, Mr. Wolf bases this position on ORS 759.005, which contains a definition of “telecommunications service” which excludes, among other types of communications, “services provided by radio common carrier.” However, ORS 759.005 is not appropriate or helpful to this inquiry. ORS 759.005 is the definitional section for ORS chapter 759, which addresses utility regulation. In addressing this issue, a court would not rely on this unrelated provision as a substitute for analyzing ORS 403.200 and its related provisions.

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Very truly yours,

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Legislative Counsel



By

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⁴ Section 1a, chapter 59, Oregon Laws 2014.

⁵ The reference to wireless service was added in 1995. See section 1, chapter 276, Oregon Laws 1995.

⁶ OAR 150-403-0010 (4)(b).