

June 11, 1999

Supersedes Revenue Ruling 1-98-1

Sales and Use Tax - Cellular Telephones. RETAILERS WHO USE CELLULAR TELEPHONES AS AN INDUCEMENT TO OBTAIN SIGNED CELLULAR TELEPHONE SERVICE CONTRACTS FOR A SERVICE PROVIDER MUST PAY CONSUMER'S USE TAX ON THE DIFFERENCE BETWEEN THE RETAILER'S COST OF THE TELEPHONE AND ANY AMOUNT RECEIVED FOR THE PHONE.

Advice has been requested regarding the application of sales and use tax on cellular telephones used as an inducement by an authorized agent of the cellular service provider to obtain signed service contracts for the service provider.

A common marketing practice in the cellular telephone industry is for a cellular telephone service provider to contract with retailers for the retailer's solicitation of customers for the provider's cellular service. The provider agrees to pay the retailer for each signed contract delivered to the service provider. The retailer is required to have cellular phones available for those becoming cellular customers.

In order to obtain the payment from the service provider for a signed contract, the retailer offers to furnish a cellular telephone for a substantially reduced amount to those who sign a service contract. After the retailer receives a signed contract from the customer, the retailer submits the contract to the provider and receives the payment from the service provider.

For cellular telephones used by a retailer to obtain a commission, the retailer is not making a bona fide retail sale of the cellular phone, but is using the cellular phone to receive the payment from the service provider. Under the Nebraska Revenue Act sales tax must be collected on the amount received for the cellular telephone whether sold at a bargain price or otherwise. Consumer's use tax is due on any difference between the retailer's cost of the telephone and any amount received by the retailer from the customer.

The provisions of this ruling apply to any cellular phones, and to any cellular phone accessories used in the same manner, transferred on or after July 1, 1999.

APPROVED:



Mary Jane Egr
State Tax Commissioner

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