

[Senate Bill 1481](#) (Governance and Finance Committee)

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Date: Introduced

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Programs: Prepaid Mobile Telephony Services

Sponsor: Board of Equalization

Revenue and Taxation Code Sections 42010, 42014, and 42022

Effective: January 1, 2017

**Summary:** Among other things, this bill:

- Makes conforming changes to seller debt provisions under the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act);
- Limits the circumstances under which a retail transaction is deemed to occur in this state based on a mobile telephone number; and
- Provides that sellers with de minimis sales of prepaid MTS are not required to register as prepaid MTS sellers with the Board of Equalization (BOE)

**Purpose:** To make housekeeping and technical changes to the Prepaid MTS Act.

**Fiscal Impact Summary:** Does not impact state revenues.

<p style="text-align: center;"><b>Conforming seller debt changes: Prepaid MTS Collection Act</b> <i>Revenue and Taxation Code Section (RTC) 42010</i></p>
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**Existing Law:** Beginning January 1, 2016, the Prepaid MTS Act and Local Prepaid Mobile Telephony Services Collection Act (Collection Acts)<sup>1</sup> impose state and local prepaid MTS surcharges on each prepaid consumer as a percentage of the sales price of each retail transaction. The Prepaid MTS Act requires the seller to collect the prepaid MTS surcharge and local charge at the time of the retail transaction. The law also includes necessary provisions that allow for the BOE to efficiently and effectively administer and collect the prepaid MTS surcharge and local charge.

For example, Section 42010(j) provides that the prepaid MTS surcharge that a seller must collect and any amount unreturned to the consumer that is not owed as part of the surcharge, constitutes a seller's debt to the state. Section 42010(j) also contains similar, but not identical, language with respect to the local charge. However, the local charge provision neither is consistent with the prepaid MTS surcharge provision, nor conforms to other user-imposed taxes administered by the BOE (e.g. [RTC Section 41023](#)).

**Proposed Law:** This bill makes conforming, technical changes to RTC Section 42010(j), allowing the BOE to move forward with its regulatory process for the Collection Acts.

**Background:** In 2014, Assembly Bill 1717 (Ch. 885) enacted the Collection Acts to standardize the method used to collect communications taxes, fees, surcharges, utility user taxes, and other telecommunication charges from end-use consumers of prepaid MTS. As the Collection Acts made their way through the Legislature, stakeholders provided suggested technical amendments to the bill. One such amendment included the addition of a missing word ("that") in Section 42010(j) to clarify the seller's liability for failing to collect the prepaid MTS surcharge. While the August 22, 2014 version of AB 1717 incorporated the missing word into Section 42010(j), the remainder of the section that pertains to the local charge was inadvertently overlooked and is inconsistent with other BOE-administered end-user taxes.

**Commentary:** The proposed technical change is necessary for the efficient and effective administration of the prepaid MTS surcharge and local charge.

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<sup>1</sup> Part 21 (commencing with Section 42001) and Part 21.5 (commencing with Section 42100) of Division 2 of the RTC. This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

**Known-Address Transaction: Qualifying Criteria***Revenue and Taxation Code Section 42014*

**Existing Law:** For purposes of imposing the prepaid MTS surcharge, the Prepaid MTS Act<sup>2</sup> provides that a retail transaction occurs *in this state* if the consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction). If this is not applicable, a retail transaction occurs in this state if the consumer's address is in this state (known-address transaction). A retail sale is considered a known-address transaction occurring in this state under **any** one of the following circumstances:

- The retail sale involves the shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.
- The prepaid consumer's address is known by the seller to be in the state. The consumer's address is considered to be "known by the seller" if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith.
- During completion of the retail transaction, the prepaid consumer provides an address that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.
- The mobile telephone number associates with a location in this state.

The Prepaid MTS Act also references the above circumstances to determine the location to impose the correct local charge rate in a known-address transaction; however, because a retail transaction only occurs in one local jurisdiction for purposes of assessing local charges, it further states that these circumstances must be determined and applied in descending order.

**Proposed Law:** This bill revises the rules used to determine whether a retail sale of prepaid MTS occurs in California by limiting the circumstances under which a transaction is considered to be a known-address transaction occurring in this state to the prepaid consumer's known address, unless the prepaid consumer's address is not known.

**Commentary:** Under existing law, a known out-of-state resident may be charged the prepaid MTS surcharge on their prepaid MTS purchase, even if the product is shipped from an out-of-state seller to the prepaid consumer's out-of-state address. For example, a Sacramento, California resident moves to Oregon. The resident wants to maintain an existing wireless telephone number with the (916) area code, which is now common practice. If that Oregon resident purchases prepaid MTS in a transaction where their address is not available to the retailer, the Prepaid MTS surcharge applies, even if the retailer knows the prepaid consumer has an Oregon address. The Prepaid MTS surcharge applies to the prepaid consumer's purchase, which is an in-state known-address transaction, as the wireless telephone number is associated with a location in California (due to its assigned (916) area code). The prepaid MTS surcharge serves to fund in-state services, just as those services were taxed prior to the Collection Acts becoming operative. Accordingly, it is unfair for an Oregon resident to be charged the prepaid MTS surcharge when the seller knows the prepaid purchaser resides outside of California based on their address.

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<sup>2</sup> Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code.

**De Minimis Sales: Registration**  
*Revenue and Taxation Code Section 42022*

**Existing Law:** Under existing law, the Prepaid MTS Act requires every seller of prepaid MTS to register with the BOE and to collect and remit the prepaid MTS surcharge on retail sales of prepaid MTS.

The Prepaid MTS Act relieves a seller other than a direct seller,<sup>3</sup> commencing January 1, 2017, of the requirement to collect the prepaid MTS surcharge if that seller had prepaid MTS sales of less than \$15,000 in the previous calendar year.

**Proposed Law:** This bill removes the MTS surcharge registration requirement for prepaid MTS sellers making de minimus prepaid MTS sales during the previous calendar year. Such sellers may continue to voluntarily register with the BOE and to collect and remit the prepaid MTS surcharge. These sellers must still continue to track their sales of prepaid MTS to determine if their sales fall under the threshold each calendar year.

**Commentary:** The Prepaid MTS Act requires a seller to register with the BOE whether or not they make de minimus prepaid MTS sales. These de minimus (small) sellers registered with the BOE must continue to file returns with the BOE although they are not required to collect the prepaid MTS surcharge. This creates a burden to small sellers that the de minimus provisions are intended to address.

**Administrative Costs:** The bill results in no additional BOE administrative costs.

**Revenue Impact:** This measure does not impact state revenues.

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<sup>3</sup> Not including a direct seller, as defined pursuant to [RTC 42004\(b\)](#).