

**Amend Sections 41003, 41007, 41008, 41009, 41010, 41011, 41012, 41020, 41021, 41022, 41023, 41024, 41025, 41027, 41030, 41031, 41032, 41045, 41046, 41050, 41051, 41052, 41052.1, 41053, 41076, 41077, 41080, 41083, 41088, 41090, 41095, 41097, 41101, and 41150 of, and repeal Sections 41014, 41015, 41016, 41017, 41018, 41019, and 41026 of, the Revenue And Taxation Code to change the current method of imposing the Emergency Telephone Users Surcharge from a percentage of the charge for intrastate telephone communication service to a flat-rate per access line basis.**

**Source: Special Taxes Department – Excise Taxes Division**

Under existing law, the emergency telephone users (911) surcharge is imposed on every person in the state for intrastate telephone communication services at the rate of 0.72% of the charges for such services unless specifically exempted by law. The rate is determined annually by the Department of General Services so that sufficient revenue is produced to fund the current year's fiscal costs of administration of the 911 emergency telephone number system.

Current statutes provide that every service supplier shall collect the surcharge from each service user at the time it collects its billings from the service user. A service supplier is currently defined as any person supplying intrastate telephone communication service to any service user in this state.

The surcharges remitted to the state are deposited in the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund. The funds in this account are used to pay for the costs of administration of the 911 emergency telephone number system.

The current statutes were enacted before the recent evolution of the telephone communication service industry. With today's technology, there are a greater number of telephone services available that are multi-dimensional and much more sophisticated than the current statutes consider. Consequently, the current statutes on the application of the surcharge have become increasingly complicated in their application to new charges for telephone communication services. In addition, deregulation has produced hundreds of new service suppliers that have added to the Board's workload of administering the 911 surcharge program.

This proposed change to the statutes would impose the 911 surcharge on each service user for each access line for each month for which a service user subscribes or contracts with the service supplier. The surcharge imposed would be a flat-rate per month as determined by the Department of General Services so that sufficient revenue is produced to fund the current year's fiscal 911 costs.

Under this proposed law, a service supplier would be defined as any person subscribing or contracting to receive payment from any service user for the use of an access line in this state. An access line would mean:

- (a) A switched access line which is a voice grade capable telephone service line which connects a service user to the local exchange company's switching office in this state, or
- (b) A radio access line which is a telephone number assigned to or used by a service user for two-way local wireless voice service available to the public for hire from a commercial mobile radio communications service provider in this state. Radio access lines include, but are not limited to, radio-telephone communication lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access only to one-way signalling service, such as paging service, or only to communications channels suitable only for data transmission.

The benefit to switching to a flat-rate per access line surcharge would be the simplification for service suppliers to remit the correct amount of the 911 surcharge because this proposal would eliminate the complicated calculations and interpretations of what charges are subject to the 911 surcharge. From a tax administration standpoint, the proposed definition would exclude long distance providers and resellers, thereby drastically reducing the number of registrants from approximately 500 down to 50.

It should be pointed out that this proposal would have a minor revenue impact on some intrastate service users. Since the surcharge would no longer be based on charges for intrastate telephone communication services, those consumers with low monthly intrastate telephone bills would pay a higher 911 surcharge. For example, a consumer with an intrastate telephone bill of \$30 is currently paying a 911 surcharge of approximately \$0.22. Under this proposal, it is estimated that the flat-rate surcharge would be \$0.35 per access line in order to generate sufficient revenue to administer the current 911 program. Conversely, a consumer with a \$70 intrastate telephone bill, subject to a \$0.50 surcharge, would pay less under this proposal.

*The following sections of the Emergency Telephone Users Surcharge Law (commencing with Section 41001 of the Revenue and Taxation Code) are amended to read:*

41003. "Person" includes means an individual, firm, partnership, joint venture, limited liability company, association, cooperative organization, fraternal organization, nonprofit organization, corporation, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy.

~~"Person" does not include a nonprofit hospital, nonprofit educational organization, or a public agency.~~

41007. ~~(a) "Service supplier" shall mean~~ any person supplying ~~subscribing or contracting to receive payment from any service user for the use of an access line~~ intrastate telephone communication services pursuant to California intrastate tariffs to any service user in this state.

~~(b) On and after January 1, 1988, "service supplier" also includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission, by rule or order, modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.~~

41008. As used in this part, "month" shall mean a calendar month.

41009. "Service user" means any person using that subscribes or contracts with a service supplier to pay for one or more access lines for purposes other than resale. ~~intrastate telephone communication services in this state who is required to pay a surcharge under the provisions of this part.~~

41010. "Access line" means:

(a) a switched access line which is a voice grade capable telephone service line which connects a service user to the local exchange company's switching office in this state, or

(b) a radio access line which is a telephone number assigned to or used by a service user for two-way local wireless voice service available to the public for hire from a commercial mobile radio communications service provider in this state. Radio access lines include, but are not limited to, radio-telephone communication lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access only to one-way signalling service, such as paging service, or only to communications channels suitable only for data transmission. ~~"Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the service are all located in this state.~~

41011. "Prepaid telephone service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis. ~~"Charges for services" means all charges billed by a service supplier to a service user for intrastate telephone communications services and shall mean local telephone service and include monthly service flat rate charges for usage, message unit charges and shall mean toll charges, and include intra-state wide area~~

~~telephone service charges. "Charges for services" shall not include any tax imposed by the United States or by any charter city, charges for service paid by inserting coins in a public coin-operated telephone, and shall not apply to amounts billed to nonsubscribers for coin shortages. Where a coin-operated telephone service is furnished for a guarantee or other periodic amount, such amount is subject to the surcharge imposed by this part. "Charges for services" shall not include charges for intrastate toll calls where bills for such calls originate out of California.~~

~~"Charges for services" shall not include charges for any nonrecurring, installation, service connection or one-time charge for service or directory advertising, and shall not include private communication service charges, charges for other than communications service, or any charge made by a hotel or motel for service rendered in placing calls for its guests regardless of how such hotel or motel charge is denominated or characterized by an applicable tariff of the Public Utilities Commission of this state.~~

~~"Charges for services" shall not include charges for basic exchange-line service for lifeline services.~~

41012. "Public telephone" means any coin-operated telephone provided by the serving telephone company accessible to the public.

~~41014. Notwithstanding any other provision of law to the contrary, persons subject to the jurisdiction of the Public Utilities Commission of the State of California need not obtain an authorization from the commission to comply with the provisions of this part, nor shall such persons obtain any such authorization on behalf of any hotel or motel, in order that such entities be permitted to collect and recoup the surcharge imposed hereby upon any charge for services measured by time units or other time measurement, from their guests, in addition to any applicable tariff rates.~~

~~41015. "Local telephone service" shall mean both of the following:~~

~~—(a) The access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of the local telephone system.~~

~~—(b) Any facility or service provided in connection with a service described in subdivision (a). The term "local telephone service" does not include any service which is a "toll telephone service" or a "private communication service."~~

~~41016. "Toll telephone service" shall mean~~

~~—(a) A telephonic quality communication for which (1) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (2) the charge is paid within the United States, and~~

~~—(b) A service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a~~

~~specified area which is outside the local telephone system area in which the station provided with this service is located.~~

~~41017. "Private communication service" shall mean~~

~~—(a) The communication service furnished to a subscriber which entitles the subscriber—~~

~~—(1) To exclusive or priority use of any communication channel or groups of channels, or~~

~~—(2) To the use of an intercommunication system for the subscriber's stations, regardless of whether such channel, groups of channels, or intercommunication system may be connected through switching with a service described in Sections 41015 and 41016,~~

~~—(b) Switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of channels or systems described in subdivision (a), and~~

~~—(c) The channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system, except that such term shall not include any communication service unless a separate charge is made for such service.~~

~~41018. "Communications equipment company" shall mean a manufacturer or vendor that sells or leases communications equipment.~~

~~41019. No surcharge shall be imposed on charges for any types of service or equipment furnished by a service supplier subject to state or federal public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons not subject to state or federal public utility regulation.~~

~~41020. A surcharge is hereby imposed on amounts paid by every person in the state for intrastate telephone communication service in this state commencing on July 1, 1977 each service user for each access line for each month or part thereof, for which a service user subscribes or contracts with the service supplier.~~

~~The surcharge imposed shall be at the rate of one half of 1 percent of the charges made for such services to and including November 1, 1982, at least \_\_\_\_\_ dollars (\$ . ) per access line per month, but not more than \_\_\_\_\_ dollars (\$ . ) per access line per month to and including October 31, 2001, and thereafter such a rate as shall be fixed pursuant to Article 2 of the this chapter thereafter.~~

~~The surcharge shall be paid by the service user as hereinafter provided.~~

~~41021. Every service supplier shall collect the surcharge on a per access line per month basis and is authorized to collect the amount of the surcharge from each service user at the time it collects its billings from the service user, provided, the The duty to collect the surcharge from a service user shall commence with the~~

beginning of the first regular billing period applicable to that person which starts on or after the operative date of the surcharge imposed by this part. ~~If the stations or lines of more than one service supplier are utilized in furnishing the telephone communications services to the service user, the service supplier that bills the customer shall collect the surcharge from the customer.~~

Only one payment per month under this part shall be required with respect to the surcharge on any access line service, ~~notwithstanding that the lines or stations of one or more service suppliers are used in furnishing such service.~~

41022. The surcharge required to be collected by the service supplier shall be added to and stated separately in its billings to the service user. The surcharge must be separately identified as "911 Surcharge" and may not exceed the per access line amount fixed in Section 41020.

41023. The surcharge required to be collected by the service supplier, and any amount unreturned to the service user which is not a surcharge but was collected from the service user as representing a surcharge, constitute debts owed by the service supplier to this state, except as provided in Section 41025.

A service supplier that has collected any amount of surcharge in excess of the amount of surcharge imposed by this part and actually due from a service user, may refund such amount to the service user, even though such surcharge amount has already been paid over to the board and no corresponding credit or refund has yet been secured. ~~Any service supplier making a refund of any charge to a service user upon which surcharge is collected under this part from the service user may repay therewith the amount of the surcharge paid.~~ The service supplier may claim credit for such overpayment refund against the amount of surcharge imposed by this part which is due upon any other ~~quarterly~~ return, providing such credit is claimed in a return dated no later than three years from the date of overpayment.

41024. Every service user in this state is liable for the surcharge until it has been paid to this state, except that payment to a service supplier registered under this part is sufficient to relieve the user from further liability for the tax.

Any surcharge collected from a service user which has not been remitted to the board shall be deemed a debt owed to the State of California by the person required to collect and remit such surcharge. ~~Nothing in this part shall impose any obligation upon a service supplier to take any legal action to enforce the collection of the utility users surcharge imposed by this part. The service supplier shall provide the board with amounts uncollected which total three dollars (\$3) or more on a cumulative basis with respect to a single service user along with the names, addresses and reasons of the service users refusing to pay the surcharge imposed by this part.~~

41025. A service supplier is relieved from the obligation to collect and remit the surcharge in so far as the access lines on which the surcharge is imposed are supplied to service user accounts which have been found to be worthless and which

~~have been charged off in accordance with generally accepted accounting principles. If a bill is rendered to persons using intrastate telephone services the amount on which the surcharge with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the surcharge then the amount on which the surcharge with respect to each such group shall be based, shall be the sum of all items within that group, and the surcharge on the remaining items not included in any such group, shall be based on the charge for each item separately.~~

~~41026. In the payment of the surcharge imposed by this part, a fractional part of a cent shall be disregarded unless it amounts to one-half or more, in which case it shall be increased to one cent.~~

~~41027. Nothing in this part shall be construed as imposing a surcharge upon access lines amounts paid by any person when imposition of such surcharge would be in violation of the Constitution of the United States, the United States Code, or the laws of the State of California, nor upon toll charges used in the collection and dissemination of news for the public press or on charges for wide area telephone service used by common carriers in the conduct of their business.~~

41030. (a) The Department of General Services shall determine annually, on or before September 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The surcharge rate shall be determined by dividing the costs (including incremental costs) the Department of General Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the number of access lines charges for intrastate telephone communications services to which the surcharge will apply for the period of November 1 of the current calendar year to October 31 of the next succeeding calendar year, but in no event shall such surcharge rate in any year be greater than dollars (\$ . ) three-quarters of 1 percent nor less than dollars (\$ . ) one-half of 1 percent.

(b) Each service supplier shall indicate on its returns filed with the board the number of access lines upon which the surcharge was imposed during the reporting period. The board shall, no later than July 15, notify the Department of General Services of the number of access lines subject to the surcharge per reporting period, based on the available information taken from the service supplier returns.

41031. The Department of General Services shall make its determination of ~~such~~ the amount of the surcharge rate each year no later than September 1 and shall notify the board of the new amount rate, which shall be fixed by the board to be

~~effective with respect to charges made for intrastate telephone communication services on or after November 1 of each year with respect to access lines for which a service user has subscribed or contracted.~~

41032. Immediately upon notification by the Department of General Services and fixing the surcharge ~~rate~~, the board shall each year no later than September 15 publish in its minutes the new surcharge rate, and it shall notify by mail every service supplier registered with it of the new surcharge rate.

41045. The surcharges imposed by this part shall be collected insofar as practicable at the same time as, and along with, the charges made in accordance with regular billing practice of the service supplier.

~~The charges for services determined by or stated on a billing of a service supplier in accordance with its business practices and accounting records to have been supplied to a service user during any calendar month or billing period of the service supplier shall be presumed to be correct. The presumption may be rebutted by evidence which establishes that the charges for services were other than such amount.~~

41046. There are exempt from the surcharge ~~charges for intrastate telephone communication services which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.~~ the following access lines and non access-line services:

- (a) those lines connected to public telephones;
- (b) those lines supplying lifeline service;
- (c) those lines for which a nonprofit hospital or nonprofit educational organization, exempt pursuant to Section 501 (a) of the Internal Revenue Code, has subscribed;
- (d) those lines for which a public agency has subscribed; and
- (e) prepaid telephone service.

41050. The surcharge imposed by Section 41020 is imposed as to each access line for which a service user has subscribed or contracted in any calendar month, whether or not the subscription or contract covered all or part of any month. If a service user subscribes for service with one service supplier for a portion of a month and then subscribes for service with another service supplier for the remainder of the same month, the service user is liable for the surcharge as to each of the access lines for which the service user has subscribed or contracted with the service supplier. ~~attaches at the time the intrastate telephone communication services are billed by the service supplier to the service user and shall be paid by the service user when paying for such services.~~

41051. The surcharges imposed by this part and the amounts thereof required to be collected are due monthly, and the amount of surcharge due or collected in one calendar month by the service supplier shall be remitted to the board on or before

the last day of the second month following the month in which the surcharges were collected. ~~However, the fourth quarter collection for the 1996 calendar year shall be remitted no later than February 15, 1997.~~

41052. On or before the last day of the second month following each month in which the surcharges were collected, a return for that month shall be filed with the board in such form as the board may prescribe.

~~The service supplier shall include a list of any service users who have refused to pay a cumulative total of three dollars (\$3) or more of the surcharge imposed by this part with each return filing.~~

41052.1. Notwithstanding Sec. 45051, if if the board deems it necessary in order to ensure payment or to facilitate the collection by the state of the amount of taxes surcharge due, the board may require returns and payment of the amount of surcharges due for a calendar quarter or calendar year period. Such return is due on or before the last day of the second month following the reporting period in which the surcharge was imposed.

41053. The person required to file the return shall deliver the return together with a remittance of the amount of the surcharge payable to ~~the office of the board.~~

41076. Except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return every notice of a deficiency determination shall be mailed within three years after the last day of the second calendar month following the reporting period month for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the second calendar month following the reporting period month for which the amount is proposed to be determined.

41077. In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the surcharge tax or any portion thereof.

41080. If any person fails to make a return, the board shall make an estimate of ~~the amount of the charges for services by the person, or, as the case may be of the amount of charges for services received by the persons,~~ number of access lines in this state which are subject to the surcharge. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate the board shall compute and determine

the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof, ~~or ten dollars (\$10), whichever is greater~~. One or more determinations may be made for one or for more than one period.

41083. If the failure of any person to file a return is due to fraud or an intent to evade this part or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, ~~or twenty-five dollars (\$25), whichever is greater~~, shall be added thereto in addition to the penalty provided in Section 41080.

41088. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 41074 or Section 41080 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the last day of the second calendar month following the reporting period ~~month~~ for which the increase is asserted.

41090. All determinations made by the board under Article 3 or 4 of this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties ~~or ten dollars (\$10), whichever is greater~~, shall be added thereto.

41095. Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 41070) or Article 4 (commencing with Section 41080), within the time required shall pay a penalty of 10 percent of the surcharge or amount of the surcharge ~~or ten dollars (\$10), whichever is greater~~, in addition to the tax or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of tax required to be collected became due and payable to the state until the date of payment.

41097. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 41054, 41082, and 41095.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

41101. No refund shall be approved by the board after three years from the last day of the second month following the close of the ~~month~~ reporting period for which the overpayment was made, or, with respect to determinations made under Article 3 or 4 of Chapter 4 of this part, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period.

41150. The Legislature hereby declares and finds that to enable public agencies to implement "911" emergency phone systems required by the provisions of Chapter 1005 of the 1972 Regular Session (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code) it is necessary that a surcharge be imposed upon each access line ~~amounts paid by every person in the state for intrastate telephone communication services~~ in this state. This bill will provide funding for basic 911, basic 911 (including telephone central office identification) 911 with selective routing or a combination of the above. These services will include incoming 911 lines/trunks, 911 answering positions including common control equipment, transfer lines and transfer positions. In addition, this part will provide funding for incremental costs.