



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

December 11, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 41128, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 2401, *Definitions*, Regulation 2413, *Exemptions from Surcharge*, and Regulation 2422, *Returns and Payment*. The proposed amendments to **Regulations 2401 and 2422** implement, interpret, and make specific the statutes regarding the prepaid mobile telephony service surcharge reporting requirements for a direct seller of prepaid mobile telephony service. The proposed amendments to Regulation 2413 make the regulation consistent with guidance provided by the U.S. Department of State, Office of Foreign Missions, specifying that foreign governments and career consular officers are not exempt from the emergency telephone users surcharge under federal law.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on January 26-28, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on January 26, 27, or 28, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 2401, 2413, and 2422.

AUTHORITY

Regulations 2401, 2413, and 2422: RTC section 41128

REFERENCE

Regulation 2401: RTC sections 41007, 41011, 41015, 41016, 41021, and 42004.

Regulation 2413: RTC sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129.

Regulation 2422: RTC sections 41024, 41033, 41051, 41052, 41052.1, 41053 and 42010.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with RTC section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and Regulation 2422. As relevant here, RTC sections 41051 and 41052 generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the

Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “‘mobile telephony service’ or ‘MTS’” means “commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs in this state. The prepaid MTS surcharge is in lieu of the surcharges and user fees imposed on amounts paid for prepaid MTS under the law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “seller” means “a person that sells prepaid [MTS] to a person in a retail transaction.” RTC section 42004 further provides that a “direct seller” means “a prepaid [MTS] provider or service supplier as defined in [RTC] Section 41007 that makes a sale of prepaid [MTS] directly to a prepaid consumer for any purpose other than for resale in the regular course of business.” A direct seller includes, but is not limited to, a telephone corporation, as defined in section 234 of the Public Utilities Code, a person that provides interconnected VoIP service, as defined in section 285 of the Public Utilities Code, and a retailer that is a member of the same commonly controlled group or combined reporting group as a telephone corporation or provider of VoIP service under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For seller’s, other than direct seller’s, the prepaid MTS surcharge is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and

payable to the Board under the same reporting and payment periods as their 911 surcharge is due and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media, pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act's definition of prepaid MTS into the Emergency Telephone Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge.

AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that "[f]or each fiscal year, beginning with the 2016–17 fiscal year" each "direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year."

Also, as relevant here, the Board has adopted Regulation 2401 to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be "construed as imposing a [911] surcharge upon 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" The Board previously adopted Regulation 2413 to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply charges for service to "[f]oreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States." However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- "Although foreign governments and accredited members are exempt from tax under the Vienna Convention on Consular Relations (VCCR), this exemption does not apply to 'charges levied for specific services rendered.' VCCR Article 49.1(e).";
- "OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax";
- OFM's "view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services"; and

- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached to initial statement of reasons.)

Effects, Objectives, and Benefits of the Proposed Amendments to Regulations 2401, 2413, and 2422

Business Taxes Committee Process

There is currently an issue because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and “direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and
- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to charges for service to “[f]oreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff's draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase "right to utilize and/or access," rather than "right to access," MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15-009, which recommended that the Board adopt staff's revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms "mobile telephony services," "prepaid mobile telephony services," and "direct seller" in accordance with RTC sections 42004, and added a reference to RTC section 42004 to the regulation's reference note.

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to "Article XIII, Section 28" in subdivision (b)(4) and the reference to "Section 4253" in subdivision (e) to "article XIII, section 28" and "section 4253," respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include "Reporting" for purposes of clarification;
- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board's website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.
- Clarified that, at the time of filing each return, direct sellers are required to

report service users, included prepaid consumers, who have refused to pay the surcharge, as required by RTC section 41052; and

- Added references to RTC sections 41033, 41053, and 42010 to the regulation's reference note.

Furthermore, Formal Issue Paper 15-009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15-009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancia, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff's recommendation to propose to adopt staff's revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary to have the effect and accomplish the objective of addressing the first issue referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary to have the effect and accomplish the objective of the second issue referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary to have the effect and accomplish the objective of addressing the third issue referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.

- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

The Board has performed an evaluation of whether the proposed amendments to Regulations 2401, 2413, and 2422 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments to Regulations 2401, 2413, and 2422, are not inconsistent or incompatible with existing state regulations. This is because Regulations 2401 and 2422 are the only state regulations that specifically implement, interpret, and makes specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. This is also because Regulation 2413 is the only regulation that specifically implements, interprets, and makes specific RTC section 41027 (discussed above). **In addition,** the Board has determined that there are no comparable federal regulations or statutes to Regulations 2401, 2413, and 2422.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost to any local agency or school district that is required to be

reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed adoption of the amendments to Regulations 2401, 2413, and 2422 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of Regulations 2401, 2413, and 2422 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected

private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Andrew Kwee, by telephone at (916) 323-3096, by e-mail at Andrew.Kwee@boe.ca.gov, or by mail at State Board of Equalization, Attn: Andrew Kwee, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Kwee.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on January 26, 2016, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 2401, 2413, and 2422 during the January 26-28, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 2401, 2413, and 2422. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored and strikethrough versions of the text of Regulations 2401, 2413, and 2422 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 2401, 2413, and 2422, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

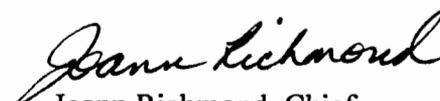
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 2401, 2413, and 2422 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 2401, 2413, and 2422, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,


Joann Richmond, Chief
Board Proceedings Division

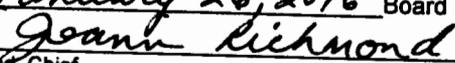
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STATE BOARD OF EQUALIZATION

BOARD APPROVED



At the January 26, 2016 Board Meeting


Joann Richmond, Chief
Board Proceedings Division

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code (RTC) section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and California Code of Regulations, title 18, section (Regulation) 2422, *Returns and Payment*. As relevant here, RTC sections 41051 and 41052 generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “‘mobile telephony service’ or ‘MTS’” means “commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs in this state. The prepaid MTS surcharge is in lieu of the surcharges and user fees imposed on amounts paid for prepaid MTS under the law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “seller” means “a person that sells prepaid [MTS] to a person in a retail transaction.” RTC section 42004 further provides that a “direct seller” means “a prepaid [MTS] provider or service supplier as defined in [RTC] Section 41007 that makes a sale of prepaid [MTS] directly to a prepaid consumer for any purpose other than for resale in the regular course of business.” A direct seller includes, but is not limited to, a telephone corporation,¹ a person that provides interconnected VoIP service,² and a retailer that is a member of the same commonly controlled group or combined reporting group as a telephone corporation or provider of VoIP service under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For seller’s, other than direct seller’s, the prepaid MTS surcharge is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and payable to the Board under the same reporting and payment periods as their 911 surcharge is due and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media,

¹ As defined in section 234 of the Public Utilities Code.

² As defined in section 285 of the Public Utilities Code.

pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act's definition of prepaid MTS into the Emergency Telephone Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge. AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that “[f]or each fiscal year, beginning with the 2016–17 fiscal year” each “direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year.”

Also, as relevant here, the Board has adopted Regulation 2401, *Definitions*, to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be “construed as imposing a [911] surcharge upon 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” The Board previously adopted Regulation 2413, *Exemptions from Surcharge*, to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply charges for service to “[f]oreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States.” However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- “Although foreign governments and accredited members are exempt from tax under the Vienna Convention on Consular Relations (VCCR), this exemption does not apply to ‘charges levied for specific services rendered.’ VCCR Article 49.1(e).”;
- “OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax”;
- OFM’s “view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services”; and

- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached.)

Proposed Amendments

Business Taxes Committee Process

There is currently an issue (or “problem” within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and “direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and
- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue (or problem) because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to charges for service to “[f]oreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to

holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff's draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase "right to utilize and/or access," rather than "right to access," MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15-009, which recommended that the Board adopt staff's revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms "mobile telephony services," "prepaid mobile telephony services," and "direct seller" in accordance with RTC sections 42004, and added a reference to RTC section 42004 to the regulation's reference note.³

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to "Article XIII, Section 28" in subdivision (b)(4) and the reference to "Section 4253" in subdivision (e) to "article XIII, section 28" and "section 4253," respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include "Reporting" for purposes of clarification;

³ The Board add "or 'MTS'" to the text of Regulation 2401, subdivision (f), shown in exhibit 5 to Formal Issue Paper 15-009 to be consistent with RTC section 42004, subdivision (h).

- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;⁴
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board’s website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.⁵
- Clarified that, at the time of filing each return, direct sellers are required to report service users, included prepaid consumers, who have refused to pay the surcharge, as required by RTC section 41052; and
- Added references to RTC sections 41033, 41053, and 42010 to the regulation’s reference note.⁶

Furthermore, Formal Issue Paper 15-009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15-009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancía, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff’s recommendation to propose to adopt staff’s revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary for the specific purposes of addressing the first issue (or problem) referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct

⁴ The Board made minor, non-substantive changes to the text of the amendments to Regulation 2422, subdivision (a), shown in exhibit 6 to Formal Issue Paper 15-009 to clarify the requirements for a service supplier assigned a monthly reporting period.

⁵ The Board revised the text of new subdivision (c) shown in exhibit 6 to Formal Issue Paper 15-009 to make it consistent with RTC section 41033, subdivision (d), which only requires the reporting of “that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge, remitted by the provider or seller”

⁶ The Board added a reference to RTC section 41052.1 to the text of Regulation 2422’s reference note shown in exhibit 6 to Formal Issue Paper 15-009 because the proposed amendments implement section 41052.1.

seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary for the specific purpose of addressing the second issue (or problem) referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary for the specific purposes addressing the third issue (or problem) referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

Furthermore, the proposed amendments to Regulation 2401 duplicate provisions from statutory definitions in RTC sections 42004. However, the Board has determined that the duplication is necessary to ensure that the proposed amendments to Regulation 2401 satisfy the clarity and consistency requirements of Government Code section 11349.1, subdivision (a).

The adoption of proposed amendments to Regulations 2401, 2413, and 2422 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 2401, 2413, and 2422 or the proposed amendments to Regulation 2401, 2413, and 2422.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-009, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its September 16, 2015, Business Taxes Committee meeting in deciding to propose the adoption of the amendments to Regulations 2401, 2413, and 2422, described above.

ALTERNATIVES CONSIDERED

The Board considered whether to propose adoption of amendments to Regulations 2401, 2413, and 2422 as recommended by staff in Formal Issue Paper 15-009 during its September 16, 2015, Business Taxes Committee meeting, or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the amendments are reasonably necessary for the reasons set forth above.

During the Board's September 16, 2015, Business Taxes Committee meeting, the Board decided to propose to adopt the amendments to Regulations 2401, 2413, and 2422 as recommended by staff because the Board determined that the adoption of the proposed amendments is reasonably necessary for all the reasons provided above. The Board did not reject any reasonable alternative to the proposed amendments to Regulations 2401, 2413, and 2422 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)(1)

The Board is proposing to adopt amendments to Regulations 2401 and 2422 to implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS, and provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board is proposing to adopt amendments to delete subdivision (b)(7) from Regulation 2413 to make the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

All of the provisions in the proposed amendments to Regulations 2401, 2413, and 2422 are fully consistent with current law, including the provisions of AB 1717 enacting the Prepaid Mobile Telephony Surcharge Collection Act, and adding statutes to and amending statutes in the Emergency Telephone Users Surcharge Act, and there is nothing in the proposed amendments to Regulations 2401, 2413, and 2422 that would significantly change how individuals and businesses would generally behave in response to current state and federal law, including the provisions of AB 1717, in the absence of the proposed regulatory action. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business that is in addition to whatever economic impact the provisions of AB 1717 will have on individuals and businesses. And, the Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422, is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, the Board has determined that adoption of proposed amendments to Regulations 2401, 2413, and 2422 does not impose any costs on any persons, including businesses, which are not already imposed by state and federal law, including the provisions of AB 1717, and the Board has determined that there is nothing in the proposed amendments to Regulations 2401, 2413, and 2422 that would impact revenue. Therefore, based on these facts and all of the information in the rulemaking file, the

Board has determined that the adoption of proposed amendments to Regulations 2401, 2413, and 2422 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand businesses currently doing business in the State of California.

Furthermore, the proposed amendments to Regulations 2401, 2413, and 2422 will not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant adverse economic impact on business.

The adoption of proposed amendments to Regulations 2401, 2413, and 2422 may affect small businesses.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2401

2401. Definitions.

(a) Service Supplier.

(1) “Service Supplier” means both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1.

(2) Notwithstanding paragraph (1):

(A) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the “service supplier” means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) Intrastate Telephone Communication Services. “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 services are all located in this state. It includes 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 a local telephone system and any facility or service provided in connection with local telephone service. It also includes either:

(1) A telephonic quality communication for which there is a toll charge for the service that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication; or

(2) A service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or 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 the service is located.

(c) Billing Agent. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) Billing Aggregator. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;

(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such time and in such form as the Board requests.

(e) Prepaid Telephone Calling Card. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

(f) Mobile Telephony Service. "Mobile telephony service" or "MTS" has the same meaning as defined in section 224.4 of the Public Utilities Code.

(g) Prepaid Mobile Telephony Services. "Prepaid mobile telephony services" or "prepaid MTS" means the right to utilize and/or access mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars and are utilized by means of a mobile device. For these purposes, "telecommunications service" and "information service" have the same meanings as defined in section 153 of title 47 of the United States Code.

(h) Direct Seller. "Direct seller" means a prepaid MTS provider or service supplier, as defined in Revenue and Taxation Code section 41007, that makes a sale of prepaid MTS directly to a prepaid consumer for any purpose other than for resale in the regular course of business.

A direct seller includes, but is not limited, to any of the following:

(1) A telephone corporation, as defined by section 234 of the Public Utilities Code.

(2) A person that provides “interconnected Voice over Internet Protocol (VoIP) service,” as that term is defined in section 285 of the Public Utilities Code.

(3) A “retailer engaged in business in this state,” as defined by Revenue and Taxation Code section 6203, that is a member of the same commonly controlled group, as defined in Revenue and Taxation Code section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of section 25106.5 of title 18 of the California Code of Regulations, as an entity described in paragraph (1) or (2).

Note: Authority cited: Sections 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, ~~and 41021~~ and 42004, Revenue and Taxation Code.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2413

2413. Exemptions from Surcharge.

The surcharge does not apply to:

(a) Charges for service or equipment furnished by a service supplier subject to public utilities regulation during any period when the same or similar service or equipment is also available for sale or lease from other than a service supplier subject to public utility regulation.

(b) Charges for service 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. These include charges for service to:

(1) The United States, its unincorporated agencies and instrumentalities, or any state of the United States.

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.

(3) The American National Red Cross, its chapters and branches.

(4) Insurance companies, including title insurance companies, subject to taxation under California Constitution, Article XIII, Section 28.

(5) Banks, including national banking associations, located within the limits of this state. The exemption for state banks and national banking associations has been repealed beginning with the bank's income year for Bank and Corporation Tax purposes commencing on or after January 1, 1981. The service supplier shall collect the surcharge from each state bank and each national banking association beginning with the first regular billing period applicable to that bank which commences on or after the date the bank becomes subject to the surcharge.

(6) Enrolled Indians who are service users subscribing for service from within the limits of an Indian reservation.

~~(7) Foreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States.~~

~~(78) Federal credit unions organized in accordance with the provisions of the Federal Credit Union Act.~~

(c) Toll charges used in the collection and dissemination of news for public press.

(d) Charges for wide-area telephone service used by common carriers in the conduct of their business.

(e) 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.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129, Revenue and Taxation Code.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2422

2422. Returns, Reporting, and Payment.

Returns filed under the Emergency Telephone Users Surcharge Act must comply with the four requirements listed below:

(a) On or before the last day of the second month ~~of~~ following each reporting period, as assigned by the Board, ~~calendar quarter~~ every service supplier shall file an emergency telephone users surcharge return on a form prescribed by the ~~B~~board for ~~the preceding~~ that calendar month, quarter or calendar year reporting period. The return shall be signed by a responsible officer or agent of the service supplier and shall be accompanied by a payment for the surcharge due. All remittances shall be payable to the State Board of Equalization.

(b) A direct seller of prepaid MTS is required to file a return online with the Board through the Board's website on or before the due date prescribed above.

(c) A direct seller is required to report to the Board the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge that the direct seller remitted for the prior fiscal year, by September 1 of each year starting with fiscal year 2016-17.

(d) At the time of filing each surcharge return the service supplier or direct seller shall provide the ~~B~~board with a list containing the names and addresses of any service users or prepaid consumers who have refused to pay the surcharge, the date the surcharge was billed to each customer, the amount of each unpaid surcharge, and the reasons, if any, given by the users for refusing to make such payment. On and after January 1, 1982, such information shall be provided for a service user or prepaid consumer only if the cumulative uncollected amount for that user totals \$3.00 or more.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41024, 41033, 41051, ~~and~~ 41052, 41052.1, 41053 and 42010, Revenue and Taxation Code.

Regulation History

Types of Regulations: Emergency Telephone Users Surcharge

Regulations: 2401, 2413, 2422

Title: 2401, *Definitions*
2413, *Exemptions from Surcharge*,
2422, *Returns and Payment*

Preparation: Andrew Kwee

Legal Contact: Andrew Kwee

The State Board of Equalization proposes to amend Regulations 2401 and 2422 to clarify direct sellers' prepaid mobile telephony service surcharge reporting requirements, and amend Regulation 2413 to make it consistent with guidance from the U.S. Department of State, Office of Foreign Missions.

History of Proposed Regulations:

January 26-28, 2016	Public Hearing
December 11, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
December 1, 2015	Notice to OAL
September 16, 2015	Business Taxes Committee, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA