State of California

Board of Equalization
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Memorandum

To: Honorable Fiona Ma, CPA, Chairwoman
Honorable Diane L. Harkey, Vice Chair
Honorable George Runner, First District
Honorable Jerome E. Horton, Third District
Honorable Betty T. Yee, State Controller

Date: September 13, 2016

STATE BOARD OF EQUALIZATION

BOARD APPROVED

At the September 27, 2016 Board Meeting

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

From: Robert D. Tucker
Acting Chief Counsel

Subject: Board Meeting, September 27-29, 2016
Item J – Chief Counsel's Rulemaking Calendar
Recommendation to Make Sufficiently Related Changes to Proposed Prepaid Mobile Telephony Services (MTS) Surcharge Regulation 2460, *Administration*

I. Introduction.

On December 4, 2015, the Board published a notice regarding the proposed adoption of new Prepaid Mobile Telephony Services (MTS) Surcharge Regulations 2460, *Administration*, 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*, and 2462, *Refunds of Excess Charges Collected.*[1] During the public hearing on January 26, 2016, the Board voted to adopt proposed Regulations 2460, 2461, and 2462 without making any changes. Board staff subsequently prepared the updated informative digest and final statement of reasons for the adoption of Regulations 2460, 2461, and 2462 and submitted the rulemaking file to the Office of Administrative Law (OAL) for review.

During their review of the rulemaking file, OAL staff concluded that subdivision (b) of proposed Regulation 2460 could not be approved by OAL as adopted because it lacked sufficient clarity (as defined in Gov. Code, § 11349). Board staff discussed this issue with OAL's staff and agreed to withdraw the rulemaking file from OAL's review and work on clarifying changes to proposed Regulation 2460 to address OAL staff's concerns. Recently, OAL staff indicated that Board staff's changes to subdivisions (a) and (b) of proposed Regulation 2460 illustrated in strikeout and underline format in Attachment A address OAL staff's clarity issues and OAL should approve the Board's adoption of proposed Regulation 2460 after the Board makes the changes.

As a result, during the September 27-29, 2016, Board meeting, staff will recommend and request that the Board authorize staff to make the changes to subdivisions (a) and (b) of proposed Regulation 2460 illustrated in Attachment A and refer the revised text of the proposed regulation to the 15-day file for additional notice and public comment, as provided for by Government Code section 11346.8, subdivision (c). Once the 15-day file process is complete, the Board may readopt

[1] The effective period of the notice is one year from the date thereof. (Gov. Code, § 11346.4, subd. (b).)

Regulation 2460 with the changes and Board staff may resubmit the rulemaking file for the adoption of proposed Regulations 2460, 2461, and 2462 to OAL.

II. Discussion.

The Board proposed to adopt Regulations 2460, 2461, and 2462 to implement, interpret, and make specific the Prepaid Mobile Telephony Services Surcharge Collection Act's (Prepaid MTS Act's) and the Local Prepaid Mobile Telephony Services Collection Act's (Local Act's) statutes regarding the application of the prepaid mobile telephony services (MTS) surcharge and local charges to the purchase of prepaid MTS, which became effective January 1, 2016. As relevant here, proposed Regulation 2460, subdivision (a), incorporates statutory terms from the Prepaid MTS Act and Local Act, and further defines the key statutory terms used in Regulations 2460, 2461, and 2462.

Also, the first paragraph in proposed Regulation 2460, subdivision (b), implements the statutory requirement from Revenue and Taxation Code (RTC) section 42022 that "Every seller[2] shall register with the board" by providing that "Every person that sells prepaid MTS to a person in a retail transaction is required to register with the Board pursuant to Revenue and Taxation Code section 42022." However, RTC section 42010, subdivision (d)(1), contains an exception relieving direct sellers of the requirement to remit the Prepaid MTS Surcharge and Local Charges to the Board pursuant to chapter 3 of the Prepaid MTS Act (commencing with RTC section 42020), which includes RTC section 42022. Also, RTC section 42010, subdivision (f)(2), requires direct sellers to remit that "portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge" to the Board pursuant to the Emergency Telephone Users Surcharge Act (commencing with RTC section 41001)) and, as such, direct sellers must register with the Board pursuant to RTC section 41040. Therefore, the first paragraph in subdivision (b) of proposed Regulation 2460 further clarifies the registration requirements for sellers, including direct sellers, of prepaid MTS by providing that "[d]irect sellers are required to be registered with the Board under the Emergency Telephone Users Surcharge Act," they "are not required to register as a seller of prepaid MTS" under Regulation 2460, subdivision (b), and providing that "[a] seller, other than a direct seller, shall register for a Prepaid MTS Account" under Regulation 2460, subdivision (b).

In addition, the second paragraph in proposed Regulation 2460, subdivision (b), incorporates, with minor grammatical changes, the provisions in RTC section 42022 providing that "Every application for registration [for a Prepaid MTS Account] shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of its place or places of business, and such other information as the board may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the board."

During their review of the rulemaking file, OAL staff concluded that, in their opinion, there currently are clarity issues with subdivision (b) of proposed Regulation 2460 and it cannot be approved by OAL as adopted. This is because the subdivision requires sellers, other than direct sellers, to register with the Board on an application for registration "form prescribed by the Board," which shall be authenticated "pursuant to methods prescribed by the Board," but it does not give

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[2] RTC section 42004, subdivision (p), defines "seller" to mean "a person that sells prepaid [MTS] to a person in a retail transaction."

the regulated public any way of knowing what information may be required on the application form, and how the Board will authenticate an application. This was also because the specific language in subdivision (b), which provides that an application for registration shall contain "such other information as the Board may require" could be interpreted by some readers as permitting the Board to generally require information to be provided on application forms without complying with the applicable rulemaking requirements in the Administrative Procedure Act (Gov. Code, § 11340 et seq.).

Board staff asked OAL staff whether the Board could address the clarity issues by deleting subdivision (b) from proposed Regulation 2460. OAL staff noted that proposed Regulation 2461, subdivision (b), permits sellers of prepaid MTS to accept a resale certificate from a person "who holds a Prepaid MTS Account as required by Regulation 2460," and that the provisions of subdivision (b) and Appendix A to proposed Regulation 2461 require a resale certificate to include the purchaser's Prepaid MTS Account number or include a sufficient explanation as to the reason the purchaser is not required to hold a Prepaid MTS Account in lieu of a Prepaid MTS Account number. Therefore, OAL staff determined that the Board needs to prescribe the requirements to register for a Prepaid MTS Account and obtain the type of Prepaid MTS Account number referred to in Regulation 2461, and that the Board cannot entirely delete subdivision (b) without creating further clarity issues with regard to the provisions of proposed Regulation 2461 that refer to a Prepaid MTS Account and Prepaid MTS Account number. However, OAL staff agreed that only one sentence in proposed Regulation 2460, subdivision (b), discusses authentication. Therefore, OAL staff indicated that they thought the Board could delete that one sentence from proposed Regulation 2460 without creating other clarity issues with proposed Regulations 2460, 2461, and 2462, and if the Board deleted that sentence, the Board would not be required to prescribe how the Board authenticates applications in order to obtain OAL's approval of proposed Regulation 2460.

A. Sufficiently Related Changes to Address OAL Staff's Clarity Issues

Board staff determined that the Board currently requires an application for a Prepaid MTS Account to provide:

- Information the Board needs to specifically identify the person registering for a Prepaid MTS Account (hereafter "identifying information");
- Information the Board needs to contact and communicate with the person registering for a Prepaid MTS Account and with that person's authorized representatives, if any (hereafter "contact information");
- Information the Board needs to determine that a person registering for a Prepaid MTS Account is required to register with the Board to collect the prepaid MTS surcharge and local charges, determine if the person is required to remit the prepaid MTS surcharge and local charges it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person's books and records (hereafter "business information");
- Information the Board needs to identify the owners of an entity or business registering for a Prepaid MTS Account (hereafter "ownership information"); and

- Information the Board needs to verify that the individual submitting an application for registration is the person registering with the Board or that the individual or individuals submitting an application for registration on behalf of another person is or are authorized to register such person (hereafter "representative information").

Therefore, to address OAL staff's clarity issues, Board staff drafted definitions for the terms identifying information, contact information, business information, ownership information, representative information, and Prepaid MTS Account to be added to subdivision (a) of proposed Regulation 2460. Board staff drafted new provisions to be added to the end of the last sentence in the first paragraph of subdivision (b) of proposed Regulation 2460, to clarify that a seller, other than a direct seller, shall register for a Prepaid MTS Account "by completing an application for registration with the Board." Board staff drafted new provisions to be added to the first sentence in the second paragraph of proposed Regulation 2461 to clarify that every application for registration "for a Prepaid MTS Account shall provide the applicant's identifying information, contact information, business information, ownership information, and representative information" (as defined). Board staff also agreed to delete all the remaining provisions in the second paragraph in subdivision (b) that previously raised clarity issues, including the provisions regarding authentication.

Board staff discussed its draft changes to subdivisions (a) and (b) of proposed Regulation 2460 with OAL staff and OAL staff indicated that the draft revisions address OAL staff's concerns and OAL should approve the Board's adoption of proposed Regulations 2460, 2461, and 2462 after the changes are made. As a result, Board staff's draft definitions for the terms identifying information, contact information, business information, ownership information, representative information, and Prepaid MTS Account are included in the clarifying changes to subdivision (a) of proposed Regulation 2460 illustrated in Attachment A. Also, Board staff's other draft changes to address OAL staff's clarity issues are included in the clarifying changes to subdivision (b) of proposed Regulation 2460 illustrated in Attachment A.

Board staff has determined that these changes are sufficiently related to the original proposed text of Regulation 2460, subdivision (b), and Regulation 2461, subdivision (b) and Appendix A, that the public was adequately placed on notice that the changes could result from the Board's original proposed regulatory action and that the changes may be made in accordance with the 15-day file process. Therefore, Board staff recommends that the Board authorize staff to make the changes and refer the revised text of the proposed regulation to the 15-day file for additional notice and public comment, as provided for by Government Code section 11346.8, subdivision (c), because the changes are reasonably necessary for the specific purpose of adding sufficient clarity to proposed Regulation 2460 so that the regulated public will know what information they must provide to the Board in order to complete an application for registration for a Prepaid MTS Account and obtain a Prepaid MTS Account number.

B. Other Changes to Subdivision (b)

While Board staff was drafting the changes to the original text of subdivision (b) of proposed Regulation 2460 to address the clarity issues raised by OAL staff, Board staff realized that the first sentence in the first paragraph of subdivision (b) may confuse some readers. This is because the first sentence appears to require "every" seller of prepaid MTS to register with the Board for a Prepaid MTS Account "pursuant to RTC section 42022." However, the second and third sentences

in the first paragraph provide that direct sellers "must register with the Board under the Emergency Telephone Users Surcharge Act" and a direct seller is "not required to register as a seller of Prepaid MTS" under subdivision (b) of proposed Regulation 2460 because direct sellers are required to remit that portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge to the Board pursuant to Emergency Telephone Users Surcharge Act, not chapter 3 of the Prepaid MTS Act. And, the fourth sentence in the first paragraph finally clarifies that sellers, other than direct sellers, are actually the only sellers required to register for Prepaid MTS Accounts with the Board under subdivision (b) of proposed Regulation 2460. Also, Board staff determined that the first sentence in the first paragraph in subdivision (b) is not necessary because the other three sentences sufficiently clarify the requirements for sellers of prepaid MTS to register with the Board. In addition, Board staff determined that subdivision (b) would be better organized and more helpful if it began by simply explaining that a "seller, other than a direct seller, shall register for a Prepaid MTS Account" as required by RTC section 42022 and subdivision (b) of proposed Regulation 2460, and subdivision (b) did not discuss the registration requirements for direct sellers, until it finished discussing the registration requirements for sellers, other than direct sellers.

Therefore, Board staff also recommends and requests that the Board authorize staff to make changes to delete the first sentence in subdivision (b) of proposed Regulation 2460 because it is not necessary and may be confusing. Board staff recommends and requests that the Board authorize staff to make changes to move the second and third sentences in the first paragraph of subdivision (b), regarding direct sellers' registration requirements, to a new second paragraph at the end of subdivision (b), and clarify, in the third sentence, that direct sellers are not required to register "for a Prepaid MTS Account." Board staff also recommends and requests the Board authorize staff to make changes combining the remaining provisions regarding the registration requirements for sellers, other than direct sellers, in the first paragraph of subdivision (b), so that the first paragraph will only discuss the registration requirements for sellers, other than direct sellers. Board staff has determined that the changes are reasonably necessary for the specific purposes of clarifying and better organizing the current provisions in subdivision (b) of proposed Regulation 2460 without changing their current meaning.

In addition, Board staff has determined that these changes are nonsubstantial or solely grammatical in nature because they do not change the meaning of any of subdivision (b)'s current provisions and may be made without further notice and comment. However, Board staff recommends that these changes also be referred to the 15-day file with the changes discussed above because these changes are sufficiently related to the original proposed text of Regulation 2460, subdivision (b), that the public was adequately placed on notice that the changes could result from the Board's original proposed regulatory action, and referring these changes to 15-day file will provide the public with an opportunity for additional notice and comment, and ensure that the Board has complied with Government Code section 11346.8, subdivision (c), in making the changes in case OAL staff determines that any of these changes are substantive in nature.

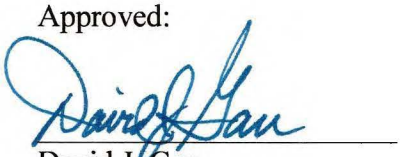
III. <u>Conclusion.</u>

Board staff is recommending that the Board authorize staff to make the changes to the original text of proposed Regulation 2460 described above and illustrated in Attachment A because Board staff has determined that the changes are necessary to address the clarity issues raised by OAL staff, and to ensure the regulatory language clearly prescribes the requirements for sellers, other than direct sellers, to register for a Prepaid MTS Account and obtain a Prepaid MTS Account number. If the Board authorizes staff to make the changes, Board staff will make the

revised text of proposed Regulation 2460, with the new changes clearly indicated, available to the public for an additional 15-day comment period and then present the revised text of the proposed regulation to the Board for adoption.

If you need more information or have any questions, please contact Tax Counsel III (Specialist) Andrew Kwee at (916) 323-3096.

Approved:



David J. Gau
Executive Director

RT:BH:hp

Attachments: Attachment A, Staff's Recommended Changes to the Proposed Text of Regulation 2460

cc:	Mr. David J. Gau	MIC:73
	Ms. Susanne Buehler	MIC:43
	Mr. Robert Tucker	MIC:82
	Mr. Bradley Heller	MIC:82
	Mr. Stephen Smith	MIC:82
	Mr. Andrew Kwee	MIC:82
	Ms. Kirsten Stark	MIC:50

Staff's Recommended Changes to the Proposed Text of

California Code of Regulations, Title 18, Section 2460,

Administration

(A new regulation to be added to the California Code of Regulations)

2460. Administration.

(a) Definitions. For purposes of this chapter (Prepaid Mobile Telephony Services Regulations, commencing with Regulation 2460), the following terms shall have the following meanings:

(1) "Board" means the State Board of Equalization.

(2) "Business information" means information the Board deems necessary to determine that a person is required to register with the Board to collect the prepaid MTS surcharge and local charges, determine if the person is required to remit the prepaid MTS surcharge and local charges it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person's books and records. Such information includes, but is not limited to, the name of the person's business, the addresses of the person's business locations, the date the person's business started or will start, the business's business activities, the business's projected revenue, the name and branch location of the bank or other financial institution where the business maintains its accounts, and the name and contact information of at least one individual the Board may contact to obtain access to the business's books and records.

(3) "Contact information" means information the Board deems necessary to contact and communicate with a person registering for a Prepaid MTS Account and with that person's authorized representative(s), if any. Such information includes, but is not limited to, a current mailing address and telephone number.

~~(2)~~(4) "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:

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

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

(C) 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 subparagraph (A) or (B).

~~(3)~~(5) "Emergency telephone users surcharge" means surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001) to be collected from prepaid consumers of mobile telephony services.

(6) "Identifying information" means information the Board deems necessary to specifically identify a person registering for a Prepaid MTS Account. Such information includes, but is not limited to, the person's name, the person's type (e.g., individual, partnership, limited liability company, corporation, etc.), the person's federal Taxpayer Identification Number, and may also include, but is not limited to, the person's driver's license number or other government-issued identification card number or entity number issued by the California Secretary of State.

~~(4)~~(7) "In this state" means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

~~(5)~~(8) "Local charge" or "local charges" means the utility user taxes as described in Revenue and Taxation Code section 42102, and charges for access to communication services or to local "911" emergency telephone systems, as described in Revenue and Taxation Code section 42102.5, the collection of which are subject to the provisions of the Local Prepaid Mobile Telephony Services Collection Act (commencing with Revenue and Taxation Code section 42100).

~~(6)~~(9) "Local jurisdiction" or "local agency" means a city, county, or city and county, which includes a charter city, county, or city and county.

~~(7)~~(10) "Mobile data service" has the same meaning as defined in section 224.4 of the Public Utilities Code.

~~(8)~~(11) "Mobile telephony service" or "MTS" has the same meaning as defined in section 224.4 of the Public Utilities Code.

~~(9)~~(12) "Ordinance" refers to an ordinance of a local jurisdiction or local agency imposing a local charge, including any local enactment relating to the filing of a claim for refund or other claim arising under the ordinance.

(13) "Ownership information" means information the Board deems necessary to identify the owners of an entity or business. Such information may include, but is not limited to, the owners' names and contact information.

~~(10)~~(14) "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any city, county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

~~(11)~~(15) "Prepaid consumer" means a person who purchases prepaid MTS in a retail transaction.

~~(12)~~(16) "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.

(17) "Prepaid MTS Account" means an account issued and maintained by the Board to uniquely identify a seller, other than a direct seller, of prepaid MTS who is registered with the Board pursuant to the Prepaid MTS Surcharge Act to collect the Prepaid MTS surcharge and local charges from prepaid consumers and remit them to the Board.

~~(13)~~(18) "Prepaid MTS provider" means a telephone corporation, as defined in section 234 of the Public Utilities Code, that provides prepaid MTS.

~~(14)~~(19) "Prepaid MTS surcharge" means the surcharge imposed under the Prepaid Mobile Telephony Services Surcharge Collection Act (commencing with Revenue and Taxation Code section 42001) that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Revenue and Taxation Code section 42010, that is required to be collected by a seller from a prepaid consumer.

~~(15)~~(20) "Public Utilities Commission" or "Commission" means the Public Utilities Commission created by section 1 of article XII of the California Constitution.

~~(16)~~(21) "Public Utilities Commission surcharges" means surcharges authorized by the Public Utilities Commission to be billed and collected from end-use consumers of wireless communications services, and of which the Commission provides the Board with notice pursuant to section 319 of the Public Utilities Code, including:

(A) The California High-Cost Fund-A Administrative Committee Fund program surcharge (Section 275.6 of the Public Utilities Code).

(B) The California High-Cost Fund-B Administrative Committee Fund program surcharge (Section 739.3 of the Public Utilities Code).

(C) The Deaf and Disabled Telecommunications Program Administrative Committee Fund surcharge (Section 2881 of the Public Utilities Code).

(D) The California Teleconnect Fund Administrative Committee Fund program surcharge (Section 280 of the Public Utilities Code).

(E) The California Advanced Services Fund program surcharge (Section 281 of the Public Utilities Code).

(F) The Moore Universal Telephone Service Act (Article 8 (commencing with section 871) of chapter 4 of part 1 of division 1 of the Public Utilities Code).

(G) Public Utilities Commission reimbursement fees imposed pursuant to chapter 2.5 (commencing with section 401) of part 1 of division 1 of the Public Utilities Code.

(22) "Representative information" means information the Board deems necessary to verify that the individual submitting an application for registration is the person registering with the Board or that the individual or individuals submitting an application for registration on behalf of another person is or are authorized to register such person. Such information includes, but is not limited to, each individual's name, title, and contact information.

~~(17)~~(23) "Retail transaction" means the purchase of prepaid MTS, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business. For these purposes, a "purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise of prepaid MTS for a consideration, including such a transfer of a mobile telephone service communication device (commonly termed a cell phone) when purchased with prepaid MTS for a single, nonitemized price, and for other than a minimal amount of prepaid MTS.

~~(18)~~(24) "Sale" means any transfer of title, possession, exchange, or barter, conditional or otherwise of prepaid MTS for a consideration, including such a transfer of a mobile telephone service communication device (commonly termed a cell phone) when sold with prepaid MTS for a single, nonitemized price, and for other than a minimal amount of prepaid MTS.

~~(19)~~(25) "Seller" means a person that sells prepaid MTS to a person in a retail transaction.

(b) Registration. ~~Every person that sells prepaid MTS to a person in a retail transaction is required to register with the Board pursuant to Revenue and Taxation Code section 42022. Direct sellers are required to be registered with the Board under the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001). Direct sellers are not required to register as a seller of prepaid MTS.~~ A seller, other than a direct seller, shall register for a Prepaid MTS Account by completing an application for registration with the Board. Every application for registration for a Prepaid MTS Account shall provide the applicant's identifying information, contact information, business information, ownership information, and representative information~~, be made in a form prescribed by the Board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business and such other information as the Board may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the Board.~~

Direct sellers are required to be registered with the Board under the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001). Direct sellers are not required to register for a Prepaid MTS Account.

(c) Payment of Prepaid MTS Surcharge and Local Charges by Purchasers. Every consumer of prepaid MTS in this state is liable for the prepaid MTS surcharge and any local charges until

those amounts are paid to the Board, unless a receipt, as provided by subdivision (d), is obtained from a registered seller.

(d) Receipts. Each seller required to collect the prepaid MTS surcharge and local charges from a prepaid consumer must give a receipt to each prepaid consumer at the time of the retail transaction with a separate statement of the combined prepaid MTS surcharge and local charges, even if the prepaid MTS is sold for a price that includes all applicable taxes and fees. For purposes of this subdivision, prepaid MTS are sold on a tax-included basis if the seller discloses to the consumer in the receipt that the price of the prepaid MTS includes applicable taxes and fees.

For the purposes of this regulation, a receipt need not be in any particular form and may consist of an invoice, receipt, or other similar document provided to the prepaid consumer, or otherwise disclosed electronically to the prepaid consumer, but must show the following:

(1) The name and place of business of the seller.

(2) The date on which the service was sold.

(3) A combined amount of the prepaid MTS surcharge and local charges collected from the prepaid consumer. If the prepaid MTS were not sold to the prepaid consumer on a tax-included basis, the receipt must also separately state the sales price subject to the prepaid MTS surcharge and local charges.

(e) Payment and Returns.

(1) Payment. Except as otherwise provided in subdivision (e)(4) and (e)(6), the prepaid MTS surcharge and local charges are due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter.

(2). Returns. Notwithstanding Revenue and Taxation Code section 55040, and except as otherwise provided in subdivision (e)(6), every person liable for the prepaid MTS surcharge and local charges must file a return online with the Board through the Board's website quarterly, on or before the last day of the next month following each calendar quarter.

(3) Reporting Periods. Notwithstanding subdivisions (e)(1) or (e)(2), the Board may require returns and payment of the prepaid MTS surcharge and local charges required to be reported to the Board pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act, for quarterly periods other than calendar quarters, or for reporting periods other than quarterly periods.

(4) Seller Reimbursement Retention. A seller, that is not a direct seller, may deduct and retain a reimbursement amount equal to two percent of the amounts it collects from prepaid consumers for the prepaid MTS surcharge and local charges, on a pro rata basis, according to that portion of the revenues collected for each of the following:

(A). The emergency telephone users surcharge.

(B). The Public Utilities Commission surcharges.

(C). The local charges.

Such reimbursement is to be taken on the return for the corresponding reporting period in which the sale of the prepaid MTS occurs. If a seller claims only some or none of the reimbursement amount during the corresponding reporting period in which the sale occurred, the seller is not allowed to claim a credit for the remaining unclaimed reimbursement on a subsequent return. Rather, the seller must file a claim for refund.

(5) Electronic Funds Transfer. Notwithstanding Revenue and Taxation Code section 55050, any person required, or that elects, to remit its sales and use tax liabilities due by electronic funds transfer (pursuant to Revenue and Taxation Code section 6479.3), other than a direct seller, must also remit the prepaid MTS surcharge and local charges by electronic funds transfer.

For purposes of this section, "electronic funds transfer" shall have the same meaning as defined in California Code of Regulations, title 18, section 1707, *Electronic Funds Transfer*.

(6) Direct Sellers. A direct seller shall remit the prepaid MTS surcharge and local charges as follows:

(A) That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the Public Utilities Commission, and not to the Board, for those retail transactions with a prepaid consumer in the state, along with any reports required by the Public Utilities Commission.

(B) That portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the Board pursuant to the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001) with a return filed online with the Board through the Board's website for those retail transactions with a prepaid consumer in the state.

(C) Local charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge, and not to the Board. Remittance of the local charges shall be separately identified from any other local taxes or other charges that are remitted to the local jurisdiction or local entity imposing the local tax or other charge.

For direct sellers, the portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge is due and payable to the Board, as provided by California Code of Regulations, title 18, section 2422, *Returns, Reporting and Payment*.

(f) Records. A seller of prepaid MTS shall maintain and make available for examination on request by the Board or its authorized representatives, records in the manner set forth in

California Code of Regulations, title 18, section 4901, *Records*.

(g) Relief from Liability. In addition to the provisions set forth in California Code of Regulations, title 18, section 4902, *Relief from Liability*, a seller may be relieved of the liability for the prepaid MTS surcharge and local charges as set forth in subdivision (g)(1) and (g)(2):

(1) Point-of-Sale Transaction. A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer when all of the following apply:

(A) A seller relies in good faith on the information provided by the Board to match the location of the point-of-sale transaction to the applicable prepaid MTS surcharge and local charges, and

(B) A seller collects such amounts from the prepaid consumer and remits such amounts to the Board.

(2) Known-Address Transaction. A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer when all of the following apply:

(A) A seller relies in good faith with due diligence on credible information to match the five-digit postal zip code of the prepaid consumer's address to the applicable prepaid MTS surcharge and local charges, and

(B) A seller collects such amounts from the prepaid consumer and remits such amounts to the Board.

The provisions of subdivision (g)(2) apply even if the five-digit postal zip code of the prepaid consumer's address corresponds to more than one local charge.

(h) Innocent Spouse Relief. A spouse or registered domestic partner requesting relief from liability for any prepaid MTS surcharge or local charge, interest, and penalties shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, are met.

(i) Local Charges

(1) Ordinances in effect as of September 1, 2015. On and after January 1, 2016, a local charge imposed by a local agency on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid Mobile Telephony Services Surcharge Collection Act (commencing with Revenue and Taxation Code section 42001) provided that, on or before September 1, 2015, the local agency enters into a contract with the Board pursuant to Revenue and Taxation Code section 42101.5.

In the event a local agency or local jurisdiction does not enter into a contract with the Board by September 1, 2015, the local agency may enter into a contract with the Board, pursuant to Revenue and Taxation Code section 42101.5, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year. Thereafter, all subsequently enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), (4) and (5) of this subdivision.

(2) New Local Charges. When a local agency or local jurisdiction adopts a new local charge, after September 1, 2015, the local agency shall enter into a contract with the Board, pursuant to Revenue and Taxation Code section 42101.5, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

(3) Increases in Local Charges. When a local agency or local jurisdiction increases an existing local charge, after September 1, 2015, the local agency shall provide the Board written notice of the increase, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

(4) Advance Written Notification. When a local charge is about to expire or decrease in rate, the local agency or local jurisdiction imposing the local charge shall notify the Board in writing of the upcoming change, not less than 110 days prior to the date the local charge is scheduled to expire or decrease. The change shall become operative on the first day of the calendar quarter commencing after the specified date of expiration or decrease in rate.

If advance written notice is provided less than 110 days prior to the specified date of expiration or decrease in rate, the change shall become operative on the first day of the calendar quarter commencing more than 60 days after the specified date of expiration or decrease.

(5) Inaccurate Rate Posted on Board's Website. When a local agency or local jurisdiction notifies the Board in writing that the rate posted on the Board's website (posted rate) for a local charge imposed by that local agency or local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated and the local agency or jurisdiction failed to provide advance written notice pursuant to subdivision (i)(4), the recalculated rate applicable to the local agency or local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local agency's or local jurisdiction's written notification that the posted rate is inaccurate. The local agency or local jurisdiction shall promptly notify the Board in writing of any such discrepancies with the posted rate that are known or discovered by the local agency or local jurisdiction.

(j) Posting and Calculation of Combined Rates

(1) Calculation of Prepaid MTS Surcharge Rate. The prepaid MTS surcharge rate shall be annually calculated by the Board by no later than November 1 of each year commencing November 1, 2015, by adding the following:

(A) The surcharge rate reported pursuant to subdivision (d) of Revenue and Taxation

Code section 41030; and
(B) The Public Utilities Commission's reimbursement fee and telecommunications universal service surcharges, established by the Public Utilities Commission pursuant to subdivisions (a) and (b) of Section 319 of the Public Utilities Code.

The prepaid MTS surcharge rate calculated pursuant to this subdivision shall be the prepaid MTS surcharge rate, exclusive of any applicable local charges, that applies to all retail transactions during the calendar year beginning January 1 following the calculation.

(2) Calculation of Combined Rate. The combined total of the prepaid MTS surcharge rate calculated pursuant to subdivision (j)(1), and the rate(s) of local charges imposed as of September 1, 2015, that are required to be collected by a seller from a prepaid consumer on and after January 1, 2016, shall be posted on the Board's website by December 1, 2015. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning January 1, 2016, unless there is a later change in the combined rate.

(3) New Local Charges and Increases to Existing Local Charges. After September 1, 2015, the Board shall post on its website, for each local jurisdiction, the combined total of the rates of the prepaid MTS surcharge and the rate(s) of local charges, as calculated pursuant to Revenue and Taxation Code sections 42102 and 42102.5, that each local jurisdiction has adopted and provided written notice to the Board of, on or before December 1 of each year, as provided in subdivision (i). The Board shall post the combined total of the rates of the prepaid MTS surcharge and rate(s) of local charges on its website by March 1, of each year. The posted combined total of the rates of the prepaid MTS surcharge and rate(s) of local charges shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting, unless there is a later change in the combined rate.

Note: Authority cited: Sections 42020 and 42103, Revenue and Taxation Code. Reference: Sections 42004, 42010, 42014, 42020, 42021, 42022, 42101, 42101.5, 42102, 42102.5 and 42103, Revenue and Taxation Code.