

Regulation 3500

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 3500

Index

1. *Form 400 and Proposed Regulation 3500*
2. *Statement of Explanation*
3. *AB 1492*
4. *AB 1717*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 12/24/15*
- B. *Minutes, 01/26/16*
- C. *Reporters Transcript, 01/26/16*

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: March 23, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2016-0212-01
OAL Matter Type Nonsubstantive (N)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Application of the Fee Collection Procedures Law."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

RECEIVED

MAR 22 2016

by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

State of California
Office of Administrative Law

cc: D. KINNEE, D. KINNEE

In re:
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend section: 3500

Repeal sections:

NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT

California Code of Regulations, Title 1,
Section 100

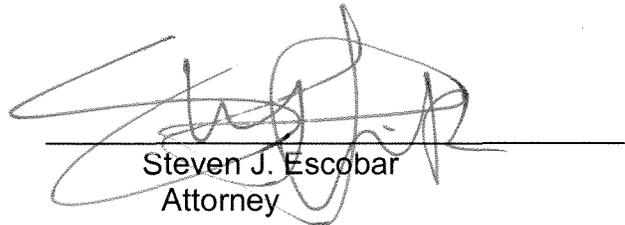
OAL Matter Number: 2016-0212-01N

OAL Matter Type: Nonsubstantive (N)

Section 3500 of title 18 of the California Code of Regulations lists fees and taxes collected by the Board of Equalization (the "Board") pursuant to the Fee Collection Procedures Law (Rev. & Tax Code, sec. 55001 et seq.). The Board is amending Section 3500 to add "Lumber Products Assessment," "Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services [("MTS")] Collection Act," and "Prepaid [MTS] Surcharge required to be collected by sellers other than direct sellers" to this list of fees and taxes as a change without regulatory effect. The Board is also adding three Reference citations, each of which corresponds to one of the three items added to the list in Section 3500.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: March 17, 2016



Steven J. Escobar
Attorney

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

NONSUBSTANTIVE

(true copies on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2016-0212-01N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
 in the office of the Secretary of State
 of the State of California

MAR 17 2016

2:11 PM

2016 FEB 12 P 2:03

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
 State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Application of the Fee Collection Procedures Law	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3500
TITLE(S) 18	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE February 12, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 17 2016

Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 3500. Application of the Fee Collection Procedures Law.

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services Collection Act, Lumber Products Assessment, Marine Invasive Species Fee, Natural Gas Surcharge, Prepaid Mobile Telephony Services Surcharge required to be collected by sellers other than direct sellers, and Water Rights Fee.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 4629.5, 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 42020, 42103 and 44003, Revenue and Taxation Code; Section 1537, Water Code.

Substances Incident Response Training and Education Program established pursuant to Government Code §8574.20. The increases are approximately 400%.

Description of the agency actions to enforce this fee increase.

CalOES/CSTI announced this fee increase in emails sent to state-certified hazmat instructors on Tuesday 12-15-2015. This fee increase is scheduled to become effective in March 2016.

Legal basis for believing this fee increase is a regulation.

This fee increase has general applicability and implements GC §8574.20(i).

GC §8574.20(i) authorizes CalOES/CSTI to:

“Establish and collect admission fees and other fees that may be necessary to be charged for advanced or specialized training given at the California Specialized Training Institute. These fees shall be used to offset costs incurred pursuant to this article.”

It will apply to individuals providing training in hazardous materials response that is certified as per to the regulations authorized by GC §8574.20. (These regulations are in Title 19 CCR §2510-2560.)

CalOES/CSTI has not gone through the rulemaking process before implementing this fee increase. The regulations that apply to this program don't contain any information on fees. CSTI has never gone through the rulemaking process in determining or implementing the fees authorized by GC §8574.20(j). There is no express statutory exemption from the APA for this action. (This case is nearly identical to the one described in 2008 OAL Determination #12 which is attached.)

Public importance and need for prompt action.

State-certified instructors will provide CalOES/CSTI standardized hazmat response training throughout California and in other states, territories, and commonwealths and even overseas. Over 1,000 classes will take place in any given year. Over 22,000 persons will take part in this training.

This fee increase has taken place in a short time frame with little advance notice. The budgets for many of the classes scheduled to take place have already been set. In many cases, these classes will take place in police and fire academies, military agencies, city, county, state and private industries their budgets were based on the previous fee schedule. This fee increase will have an adverse impact on their finances since their tuition rates won't reflect this fee increase.

This fee increase will adversely impact thousands of state certified instructors and in some cases will force agencies and companies to abandon the use of the stan-

dardized curriculum which poses a threat to public safety.

Certifications

I certify that I have submitted a copy of this petition and all attachments to the state agency which has issued, used, enforced, or attempted to enforce the purported underground regulation:

Michael Brady
 Chief, Training Support and Compliance Section
 CalOES/CSTI
 10 Sonoma Ave. Bldg. 904
 San Luis Obispo, CA 93405-7605
 805-549-3548

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2016-0208-02
 BOARD OF EDUCATION
 Review of Proposed Revisions to Instructional Materials

Through this regular resubmittal of OAL File No. 2015-0806-01S, the Board of Education (the "Board") adopts section 9526 in title 5 of the California Code of Regulations. Education Code section 60200, subdivision (b)(2) states that the Department of Education (the "Department") shall assess a fee on publishers and manufacturers of Board-adopted instructional materials in the event a publisher or manufacturer submits proposed revisions to their adopted materials. Section 9526 establishes the associated fees, as well as the process by which the proposed revisions will be reviewed.

Title 5
 ADOPT: 9526
 Filed 03/22/2016
 Effective 07/01/2016
 Agency Contact: Hillary Wirick (916) 319-0644

File# 2016-0212-01
 BOARD OF EQUALIZATION
 Application of the Fee Collection Procedures Law

Section 3500 of title 18 of the California Code of Regulations lists fees and taxes collected by the Board of Equalization (the “Board”) pursuant to the Fee Collection Procedures Law (Rev. & Tax Code, sec. 55001 et seq.). The Board is amending Section 3500 to add “Lumber Products Assessment,” “Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services [(“MTS”)] Collection Act,” and “Prepaid MTS Surcharge required to be collected by sellers other than direct sellers” to this list of fees and taxes as a change without regulatory effect. The Board is also adding three Reference citations, each of which corresponds to one of the three items added to the list in Section 3500.

Title 18
AMEND: 3500
Filed 03/17/2016
Agency Contact: Richard Bennion (916)445-2130

File# 2016-0224-01
BOARD OF PSYCHOLOGY
Filing of Addresses

This rulemaking action amends section 1380.5 of Title 16 of the California Code of Regulations to permit a licensee to provide the Board of Psychology (Board) a Post Office box or other alternative address as his or her publicly disclosable mailing address of record. The action requires a licensee who provides a Post Office box or other alternative address as his or her mailing address of record to also provide his or her physical business or residential address to the Board for the Board’s internal administrative use and not for public disclosure. In addition, the action requires a licensee to provide the Board, and to maintain, his or her email address, if any, and to notify the Board of any address changes within 30 days of the change.

Title 16
AMEND: 1380.5
Filed 03/21/2016
Effective 07/01/2016
Agency Contact: Jonathan Burke (916)574-7137

File# 2016-0211-03
CALIFORNIA GAMBLING CONTROL
COMMISSION
Program for Responsible Gambling

This proposed regulatory action by the California Gambling Control Commission updates the “Program for Responsible Gambling” standards and requirements in sections 12460-12466 of title 4 of the California Code of Regulations.

Title 4
ADOPT: 12465 AMEND: 12460, 12461, 12462,
12463, 12464, 12466
Filed 03/23/2016
Effective 07/01/2016
Agency Contact: Tina Littleton (916)263-0700

File# 2016-0217-01
COMMISSION ON TEACHER CREDENTIALING
Supplementary Authorization in Computer Science

This action is the resubmission of OAL file no. 2015-1029-05S, which was partially withdrawn due to insufficient necessity for amendments to title 5, California Code of Regulations, sections 80057.5(b)(1)-(4) and 80089.2(a)(1)-(4). These sections pertain to examination requirements for a teaching credential supplemental authorization in any language other than English for both specific subject supplemental authorizations and introductory supplemental authorizations. This action resolves the necessity issues with the amendments to these sections.

Title 5
AMEND: 80057.5, 80089.2
Filed 03/21/2016
Effective 07/01/2016
Agency Contact: David Crable (916)323-5119

File# 2016-0317-01
DEPARTMENT OF FOOD AND AGRICULTURE
Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action will expand the quarantine area for the Asian Citrus Psyllid (ACP), *Diuraphis citri*, to approximately 26 square miles in the Milpitas area of Santa Clara County and into Alameda County. The effect of the emergency action provides authority for the state to perform quarantine activities against ACP within this additional area, along with the existing regulated areas.

Title 3
AMEND: 3435
Filed 03/21/2016
Effective 03/21/2016
Agency Contact: Sara Khalid (916)403-6625

File# 2016-0209-04
DEPARTMENT OF INSURANCE
Universal Life Policies Valuation

This rulemaking by the Department of Insurance amends sections in Title 10 of the California Code of Regulations, pertaining to the valuation of universal life insurance policies for the purpose of establishing reserves. This rulemaking makes California regulations consistent with the National Association of Insurance Commissioner’s (“NAIC”) Model Regulation 585.

Regulation 3500

Section 100

Index

1. *Form 400 and Proposed Regulation 3500*
2. *Statement of Explanation*
3. *AB 1492*
4. *AB 1717*

NOTICE PUBLICATION REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2016-0212-01N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2016 FEB 12 P 1:57

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Application of the Fee Collection Procedures Law	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3500
TITLE(S) 18	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE February 12, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 3500. Application of the Fee Collection Procedures Law.

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services Collection Act, Lumber Products Assessment, Marine Invasive Species Fee, Natural Gas Surcharge, Prepaid Mobile Telephony Services Surcharge required to be collected by sellers other than direct sellers, and Water Rights Fee.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 4629.5, 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 42020, 42103 and 44003, Revenue and Taxation Code; Section 1537, Water Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 3500, Application of the Fee Collection Procedures Law

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 3500, *Application of the Fee Collection Procedures Law*, lists fees and taxes collected by the State Board of Equalization (Board) pursuant to the Fee Collection Procedures Law (Rev. & Tax. Code (RTC) § 55001 et seq.). It was adopted January 27, 2010, and has not been amended since its adoption.

1. Changes Related to the Lumber Products Assessment

Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289) added Public Resources Code (PRC) section 4629.5 to impose the lumber products assessment¹ on certain purchases of specified lumber products and engineered wood products, beginning January 1, 2013, and section 4629.5, subdivision (c), specifies that the Board “shall administer and collect the assessment . . . pursuant to the Fee Collection Procedures Law.” Therefore, the Board proposes to add a reference to the “Lumber Products Assessment” to Regulation 3500’s list of fees and taxes collected pursuant to the Fee Collection Procedures Law and add a reference to PRC section 4629.5 to Regulation 3500’s reference note. The Board has determined that these proposed changes to Regulation 3500 are appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because they make the regulation consistent with the enactment of PRC section 4629.5, which imposed the lumber products assessment and specified that it shall be collected pursuant to the Fee Collection Procedures Law, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

2. Changes Related to Prepaid Mobile Telephony Services Surcharge and Local Charges

AB 1717 (Stats. 2014, ch. 885) enacted the Prepaid Mobile Telephony Services (MTS) Surcharge Collection Act (Prepaid MTS Act) (RTC § 42001 et seq.) and the Local Prepaid MTS Collection Act (Local Act) (RTC § 42100 et seq.). The Prepaid MTS Act imposes a prepaid MTS surcharge² on prepaid MTS consumers on and after January 1, 2016, and requires sellers to collect the prepaid MTS surcharge from prepaid MTS consumers at the time of each retail transaction. (RTC § 42010.) The Local Act provides that certain local charges³ imposed by a local agency on prepaid MTS shall be collected by sellers at the same time and in the same

¹ Although PRC section 4629.5 does not “expressly” refer to the assessment imposed by that section as the “lumber products assessment,” PRC section 4629.4, subdivision (a), does expressly refer to the assessment as “lumber products assessment imposed pursuant to Section 4629.5.”

² The term “prepaid MTS surcharge” is defined by RTC section 42004, subdivision (m).

³ The term “local charges” is defined by RTC section 42004, subdivision (e).

manner as the prepaid MTS surcharge is collected by sellers under the Prepaid MTS Act. (RTC § 42101.5.) The Local Act also provides in RTC section 42103, subdivision (a) that the Board “shall collect and administer the local charges in the manner prescribed for the collection of the prepaid MTS surcharge in the [Prepaid MTS Act].”

The Prepaid MTS Act further provides in RTC section 42020, subdivision (a)(1) that “The [B]oard shall administer and collect the prepaid MTS surcharge . . . pursuant to the Fee Collection Procedures Law.” However, RTC section 42020 goes on to provide, in subdivision (f), that: “This section applies only to those remittances of the prepaid MTS surcharge or local charges that are required to be remitted to the [B]oard pursuant to [the Prepaid MTS Act].” RTC section 42010, subdivision (d) specifies that sellers⁴ other than direct sellers⁵ subject to RTC section 42010, subdivision (f), are required to remit the prepaid MTS surcharge and local charges they collect to the Board pursuant to the Prepaid MTS Act. Also, RTC section 42010, subdivision (f) specifies that for a direct seller: (1) “[t]hat portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the commission”; (2) “[t]hat portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the [B]oard pursuant to the Emergency Telephone Users Surcharge Act” (RTC § 41001 et seq.); and (3) “[l]ocal charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge.” As a result, under the Prepaid MTS Act and Local Act, sellers other than direct sellers are required to remit the prepaid MTS surcharge and local charges they collect to the Board pursuant to the Prepaid MTS Act and the Board is required to administer and collect the prepaid MTS surcharge and local charges required to be collected by sellers other than direct sellers pursuant to the Fee Collection Procedures Law. However, direct sellers are not required to remit the prepaid MTS surcharge and local charges they collect to the Board pursuant to the Prepaid MTS Act and the Board is not authorized to administer and collect the prepaid MTS surcharge and local charges required to be collected by direct sellers pursuant to the Fee Collection Procedures Law.

Therefore, the Board proposes to add references to the “Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services Collection Act” and the “Prepaid Mobile Telephony Services Surcharge required to be collected by sellers other than direct sellers” to Regulation 3500’s list of fees and taxes collected pursuant to the Fee Collection Procedures Law. The Board also proposes to add references to Revenue and Taxation Code sections 42020 and 42103 to Regulation 3500’s reference note. The Board has determined that these proposed changes to Regulation 3500 are appropriate for processing under Rule 100 because they make the regulation consistent with the enactment of the Prepaid MTS Act and Local Act, which collectively provide that the Board is required to administer and collect the prepaid MTS surcharge and local charges required to be collected by sellers other than direct sellers pursuant to the Fee Collection Procedures Law, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

The following Rule 100 changes are proposed to Regulation 3500:

⁴ The term “seller” is defined by RTC section 42004, subdivision (p).

⁵ The term “direct seller” is defined by RTC section 42004, subdivision (b).

TEXT OF PROPOSED CHANGES

Regulation 3500. Application of the Fee Collection Procedures Law.

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services Collection Act, Lumber Products Assessment, Marine Invasive Species Fee, Natural Gas Surcharge, Prepaid Mobile Telephony Services Surcharge required to be collected by sellers other than direct sellers, and Water Rights Fee.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 4629.5, 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 42020, 42103 and 44003, Revenue and Taxation Code; Section 1537, Water Code.

Assembly Bill No. 1492

CHAPTER 289

An act to add Section 13009.2 to the Health and Safety Code, and to amend Section 4590 of, to add Article 9.5 (commencing with Section 4629) to Chapter 8 of Part 2 of Division 4 of, and to repeal Section 4629.10 of, the Public Resources Code, relating to forest resource management, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 2012. Filed with Secretary of State September 11, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1492, Committee on Budget. Forest resource management.

(1) Existing law, with certain exceptions, makes any person who negligently or in violation of the law sets a fire, or who fails or refuses to correct a fire hazard prohibited by law, liable for the fire suppression costs and for the costs of providing rescue or emergency medical services, and provides for collection of the charge. Under existing law, public agencies participating in fire suppression, rescue, or emergency medical services may bring a civil action to recover costs incurred by those agencies.

This bill would provide that, in a civil action by a public agency to recover damages caused by a fire, pecuniary damages must be quantifiable and not unreasonable in relation to the prefire fair market value of the property, taking into consideration the ecological and environmental value of the property to the public. The bill would limit the pecuniary damages that the public agency may recover to specified ecological and environmental damages and certain restoration and rehabilitation costs, replacement or acquisition costs, or diminution in value of property as a result of the fire, including lost timber value, and short-term costs related to immediate damages resulting from the fire. Further, the bill would prohibit a public agency from seeking to enhance the claim for environmental damages under other provisions of law permitting civil damages for injuries to trees and timber.

(2) The Z'Berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to, and is approved by, the Department of Forestry and Fire Protection.

The act provides that a timber harvesting plan approved on or after January 1, 2012, is effective for a period of not more than 3 years and may be extended by amendment for a one-year period, up to a maximum of 2 one-year extensions if 2 requirements are met. The act provides that a plan that is approved on or after January 1, 2010, to December 31, 2011, inclusive,

may be extended by amendment for a 2-year period, up to a maximum of 2 2-year extensions. The act requires the notice of extension to include the circumstances that prevented a timely completion of the work under the plan and an agreement to comply with the specified law, rules, and regulations as they exist on the date the extension notice is filed.

This bill would provide instead that a timber harvesting plan approved on or after July 31, 2012, would be effective for a period of not more than 5 years unless extended and would instead authorize the extension of the plan by amendment for a 2-year period. The bill would provide instead that a timber harvesting plan approved between January 1, 2010, and August 31, 2012, inclusive, may be extended by amendment for a 2-year period, up to a maximum of 2 2-year periods and would require the notice of extension for that plan to be provided to the department not sooner than 140 days, but at least 10 days, prior to the expiration date of the plan.

(3) This bill would establish the Timber Regulation and Forest Restoration Fund in the State Treasury, and would require that all revenues received from a specified assessment described in (4) and (5) below imposed on the retail sale of lumber products, as defined, and engineered wood products, as defined, less amounts deducted for refunds and reimbursements, be deposited into the fund. The bill would require that moneys deposited into the fund be expended, upon appropriation by the Legislature, for specified administrative costs, and for purposes relating to the regulatory activities of the department and other state and local agencies involved in the management of forest lands, and the costs of managing forest resource programs in the state, for certain grants to state and local public agencies, qualified nonprofit organizations, and recognized Indian tribes for fire protection and suppression, and for grants to fund restoration on timberland, as prescribed.

This bill would require the State Board of Forestry and Fire Protection, on or before October 1, 2012, to adopt a regulation that interprets and makes specific the lumber products and the engineered wood products that the board determines shall be subject to the lumber products assessment imposed by the bill, as prescribed.

The bill would require the Secretary of the Natural Resources Agency, on or before January 10, 2013, and each January 10 thereafter, in conjunction with the 2014–15 Governor’s Budget and the Governor’s Budgets thereafter, in consultation with the Secretary for Environmental Protection, to submit a report to the Joint Legislative Budget Committee on the activities of all state departments, agencies, and boards relating to forest and timberland regulation. The bill would require the Secretary of the Natural Resources Agency, no later than March 1, 2014, as part of the 2014–15 budget process, to submit a report to the Joint Legislative Budget Committee and relevant legislative policy committees, including a review of the aforementioned report.

(4) Existing law imposes a state sales and use tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, and a use tax on the storage, use, or other consumption in this

state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, at a prescribed rate. Existing law imposes various other taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, a violation of which is a crime, provides procedures for the collection of fees.

This bill would, on and after January 1, 2013, in addition to any other sales and use taxes imposed by law, impose an assessment on a person who purchases a lumber product, as defined, or an engineered wood product, as defined, in this state, at the rate of 1% of the sales price. This bill would require the tax to be administered by the State Board of Equalization, as prescribed, and would require a retailer to collect the assessment from the person and remit the amounts collected pursuant to the procedures set forth in the Fee Collection Procedures Law. By expanding the application of the Fee Collection Procedures Law, a violation of which is a crime, this bill would impose a state-mandated local program.

(5) Existing law requires the Department of Forestry and Fire Protection to invite, consider, and respond in writing to comments received from public agencies, including the Department of Fish and Game, to which a timber harvest plan has been transmitted, and to consult with these agencies at their request.

This bill would appropriate the sum of \$1,500,000 from the Timber Regulation and Forest Restoration Fund to the Department of Fish and Game to be used for the purposes of supporting the department's review of timber harvest plans.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 13009.2 is added to the Health and Safety Code, to read:

13009.2. (a) In a civil action by a public agency seeking damages caused by a fire, pecuniary damages must be quantifiable and not unreasonable in relation to the prefire fair market value of the property, taking into consideration the ecological and environmental value of the property to the public. The only recoverable pecuniary damages shall be:

(1) Either the restoration and rehabilitation costs associated with bringing the damaged property back to its preinjured state or replacement or acquisition costs of equivalent value, or diminution in value of property as a result of the fire, including lost timber value, or some combination thereof.

(2) Short-term costs related to immediate damages suffered as a result of the fire, such as burned area emergency response costs, costs associated with discrete restoration activities related to repair and replacement of real property improvements, and remediation and eradication costs relative to invasive species and any other nonnative infestation caused by or exacerbated by sudden burn area conditions.

(b) In addition to the damages authorized by subdivision (a), a public agency may also recover ecological and environmental damages caused by the fire, if those damages are quantifiable, and are not redressed by the damages set forth in subdivision (a), taking into consideration the ecological and environmental value of the property to the public. Ecological and environmental damages may include:

- (1) Lost recreational value.
- (2) Lost interim use.
- (3) Lost historical and archeological value.
- (4) Damage to wildlife, wildlife habitat, water or soil quality, or plants.
- (5) Damage to any rare natural features of the property.
- (6) Lost aesthetic value.

(c) In assessing the reasonableness of damages under subdivision (b), the prefire fair market value of the property is relevant and one factor to be considered, in addition to the other factors listed in subdivision (b).

(d) A public agency plaintiff who claims environmental damages of any kind under subdivision (a) or (b) shall not seek to enhance any pecuniary or environmental damages recovered under this section. This section is not intended to alter the law regarding whether Section 3346 of the Civil Code or Section 733 of the Code of Civil Procedure can be used to enhance fire damages, but this section does confirm that if a public agency claims environmental damages under subdivision (a) or (b), it shall not seek to enhance any damages recovered under this section for any reason, and shall not use Section 3346 of the Civil Code or Section 733 of the Code of Civil Procedure to do so, regardless of whether those sections might otherwise apply. This section is not intended to limit or change the ability of a public agency to recover costs arising from a fire as provided in Sections 13009 and 13009.1.

(e) For purposes of this section, the term “public agency” means the United States of America or any political subdivision thereof, the State of California, any city, county, district, public agency, or any other public subdivision of the state.

(f) This section shall apply only to a civil action filed on or after the effective date of the act adding this section.

SEC. 2. Section 4590 of the Public Resources Code is amended to read:

4590. (a) (1) A timber harvesting plan approved on or after July 1, 2012, is effective for a period of not more than five years, unless extended pursuant to paragraph (2).

(2) A timber harvesting plan, on which timber operations have commenced but not been completed, may be extended by amendment for

a two-year period in order to complete the timber operations, if both of the following occur:

(A) Good cause is shown.

(B) All timber operations are in conformance with the plan, this chapter, and all applicable rules and regulations, upon the filing of the notice of extension as required by this section.

(b) The extension shall apply to any area covered by the plan for which a report has not been submitted under Section 4585. The notice of extension shall be provided to the department not sooner than 30 days, but at least 10 days, prior to the expiration date of the plan. The notice shall include the circumstances that prevented a timely completion of the timber operations under the plan and, consistent with Section 4583, an agreement to comply with this chapter and the rules and regulations of the board as these exist on the date the extension notice is filed.

(c) Stocking work may continue for more than the effective period of the plan under subdivision (a), but shall be completed within five years after the conclusion of other work.

(d) (1) A timber harvesting plan that is approved on or after January 1, 2010, to August 31, 2012, inclusive, may be extended by amendment for a two-year period in order to complete the timber operations, up to a maximum of two 2-year extensions, if the plan complies with subparagraphs (A) and (B) of paragraph (2) of subdivision (a) and the notice of extension, pursuant to subdivision (b), includes written certification by a registered professional forester that neither of the conditions in subdivision (e) has occurred.

(2) Notwithstanding the notice provision of subdivision (b), for the purposes of this subdivision, the notice of extension shall be provided to the department not sooner than 140 days, but at least 10 days, prior to the expiration date of the plan.

(e) The department shall not approve an extension pursuant to subdivision (a) or (d) if either of the following has occurred:

(1) Listed species, as defined in Article 1 (commencing with Section 2050) of Chapter 1.5 of Division 3 of the Fish and Game Code or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), have been discovered in the logging area of the plan since approval of the timber harvesting plan.

(2) Significant physical changes to the harvest area or adjacent areas have occurred since the timber harvesting plan's cumulative impacts were originally assessed.

(f) An extension of a timber harvesting plan on which either of the conditions in subdivision (e) has occurred may be obtained only pursuant to Section 1039 of Title 14 of the California Code of Regulations.

SEC. 3. Article 9.5 (commencing with Section 4629) is added to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, to read:

Article 9.5. Timber Regulation and Forest Restoration Fund

4629. The Legislature finds and declares all of the following:

(a) A thriving in-state forest products sector provides public benefits, including employment opportunities in both rural and urban areas, and economic development for rural communities.

(b) Enabling continued economically viable production of forest products can help to protect the state's forest lands from conversion to other uses.

(c) The state's forest practice regulations provide for environmental protection of the state's air, water, habitat, and soil resources.

(d) Consumers of wood products in the state currently do not directly pay for the state's forest practice program and the costs of protecting the state's natural resources.

(e) Current in-state producers of wood products already bear a significant cost of conforming with the state's environmental laws, which economically disadvantages those producers relative to out-of-state production.

(f) Conforming with the state's environmental laws ensures that wildlife, habitat, clean air, forest, and water quality receive some protection.

4629.1. The Legislature further finds that the state's forest practice regulatory program needs to develop adequate performance measures to provide transparency for both the regulated community and other stakeholders.

4629.2. In enacting this article, it is the intent of the Legislature to accomplish all of the following:

(a) Promote and encourage sustainable forest practices consistent with provisions of this chapter in a manner consistent with other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Article 1 (commencing with Section 51100) of Chapter 6.7 of Part 1 of Division 1 of Title 5 of the Government Code), the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Porter-Cologne Water Quality Act (Chapter 1 (commencing with Section 13000) of Division 7 of the Water Code), and the California Endangered Species Act (Article 3 (commencing with Section 2080) of Chapter 1.5 of Division 3 of the Fish and Game Code).

(b) Ensure continued sustainable funding for the state's forest practice program to protect the state's forest resources, and replace the current piecemeal funding structure with a single funding source.

(c) Support in-state production of timber within the state's environmental standards, and promote and encourage retention of forests and forested landscapes.

(d) Create a funding source for the restoration of the state's forested lands and promote restoration of fisheries and wildlife habitat and improvement in water quality.

(e) Promote restoration and management of forested landscapes consistent with the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(f) Promote transparency in regulatory costs and programs through the creation of performance measures and accountability for the state's forest practice regulatory program and simplify the collection and use of critical data to ensure consistency with other pertinent laws and regulations.

(g) Identify and implement efficiencies in the regulation of timber harvesting between state agencies.

(h) Modify current regulatory programs to incorporate, and provide incentives for best practices, and develop standards or strategies, where appropriate, to protect natural resources, including the development of plans that address road management and riparian function on an ownershipwide, watershedwide, or districtwide scale.

4629.3. (a) The Timber Regulation and Forest Restoration Fund is hereby created in the State Treasury. All revenues received from the assessments imposed pursuant to Section 4629.5, less amounts deducted for refunds and reimbursements, shall be deposited into the fund.

(b) Unless the context requires otherwise, the following definitions shall apply to this article:

(1) "Board" means the State Board of Forestry and Fire Protection.

(2) "Department" means the Department of Forestry and Fire Protection.

(3) "Engineered wood product" means a building product, including, but not limited to, veneer-based sheeting material, plywood, laminated veneer lumber (LVL), parallel-laminated veneer (PLV), laminated beams, I-joists, edge-glued material, or composite material such as cellulosic fiberboard, hardboard, decking, particleboard, waferboard, flakeboard, oriented strand board (OSB), or any other panel or composite product where wood is a component part, that is identified in regulations adopted by the board pursuant to Section 4629.4. For purpose of this paragraph, an "engineered wood product" shall only include products that consist of at least 10 percent wood.

(4) "Fund" means the Timber Regulation and Forest Restoration Fund.

(5) "Lumber product" means a product in which wood or wood fiber is a principal component part, including, but not limited to, a solid wood product, or an engineered wood product, that is identified in regulations adopted by the board pursuant to Section 4629.4. "Lumber product" does not include furniture, paper products, indoor flooring products such as hardwood or laminated flooring, bark or cork products, firewood, or other products not typically regarded as lumber products.

(6) "Principal component part" means 10 percent of the total content by volume.

(7) "Qualified nonprofit organization" means any nonprofit public benefit corporation formed pursuant to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) qualified to do business in California and qualified for exempt status under Section 501(c)(3), 501(c)(4), or 501(c)(5) of the Internal Revenue Code.

(8) "Recognized tribe" means those entities recognized as eligible to receive service from the United States Bureau of Indian Affairs, as listed in the Federal Register, and those tribes designated in the list of nonrecognized tribes for California by the Native American Heritage Commission.

(9) “State responsibility area” means those areas for which the state has primary fire protection responsibility, as designated by the board in accordance with Section 4125.

4629.4. (a) On or before October 1, 2012, the board shall adopt a regulation that interprets and makes specific the lumber products and engineered wood products that the board determines shall be subject to the lumber products assessment imposed pursuant to Section 4629.5. The board shall annually update the regulation. The lumber products identified in the annually updated regulation that is adopted shall become subject to the assessment imposed pursuant to Section 4629.5 on the first day of the calendar quarter commencing more than 60 days after adoption of the updated regulation.

(b) The board shall adopt any regulations or emergency regulations necessary to implement the provisions of this article in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of title 2 of the Government Code). The board may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section. The initial adoption of emergency regulations and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The initial emergency regulation and the one readoption of an emergency regulation authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulation and the one readoption of an emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted. The lumber products and engineered wood products identified in the regulation adopted shall become subject to the assessment imposed pursuant to Section 4629.5, commencing January 1, 2013.

4629.5. (a) (1) On and after January 1, 2013, there is hereby imposed an assessment on a person who purchases a lumber product or an engineered wood product for the storage, use, or other consumption in this state, at the rate of 1 percent of the sales price.

(2) A retailer shall charge the person the amount of the assessment as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.

(3) The retailer shall collect the assessment from the person at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained. For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this

paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

(b) The retailer shall separately state the amount of the assessment imposed under this section on the sales receipt given by the retailer to the person at the time of sale.

(c) The State Board of Equalization shall administer and collect the assessment imposed by this section pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) with those changes as may be necessary to conform to the provisions of this article. For purposes of this section, the references in the Fee Collection Procedures Law to “fee” shall include the assessment imposed by this section.

(d) (1) The assessment is required to be collected by a retailer and any amount unreturned to the person who paid an amount in excess of the assessment, but was collected from the person under the representation by the retailer that it was owed as an assessment, constitutes debts owed by the retailer to this state.

(2) Every person who purchases a lumber product or an engineered wood product for storage, use, or other consumption in this state is liable for the assessment until it has been paid to this state, except that payment to a retailer relieves the person from further liability for the assessment. Any assessment collected from a person that has not been remitted to the State Board of Equalization shall be a debt owed to the state by the retailer required to collect and remit the assessment. Nothing in this part shall impose any obligation upon a retailer to take any legal action to enforce the collection of the assessment imposed by this section.

(e) Except as provided in paragraph (3) of subdivision (a), the State Board of Equalization may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this section, including, but not limited to, collections, reporting, refunds, and appeals.

(f) (1) The assessment imposed by this section is due and payable to the State Board of Equalization quarterly on or before the last day of the month next succeeding each quarterly period.

(2) On or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the State Board of Equalization using electronic media, in the form prescribed by the State Board of Equalization. Returns shall be authenticated in a form or pursuant to methods, as prescribed by the State Board of Equalization.

(g) For purposes of this section, all of the following shall apply:

(1) “Purchase” has the same meaning as that term is defined in Section 6010 of the Revenue and Taxation Code.

(2) “Retailer” has the same meaning as that term is defined in Section 6015 of the Revenue and Taxation Code.

(3) “Sales price” has the same meaning as that term is defined in Section 6011 of the Revenue and Taxation Code.

(4) “Storage” has the same meaning as that term is defined in Section 6008 of the Revenue and Taxation Code.

(5) “Use” has the same meaning as that term is defined in Section 6009 of the Revenue and Taxation Code.

(h) (1) Every person required to pay the assessment imposed under this article shall register with the State Board of Equalization. Every application for registration shall be made in a form prescribed by the State Board of Equalization 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 State Board of Equalization may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

(2) An application for registration filed pursuant to this section may be filed using electronic media as prescribed by the State Board of Equalization.

(3) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

4629.6. Moneys deposited in the fund shall, upon appropriation by the Legislature, only be expended for the following purposes:

(a) To reimburse the State Board of Equalization for its administrative costs associated with the administration, collection, audit, and issuance of refunds related to the lumber products and engineered wood assessment established pursuant to Section 4629.5.

(b) To pay refunds issued pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

(c) To support the activities and costs of the department, the Department of Conservation, the Department of Fish and Game, the State Water Resources Control Board, and regional water quality control boards associated with the review of projects or permits necessary to conduct timber operations. On or after July 1, 2013, except for fees applicable for fire prevention or protection within state responsibility area classified lands or timber yield assessments, no currently authorized or required fees shall be charged by the agencies listed in this subdivision for activities or costs associated with the review of a project, inspection and oversight of projects, and permits necessary to conduct timber operations of those departments and boards.

(d) For transfer to the department’s Forest Improvement Program, upon appropriation by the Legislature, for forest resources improvement grants and projects administered by the department pursuant to Chapter 1 (commencing with Section 4790) and Chapter 2 (commencing with Section 4799.06) of Part 2 of Division 4.

(e) To fund existing restoration grant programs.

(f) To the department, upon appropriation by the Legislature, for fuel treatment grants and projects pursuant to authorities under the Wildland Fire Protection and Resources Management Act of 1978 (Article 1 (commencing with Section 4461) of Chapter 7 of Part 2 of Division 4).

(g) To the department, upon appropriation by the Legislature, to provide grants to local agencies responsible for fire protection, qualified nonprofits,

recognized tribes, local and state governments, and resources conservation districts, undertaken on a state responsibility area (SRA) or on wildlands not in an SRA that pose a threat to the SRA, to reduce the costs of wildland fire suppression, reduce greenhouse gas emissions, promote adaptation of forested landscapes to changing climate, improve forest health, and protect homes and communities.

4629.7. All grants made pursuant to subdivisions (f) and (g) of Section 4629.6 shall fund activities that do any of the following, in order of priority:

(a) Improve forest health.

(b) Promote climate mitigation strategies included in the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) scoping plan for the forest sector, as adopted by the State Air Resources Control Board, or as amended through subsequent actions of that board.

(c) Promote climate change adaptation strategies for the forest sector, as adopted by the Natural Resources Agency in the California Climate Adaptation Strategy.

4629.8. (a) Funds deposited in the Timber Regulation and Forest Restoration Fund shall be appropriated in accordance with the following priorities:

(1) First priority shall be for funding associated with the administration and delivery of responsibilities identified in subdivisions (a) to (c), inclusive, of Section 4629.6.

(2) Only after paragraph (1) is funded, the second priority shall be, if deposits are sufficient in future years to maintain the fund, by 2016, at a minimum reserve of four million dollars (\$4,000,000), for use and appropriation by the Legislature in years during which revenues to the account are projected to fall short of the ongoing budget allocations for support of the activities identified in paragraph (1).

(3) Only after paragraphs (1) and (2) are funded, the third priority shall be in support of activities designated in subdivisions (d) and (e) of Section 4629.6.

(4) Only after paragraphs (1), (2), and (3) are funded, the fourth priority shall be to support the activities designated in subdivisions (f) and (g) of Section 4629.6.

(b) No funds shall be used to pay for or reimburse any requirements, including mitigation of a project proponent or applicant, as a condition of any permit.

4629.9. (a) On or before January 10, 2013, and on each January 10 thereafter in conjunction with the 2014–15 Governor’s Budget and Governors’ Budgets thereafter, the Secretary of the Natural Resources Agency, in consultation with the Secretary for Environmental Protection, shall submit to the Joint Legislative Budget Committee a report on the activities of all state departments, agencies, and boards relating to forest and timberland regulation. This report shall include, at a minimum, all of the following:

(1) A listing, by organization, of the proposed total costs associated with the review, approval, and inspection of timber harvest plans and associated permits.

(2) The number of timber harvest plans, and acreage covered by the plans, reviewed in the 2011–12 fiscal year, or the most recent fiscal year.

(3) To the extent feasible, a listing of activities, personnel, and funding, by department, for the forest practice program for 2012–13, or the most recent fiscal year, and the preceding 10 fiscal years.

(4) The number of staff in each organization dedicated fully or partially to (A) review of timber harvest plans, and (B) other forestry-related activities, by geographical location in the state.

(5) The costs of other forestry-related activities undertaken.

(6) A summary of any process improvements identified by the administration as part of ongoing review of the timber harvest process, including data and technology improvement needs.

(7) Workload analysis for the forest practice program in each organization.

(8) In order to assess efficiencies in the program and the effectiveness of spending, a set of measures for, and a plan for collection of data on, the program, including, but not limited to:

(A) The number of timber harvest plans reviewed.

(B) Average time for plan review.

(C) Number of field inspections per inspector.

(D) Number of acres under active plans.

(E) Number of violations.

(F) Evaluating ecological performance.

(b) A report required to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

4629.10. (a) No later than March 1, 2014, as part of the 2014–15 budget process, the Secretary of the Natural Resources Agency, in conjunction with the Secretary for Environmental Protection, shall submit a report to the Joint Legislative Budget Committee and to the relevant legislative policy committees, including a review of the report required to be submitted to the Joint Legislative Budget Committee pursuant to Section 4629.9. This review shall include recommendations to the budget committees on the future funding of the program, the adequacy of the current regulatory programs, and suggestions for policy recommendations that will improve this chapter and its implementing regulations, and other aspects of the laws governing timber harvesting in the state.

(b) (1) A report required to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed as of January 1, 2018.

4629.11. (a) Notwithstanding any other law, the revenues in any fiscal year may be accounted for on an accrued basis. The department may borrow against anticipated revenues to the fund to meet cashflow needs.

(b) Notwithstanding any other law, a loan obtained pursuant to subdivision (a) shall be interest free. The department shall repay the loan in a timely manner from reserves received into the fund.

4629.12. (a) The Director of Finance shall authorize a loan, from the General Fund to the fund, to implement the activities described in Section 4629.6.

(b) Any loan made pursuant to this section shall be repaid, with interest at the pooled money investment rate, from revenues from the assessment imposed pursuant to Section 4629.5.

4629.13. Notwithstanding any other law, the Controller may use the moneys in the fund for cashflow loans to the General Fund, as provided in Sections 16310 and 16381 of the Government Code. Any such loan shall be exempt from paragraph (2) of subdivision (b) of Section 16310 of the Government Code. Interest shall be paid on all moneys loaned to the General Fund and shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which the money is loaned. This section does not authorize any transfer that would interfere with the carrying out of the object for which these funds were created.

SEC. 4. The sum of one million five hundred thousand dollars (\$1,500,000) is hereby appropriated from the Timber Regulation and Forest Restoration Fund, created pursuant to subdivision (a) of Section 4629.3 of the Public Resources Code, to the Department of Fish and Game to be used for the purposes of supporting the department's review of timber harvest plans.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that statutory changes are adopted that are necessary to address forest resource management needs in the state in the coming years at the earliest possible time, it is necessary that this act take effect immediately.

Assembly Bill No. 1717

CHAPTER 885

An act to amend, repeal, and add Section 431 of, and to add and repeal Section 319 of, the Public Utilities Code, and to amend Section 41020 of, and to amend, repeal, and add Section 41030 of, to add and repeal Section 41033 of, and to add and repeal Part 21 (commencing with Section 42001) and Part 21.1 (commencing with Section 42100) of Division 2 of, the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2014. Filed with
Secretary of State September 30, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1717, Perea. Telecommunications: prepaid mobile telephony services: state surcharge and fees: local charges collection.

(1) The existing Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service to provide revenues sufficient to fund "911" emergency telephone system costs. Amounts are determined annually by the Office of Emergency Services, and upon collection are paid to the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to be expended for limited purposes, including to pay the Department of General Services for its costs in administration of the "911" emergency telephone number system.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the commission to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission, except for a railroad corporation. The commission is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized commission budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law establishes the state's telecommunications universal service programs and authorizes the commission to impose charges for the purpose of funding those programs. Pursuant to this authority, the commission has established 6 end-user surcharges to fund 6 universal service programs.

This bill would enact the Prepaid Mobile Telephony Service Surcharge Collection Act. The bill would establish a prepaid MTS surcharge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined. The prepaid MTS surcharge would include the emergency telephone users surcharge, as defined, and PUC surcharges, as defined. The bill would require a seller, as defined, to collect the prepaid MTS surcharge, as provided, from a prepaid consumer, as defined, and remit the amounts collected to the State Board of Equalization pursuant to the Fee Collection Procedures Law, unless the seller is a direct seller, as defined. The bill would require the board, after deducting its administrative expenses, to deposit the amounts collected for the emergency telephone users surcharge into the Prepaid MTS 911 Account and to deposit the amounts collected for PUC surcharges into the Prepaid MTS PUC Account in the Prepaid Mobile Telephony Services Surcharge Fund, which the bill would establish in the State Treasury. If the seller is a direct seller, it would be required to remit the PUC surcharges to the commission, the emergency telephone users surcharge to the board, and the local charges to the local jurisdiction or agency. The bill would require the commission to annually compute for prepaid mobile telephony services the commission's reimbursement fee and 6 universal service program surcharges, to post notice of those fees and surcharges on its Internet Web site, and to notify the State Board of Equalization and the Office of Emergency Services of the amounts and the computation method used to determine the amounts, which would be adjusted, as specified, and together would be the PUC surcharges.

The bill would, beginning with the 2016–17 fiscal year and ending with the 2018–19 fiscal year, require the board to calculate the net amounts collected pursuant to the MTS surcharge for the emergency telephone users surcharge during each fiscal year and to provide notification on its Internet Web site by December 15 following each fiscal year, whether the amount exceeds or is less than \$9,900,000. The bill would provide that if for any fiscal year the amount collected is less than \$9,900,000, the deficiency is the responsibility, on a pro rata basis, of each prepaid MTS provider based on each provider's share of total California intrastate prepaid mobile telephony service revenues as reported to the commission. The bill would require the commission to provide the board with information relative to each prepaid MTS provider's revenue and percentage sales upon request and authorize the board to enforce the obligation of each prepaid MTS provider by serving a notice in a prescribed manner.

The bill would require the commission, 30 days prior to adopting any adjustment to a reimbursement fee or universal service surcharge on both postpaid and prepaid intrastate service to prepare a prescribed resolution or other public document proposing the fee or surcharge adjustment and explaining the calculation of the new fee or surcharge, as specified, and would require the commission to make it available to the public and on the commission's Internet Web site.

The Moore Universal Telephone Service Act establishes the Universal Lifeline Telephone Service program in order to provide low-income households with access to affordable basic residential telephone service. Existing decisions of the commission exempt lifeline services from the commission's reimbursement fee and the 6 end-user surcharges that fund the state's 6 universal service programs.

This bill would exempt the purchase in a retail transaction in this state of prepaid mobile telephony services, either alone or in combination with mobile data or other services, by a consumer from the prepaid MTS surcharge and specified local charges if certain conditions are met, including that the prepaid consumer is certified as eligible for the state lifeline program or federal lifeline program.

The bill would require the Office of Emergency Services to annually compute, as specified, the intrastate portion of the 911 surcharge to be collected on prepaid mobile telephony services, to post notice of those charges, and to notify the State Board of Equalization of the amount, which would be the emergency telephone users surcharge. The bill would require the Office of Emergency Services to prepare a prescribed summary of the calculation of the proposed 911 surcharge and make the summary available to the public and on its Internet Web site, as specified. Local charges would be computed pursuant to the Local Prepaid Mobile Telephony Services Collection Act, discussed below.

(2) Existing law generally provides that the legislative body of any charter city may make and enforce all ordinances and regulations with respect to municipal affairs, as provided, including, but not limited to, a utility user tax in that municipality. Existing law generally provides that the legislative body of a city may levy any tax that may be levied by a charter city. Existing law further provides that the board of supervisors of any county may levy a utility user tax on the consumption of, among other things, telephone service, in the unincorporated area of the county.

This bill would, on and after January 1, 2016, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a utility user tax on the consumption of prepaid communications service at the rate specified in an ordinance adopted pursuant to existing law, and would instead require the utility user tax rate to be applied during that period under any ordinance to be at specified tiered rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act. In addition, the bill would, on or after January 1, 2016, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, on access to communication services or access to local "911" emergency telephone systems, in the city, county, or city and county at the rate as specified in an ordinance adopted pursuant to existing law, and would instead require the charge rate to be applied during that period under any ordinance to be at specified rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act. This bill would

specify that a change in a utility user tax rate or access charge rate resulting from either the rate limitations or the end of the suspension period is not subject to voter approval under either statute or Article XIII C of the California Constitution. This bill would require these local charges imposed by a city, county, or a city and county be administered and collected by the State Board of Equalization, deposited in the Local Charges for Prepaid Mobile Telephony Services Fund, which this bill would create, and transmitted to the city, county, or a city and county, as provided.

This bill would allow a consumer to rebut the presumed location of a retail transaction for purposes of the collection of the local charges by filing a claim and declaration under penalty of perjury.

By expanding the crime of perjury, this bill would impose a state-mandated local program.

(3) The bill would repeal these provisions on January 1, 2020.

(4) This bill would incorporate additional changes in Section 41030 of the Revenue and Taxation Code, proposed by SB 1211, to be operative only if SB 1211 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

(5) The Fee Collection Procedures Law makes a violation of any provision of the law, or of certain requirements imposed by the board pursuant to the law, a crime.

By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 319 is added to the Public Utilities Code, to read:

319. (a) For purposes of this section, the following terms have the following meanings:

(1) "Direct seller," "prepaid consumer," "prepaid mobile telephony services," "prepaid MTS provider," "prepaid MTS surcharge," and "Public Utilities Commission surcharges," have the same meaning as defined in Section 42004 of the Revenue and Taxation Code.

(2) "Reimbursement fee" means a charge imposed by the commission pursuant to Chapter 2.5 (commencing with Section 401).

(3) "Universal service surcharge" means any charge imposed by the commission to support programs funded through one of the state's universal

service funds created pursuant to Chapter 1.5 (commencing with Section 270).

(b) The commission shall annually, on or before October 1 of each year, commencing October 1, 2015, compute a reimbursement fee as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year and to be collected and remitted pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code). On or before October 8 of each year, commencing October 8, 2015, the commission shall post notice of the reimbursement fee on its Internet Web site and notify both the Office of Emergency Services and the State Board of Equalization of this information as well as the computation method used to determine the reimbursement fee.

(c) The commission shall annually, on or before October 1 of each year, commencing October 1, 2015, compute the individual and cumulative amounts of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year and to be collected and remitted pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code). On or before October 8 of each year, commencing October 8, 2015, the commission shall post notice of the individual percentages and the cumulative surcharge on its Internet Web site and notify both the Office of Emergency Services and the State Board of Equalization of this information as well as the computation method used to determine the cumulative surcharge.

(d) (1) Except for that portion of the prepaid MTS surcharge that is the Public Utilities Commission surcharges, computed pursuant to subdivisions (b) and (c), this section neither restricts the commission's authority to adjust reimbursement fees or universal service surcharges nor requires that they only be adjusted once annually.

(2) In annually computing reimbursement fees and universal service surcharges to be collected and remitted to the commission pursuant to this section, the commission shall adjust the fees and surcharges to account for any past overcollection or undercollection of fees or surcharges from prepaid consumers resulting from a reduction or increase in the surcharges made subsequent to December 31 of the previous year.

(3) If both upward and downward adjustments are made to reimbursement fees and universal service surcharges subsequent to December 31, the commission may adjust how collections are deposited into the reimbursement and universal service accounts so that overcollections or undercollections are minimized.

(4) It is the intent of the Legislature that reimbursement fees and universal service surcharges be applied, as much as possible, in a competitively neutral manner that does not favor either prepaid or postpaid payment for mobile telephony services, and that, over time, collections of state charges from

prepaid and postpaid consumers balance out so that neither pay a disproportionate amount.

(5) At least 30 days prior to adopting any adjustment to a reimbursement fee or universal service surcharge to be collected and remitted to the commission on both postpaid and prepaid intrastate service, the commission shall prepare a resolution or other public document proposing the fee or surcharge adjustment and explaining the calculation of the fee or surcharge. The commission shall make the resolution or other public document available to the public and on the commission's Internet Web site and it shall include all of the following:

(A) The prior year revenues from the fee or surcharge, including, but not limited to, revenues from prepaid service.

(B) Projected expenses and revenues from all sources, including, but not limited to, prepaid service, for the purposes of the fee or surcharge.

(C) The rationale for adjustment to the reimbursement fee or universal service surcharge, including, but not limited to, all impacts from prepaid MTS surcharge collection.

(e) The commission shall have enforcement authority to ensure the proper remittances over retail transactions of a prepaid MTS provider pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code).

(f) (1) A prepaid MTS provider shall remit to the commission the fee established for telephone corporations pursuant to subdivision (a) of Section 431 on the intrastate portion of the revenues received for prepaid mobile telephony service through December 31, 2015.

(2) A prepaid MTS provider shall remit to the commission the telecommunications universal service surcharges established for telephone corporations on the intrastate portion of the revenues received for prepaid mobile telephony service through December 31, 2015.

(g) (1) This section does not relieve a prepaid MTS provider or direct seller of their continuing obligation to report prepaid mobile telephony service revenues to the commission in a manner prescribed by the commission.

(2) When reporting prepaid mobile telephony service revenues to the commission, a prepaid MTS provider or direct seller shall report the intrastate revenue portion subject to the reimbursement fee and the telecommunications universal service surcharges, as well as total state mobile telephony service revenue.

(3) Reports made pursuant to this subdivision are subject to Section 583 and any related orders of the commission.

(h) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 2. Section 431 of the Public Utilities Code is amended to read:

431. (a) The commission shall annually determine a fee to be paid by every electrical, gas, telephone, telegraph, water, sewer system, and heat

corporation and every other public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission other than a railroad, except as otherwise provided in Article 2 (commencing with Section 421), for common carriers and related businesses, and as otherwise provided in Section 319, for a prepaid MTS provider, as defined in Section 42004 of the Revenue and Taxation Code.

(b) The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to regulate public utilities less the amount to be paid from special accounts or funds pursuant to Section 402, reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

(c) This article shall not apply to any electrical cooperative as defined in Chapter 5 (commencing with Section 2776) of Part 2.

(d) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 3. Section 431 is added to the Public Utilities Code, to read:

431. (a) The commission shall annually determine a fee to be paid by every electrical, gas, telephone, telegraph, water, sewer system, and heat corporation and every other public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission other than a railroad, except as otherwise provided in Article 2 (commencing with Section 421).

(b) The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to regulate public utilities less the amount to be paid from special accounts or funds pursuant to Section 402, reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

(c) This article shall not apply to any electrical cooperative as defined in Chapter 5 (commencing with Section 2776) of Part 2.

(d) On and after January 1, 1985, this article shall apply to radiotelephone utilities as defined in Section 4902 as those provisions read on December 31, 1984.

(e) This section shall become operative on January 1, 2020.

SEC. 4. Section 41020 of the Revenue and Taxation Code is amended to read:

41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for both of the following:

(1) (A) Intrastate telephone communication service in this state.

(B) Notwithstanding subparagraph (A), on and after January 1, 2016, and before January 1, 2020, in lieu of the surcharge imposed under subparagraph (A), a surcharge shall be imposed on amounts paid for prepaid mobile telephony services pursuant to the Prepaid Mobile Telephony

Services Surcharge Collection Act (Part 21 (commencing with Section 42001)).

(2) VoIP service that provides access to the “911” emergency system by utilizing the digits 9-1-1 by any service user in this state commencing on January 1, 2009. The surcharge shall not apply to charges for VoIP service where any point of origin or destination is outside of this state.

(b) (1) Notwithstanding Section 41025, charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and, for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method from the following:

(A) Books and records kept in the regular course of business.

(B) Traffic or call pattern studies representative of the service supplier’s business within California.

(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier’s contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for VoIP service on September 1 of each year shall apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year for purposes of this method. At the time the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor authorized by this subdivision shall not be interpreted to permit application of any intrastate requirement, other than the surcharge imposed under this part, upon VoIP service suppliers.

(2) Any method chosen by a service supplier shall remain in effect for at least one calendar year.

(3) If a service supplier reasonably relies upon books and records kept in the regular course of business or any documentation that satisfies the reasonable and verifiable method, then the service supplier’s determination of the portion of the billed amount attributable to services not subject to the surcharge shall be rebuttably presumed to be correct. The service supplier’s choice of books and records or other method and surcharge billing practice shall also be rebuttably presumed to be fair and legal business practices.

(4) It is the intent of the Legislature that the provisions of subparagraph (C) shall not be considered to be a precedent for the application of the surcharge or any other tax or fee where a person is required to collect a tax or fee imposed upon another.

(c) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for the services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

(d) The surcharge shall be paid by the service user as hereinafter provided.

(e) The surcharge imposed shall not apply to either of the following:

(1) In accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252), which is incorporated herein by reference, to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(2) To any charges for VoIP service billed to a customer where those services are provided to a customer whose place of primary use of VoIP service is outside this state.

(f) For purposes of this section:

(1) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) "Customer" means (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or with a VoIP service provider for VoIP service, or (B) if the end user of mobile telecommunications services or VoIP service is not the contracting party, the end user of the mobile telecommunications service or VoIP service. This paragraph applies only for the purpose of determining the place of primary use. The term "customer" does not include (A) a reseller of mobile telecommunications service or VoIP communication service, or (B) a serving carrier under an arrangement to serve the mobile customer outside the home service provider's licensed service area.

(3) "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) "Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) “Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service or VoIP service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) With respect to mobile telecommunications service, within the licensed service area of the home service provider.

(7) (A) “Reseller” means a provider who purchases telecommunications services or VoIP service from another telecommunications service provider or VoIP service and then resells the services, or uses the services as a component part of, or integrates the purchased services into, a mobile telecommunications service or VoIP service.

(B) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(8) “Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed area.

(9) “Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(10) “VoIP service provider” means that provider of VoIP service with whom the end user customer contracts for the provision of VoIP services for the customer’s own use and not for resale.

(11) “Prepaid mobile telephony services” has the same meaning as in subdivision (k) of Section 42004.

SEC. 5. Section 41030 of the Revenue and Taxation Code is amended to read:

41030. (a) The Office of Emergency Services shall determine annually, on or before October 1, to be effective on January 1 of the following year, a surcharge rate pursuant to subdivision (b) that it estimates will produce sufficient revenue to fund the current fiscal year’s 911 costs.

(b) (1) The surcharge rate shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 costs approved pursuant to Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1, to December 31, inclusive, of the next succeeding calendar year, but in no event shall the surcharge rate in any year be greater than three-quarters of 1 percent or less than one-half of 1 percent.

(2) Commencing with the calculation made October 1, 2015, to be effective January 1, 2016, the surcharge shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 costs approved pursuant to Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services, the intrastate portion of prepaid mobile telephony services, and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall the surcharge rate in any year be greater than three-quarters of 1 percent or less than one-half of 1 percent. In making its computation of the charges that are applicable to the intrastate portion of prepaid mobile telephony services, the Office of Emergency Services shall use the computation method developed by the Public Utilities Commission and reported to the Office of Emergency Services pursuant to subdivisions (a) and (b) of Section 319 of the Public Utilities Code.

(c) When determining the surcharge rates pursuant to this section, the office shall include the costs it expects to incur to plan, test, implement, and operate Next Generation 911 technology and services, including text to 911 service.

(d) The Office of Emergency Services shall notify the board of the surcharge amount collected pursuant to this part and the surcharge amount applicable to prepaid mobile telephony services by October 15 of each year.

(e) At least 30 days prior to determining the surcharge pursuant to subdivision (a), the Office of Emergency Services shall prepare a summary of the calculation of the proposed surcharge and make it available to the public and on its Internet Web site. The summary shall contain all of the following:

(1) The prior year revenues to fund 911 costs, including, but not limited to, revenues from prepaid service.

(2) Projected expenses and revenues from all sources, including, but not limited to, prepaid service to fund 911 costs.

(3) The rationale for adjustment to the surcharge determined pursuant to subdivision (b), including, but not limited to, all impacts from the surcharge collected pursuant to Part 21 (commencing with Section 42001).

(f) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 5.5. Section 41030 of the Revenue and Taxation Code is amended to read:

41030. (a) The Office of Emergency Services shall determine annually, on or before October 1, to be effective on January 1 of the following year, a surcharge rate pursuant to subdivision (b) that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs.

(b) (1) The surcharge rate shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 costs approved pursuant to Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall the surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

(2) Commencing with the calculation made October 1, 2015, to be effective January 1, 2016, the surcharge shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 costs approved pursuant to Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services, the intrastate portion of prepaid mobile telephony services, and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall the surcharge rate in any year be greater than three-quarters of 1 percent or less than one-half of 1 percent. In making its computation of the charges that are applicable to the intrastate portion of prepaid mobile telephony services, the Office of Emergency Services shall use the computation method developed by the Public Utilities Commission and reported to the Office of Emergency Services pursuant to subdivisions (a) and (b) of Section 319 of the Public Utilities Code.

(c) When determining the surcharge rates pursuant to this section, the office shall include the costs it expects to incur to plan, test, implement, and operate Next Generation 911 technology and services, including text to 911 service, consistent with the plan and timeline required by Section 53121 of the Government Code.

(d) The office shall notify the board of the surcharge rate determined pursuant to this section and the surcharge rate applicable to prepaid mobile telephony services by October 15 of each year.

(e) At least 30 days prior to determining the surcharge pursuant to subdivision (a), the Office of Emergency Services shall prepare a summary of the calculation of the proposed surcharge and make it available to the public, the Legislature, 911 Advisory Board, and on its Internet Web site. The summary shall contain all of the following:

(1) The prior year revenues to fund 911 costs, including, but not limited to, revenues from prepaid service.

(2) Projected expenses and revenues from all sources, including, but not limited to, prepaid service to fund 911 costs.

(3) The rationale for adjustment to the surcharge determined pursuant to subdivision (b), including, but not limited to, all impacts from the surcharge collected pursuant to Part 21 (commencing with Section 42001).

(f) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 6. Section 41030 is added to the Revenue and Taxation Code, to read:

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

(b) This section shall become operative on January 1, 2020.

SEC. 6.5. Section 41030 is added to the Revenue and Taxation Code, to read:

41030. (a) The Office of Emergency Services shall determine annually, on or before October 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The surcharge rate shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 costs approved pursuant to Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall the surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

(b) When determining the surcharge rate, the office shall include the costs it expects to incur to plan, test, implement, and operate Next Generation 911 technology and services, including text to 911 service, consistent with the plan and timeline required by Section 53121 of the Government Code.

(c) At least one month before determining the surcharge rate pursuant to subdivision (a), the office shall prepare a summary of the calculation of the proposed surcharge and make it available to the Legislature and the 911 Advisory Board, and on the office's Internet Web site.

(d) This section shall become operative on January 1, 2020.

SEC. 7. Section 41033 is added to the Revenue and Taxation Code, to read:

41033. (a) For purposes of this section, the following terms have the following meanings:

(1) “Direct seller,” “prepaid mobile telephony services,” “prepaid MTS provider,” “retail transaction,” and “seller” have the same meanings as defined in Section 42004.

(2) “Prepaid MTS 911 Account” means the Prepaid MTS 911 Account created in the Prepaid Mobile Telephony Services Surcharge Fund pursuant to Section 42023.

(b) (1) For each fiscal year, beginning with the 2016–17 fiscal year and ending with the 2018–19 fiscal year, the board shall calculate the following on or before the November 1 following the end of that fiscal year:

(A) The total collections for the fiscal year of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge, net of any amounts that a seller was permitted to deduct and retain pursuant to subdivision (e) of Section 42010.

(B) Less the expenses incurred and reimbursed to the board for the fiscal year from that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge pursuant to subdivision (e) of Section 42020.

(2) The board shall provide notification of whether the amount calculated in this section exceeds or is less than nine million nine hundred thousand dollars (\$9,900,000) on its Internet Web site by December 15 following the calculation, along with the underlying calculations, assumptions, and methodology.

(c) If for any fiscal year the calculation performed pursuant to subdivision (b) results in an amount less than nine million nine hundred thousand dollars (\$9,900,000), the deficiency shall be the responsibility, on a pro rata basis of each prepaid MTS provider or direct seller, as provided in this subdivision. The board shall calculate the deficiency and bill each prepaid MTS provider or direct seller its pro rata share of that deficiency based upon each prepaid MTS provider’s or direct seller’s percentage share of total California intrastate prepaid mobile telephony services revenues, as reported to the Public Utilities Commission pursuant to Section 319 of the Public Utilities Code for the prior fiscal year.

(d) For each fiscal year, beginning with the 2016–17 fiscal year and ending with the 2018–19 fiscal year, each prepaid MTS provider or direct seller shall, on or before September 1 of each year, report to the board the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge, remitted by the provider or seller pursuant to subdivision (f) of Section 42010 for the prior fiscal year.

(e) The Public Utilities Commission, within 45 days of request, shall provide the board the name and address of each prepaid MTS provider and direct seller and each prepaid MTS provider’s and direct seller’s California intrastate prepaid mobile telephone services revenue, along with the provider’s and seller’s percentage share of total California intrastate prepaid

mobile telephony services revenue for the prior fiscal year, and any other information the board deems necessary.

(f) The obligation of each prepaid MTS provider and direct seller shall be enforced by serving a notice in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board determines that the calculation performed pursuant to subdivision (b) results in a deficiency for the previous fiscal year. Notwithstanding any provisions to the contrary in this part, a petition for a redetermination of a notice issued pursuant to this subdivision may be filed within 60 days after service upon the person of notice thereof. Solely for purposes of a notice issued pursuant to this subdivision, interest shall begin to accrue at the expiration of the 60-day period. If a petition for redetermination is not filed within the 60-day period, the determination becomes final at the expiration of that period. All determinations made by the board under this section are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto. Interest shall apply in accordance with Article 6 (commencing with Section 41095). The liability imposed by this section shall be collected by the board in accordance with the provisions of this part.

(g) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 8. Part 21 (commencing with Section 42001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. PREPAID MOBILE TELEPHONY SERVICES SURCHARGE COLLECTION ACT

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

42001. This part shall be known, and may be cited, as the Prepaid Mobile Telephony Services Surcharge Collection Act.

42002. The Legislature finds and declares all of the following:

(a) Maintaining effective and efficient communications services, 911 emergency systems, communications-related public policy programs to promote universal service, and various local programs across the state benefits all persons with access to the telecommunications system.

(b) Providers of end-use communications services, including providers of mobile voice telecommunications services, which the Federal Communications Commission terms mobile telephony service, are required to collect and remit communications taxes, fees, and surcharges on various types of communication service revenues, as provided by existing state or local law.

(c) Consumers purchase prepaid mobile telephony services at a wide variety of retail locations and other distribution channels, as well as through service providers.

(d) Prepaid mobile telephony services are an important and growing segment of the communications industry. Prepaid mobile telephony services are often the only means by which persons with low incomes can obtain limited access to the telecommunications system.

(e) To ensure equitable contributions from end-use consumers of postpaid and prepaid mobile telephony services in this state, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid mobile telephony services.

(f) Prepaid mobile telephony services are frequently sold by a third-party retailer that is not the provider of mobile telephony services, and collecting taxes, fees, and surcharges from prepaid consumers of mobile telephony services at the time of the retail transaction is necessary and the most efficient and competitively neutral means of collection.

(g) An equitable distribution mechanism is necessary to ensure that utility user taxes and other telecommunication charges are collected on behalf of cities and counties and are properly distributed to those jurisdictions.

42004. For purposes of this part, the following terms have the following meanings:

(a) “Board” means the State Board of Equalization.

(b) (1) “Direct seller” means a prepaid MTS provider or service supplier, as defined in Section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than 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) An interconnected Voice over Internet Protocol (VoIP) service, as defined in Section 285 of the Public Utilities Code.

(C) A retailer, as defined by Section 6203, that is a member of the same commonly controlled group, as defined in 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).

(2) For purposes of this subdivision, “sale” means any transfer of title, possession, exchange, or barter, conditional or otherwise.

(c) “Emergency telephone users surcharge” means surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) to be collected from prepaid consumers of mobile telephony services.

(d) “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.

(e) “Local charges” means those charges described in subdivision (a) of Section 42101.

(f) “Local jurisdiction” or “local agency” means a city, county, or city and county, which includes a charter city, county, or city and county.

(g) “Mobile data service” has the same meaning as defined in Section 224.4 of the Public Utilities Code.

(h) “Mobile telephony service” or “MTS” has the same meaning as defined in Section 224.4 of the Public Utilities Code.

(i) “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.

(j) “Prepaid consumer” means a person who purchases prepaid mobile telephony services in a retail transaction.

(k) “Prepaid mobile telephony services” means the right to utilize a mobile device for 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. 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.

(l) “Prepaid MTS provider” means a telephone corporation, pursuant to Section 234 of the Public Utilities Code, that provides prepaid mobile telephony services.

(m) “Prepaid MTS surcharge” means the surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Section 42010, that is required to be collected by a seller from a prepaid consumer.

(n) “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:

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

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

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

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

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

(6) 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).

(7) 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.

(o) “Retail transaction” means the purchase of prepaid mobile telephony services, 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.

(p) “Seller” means a person that sells prepaid mobile telephony service to a person in a retail transaction.

CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES SURCHARGE

42010. (a) (1) On and after January 1, 2016, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction in this state. The prepaid MTS surcharge shall be imposed as a percentage of the sales price of each retail transaction that occurs in this state.

(2) The prepaid MTS surcharge shall be in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) and the Public Utilities Commission surcharges for prepaid mobile telephony services.

(b) The prepaid MTS surcharge shall be annually calculated by the board by no later than November 1 of each year commencing November 1, 2015, by adding the following:

(1) The surcharge rate reported pursuant to subdivision (d) of Section 41030.

(2) 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.

(c) (1) The board shall post, for each local jurisdiction, the combined total of the rates of prepaid MTS surcharge and the rate or rates of local charges, as calculated pursuant to Sections 42102 and 42102.5, that each local jurisdiction has adopted, not later than December 1 of each year, on its Internet Web site. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting.

(2) Notwithstanding paragraph (1), if a local agency notifies the board pursuant to subdivision (d) of Section 42101.5 that the posted rate is inaccurate or it no longer imposes a local charge or local charges or that the rate of its local charge or local charges has decreased, the board shall promptly post a recalculated rate that is applicable to the jurisdiction of that

local agency. The change shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the local agency notifies the board of the inaccuracy or that it no longer imposes a local charge or that the rate of its local charge has decreased. Nothing in this section modifies the notice obligations of Section 799 of the Public Utilities Code. However, beginning January 1, 2016, the notification and implementation requirements of paragraphs (5) and (6) of subdivision (a) of Section 799 of the Public Utilities Code shall not apply to prepaid mobile telephony services.

(3) The board shall also separately post on its Internet Web site the individual rates for each of the following:

(A) Each of the Public Utilities Commission surcharges that make up the Public Utilities Commission surcharge portion of the prepaid MTS surcharge, as reported pursuant to Section 319 of the Public Utilities Code.

(B) The percentage for the emergency telephone users surcharge reported pursuant to subdivision (c) of Section 41030.

(C) Each of the individual local charges reported pursuant to Section 42101.5.

(4) A seller collecting the prepaid MTS surcharge and local charges pursuant to this part and Part 21.1 (commencing with Section 42100) may rely upon the accuracy of the information posted on the board's Internet Web site in collecting and remitting all amounts of the prepaid MTS surcharge and local charges.

(d) (1) Except for amounts retained pursuant to subdivision (e), and except as provided in subdivision (f) for a seller that is a direct seller, all amounts of the prepaid MTS surcharge and local charges collected by sellers shall be remitted to the board pursuant to Chapter 3 (commencing with Section 42020).

(2) A seller that is authorized to provide lifeline service under the state lifeline program or federal lifeline program, that sells prepaid mobile telephony services directly to the prepaid customer, shall remit the prepaid MTS surcharge to the board, less any applicable exemption from the surcharge that is applicable to the retail transaction pursuant to Section 42012.

(e) A seller that is not a direct seller shall be permitted to deduct and retain an amount equal to 2 percent of the amounts that are collected by the seller from prepaid consumers for the prepaid MTS surcharge and local charges, on a pro rata basis, according to that portion of the revenues collected by the seller for each of the following:

- (1) The emergency telephone users surcharge.
- (2) The Public Utilities Commission surcharges.
- (3) Local charges.

(f) A direct seller shall remit the prepaid MTS surcharge and local charges as follows:

(1) That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the commission with those reports required by the commission.

(2) 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 (Part 20 (commencing with Section 41001)) for those retail transactions with a prepaid consumer in the state.

(3) Local charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge. 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.

(g) A direct seller shall utilize the amounts posted by the board pursuant to subdivision (c) when determining what amounts to remit to the Public Utilities Commission, board, and each local jurisdiction or local agency.

(h) A prepaid MTS provider shall offer prepaid consumers the option to make payment for additional prepaid usage directly to the prepaid MTS provider at the provider's retail location or Internet Web site.

(i) The amount of the combined prepaid MTS surcharge and local charges shall be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of mobile telephony services by the seller, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

(j) The prepaid MTS surcharge that is required to be collected by a seller and any amount unreturned to the prepaid consumer of mobile telephony services that is not owed as part of the surcharge, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the surcharge, constitute debts owed by the seller to this state. The local charge shall be collected by a seller, and any amount unreturned to the prepaid consumer of mobile telephony services that is not owed as part of the local charge but that was collected from the prepaid consumer under the representation by the seller that it was owed as part of the local charge constitutes a debt owed by the seller jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing that local charge.

(k) A seller that has collected any amount of prepaid MTS surcharge and local charges in excess of the amount of the surcharge imposed by this part and actually due from a prepaid consumer may refund that amount to the prepaid consumer, even though the surcharge amount has already been paid over to the board and no corresponding credit or refund has yet been secured. Any seller making a refund of any charge to a prepaid consumer may repay therewith the amount of the surcharge paid.

(l) (1) Every prepaid consumer of mobile telephony services in this state is liable for the prepaid MTS surcharge and any local charges until they have been paid to this state, except that payment to a seller registered under this part relieves the prepaid consumer from further liability for the surcharge and local charges. Any surcharge collected from a prepaid consumer that has not been remitted to the board shall be a debt owed to the state by the person required to collect and remit the surcharge. Any local charge collected

from a prepaid consumer that has not been remitted to the board shall be a debt owed jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the local charge by the person required to collect and remit the local charge. Nothing in this part shall impose any obligation upon a seller to take any legal action to enforce the collection of the surcharge or local charge imposed by this section.

(2) A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer of mobile telephony services by this part to the extent that the prepaid consumer has paid emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

(m) (1) A seller is relieved from liability to collect the prepaid MTS surcharge imposed by this part that became due and payable, insofar as the base upon which the surcharge is imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes by the seller or, if the seller is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A seller that has previously paid the surcharge may, under rules and regulations prescribed by the board, take as a deduction on its return the amount found worthless and charged off by the seller. If any such accounts are thereafter in whole or in part collected by the seller, the amount so collected shall be included in the first return filed after such collection and the surcharge shall be paid with the return.

(2) The board may by regulation promulgate such other rules with respect to uncollected or worthless accounts as it shall deem necessary to the fair and efficient administration of this part.

42012. (a) For purposes of this section, “state lifeline program” means the program furnishing lifeline voice communication service pursuant to 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).

(b) The purchase in a retail transaction in this state of prepaid mobile telephony services, either alone or in combination with mobile data or other services, by a consumer is exempt from the prepaid MTS surcharge if all of the following apply:

(1) The prepaid consumer is certified as eligible for the state lifeline program or federal lifeline program.

(2) The seller is authorized to provide lifeline service under the state lifeline program or federal lifeline program.

(3) The exemption is applied only to the amount paid for the portion of the prepaid mobile telephony service that the lifeline program specifies is exempt from the surcharges and fees that comprise the prepaid MTS surcharge.

42014. (a) For purposes of this part, a retail transaction occurs in the state under any of the following circumstances:

(1) The prepaid consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction).

(2) If paragraph (1) is not applicable, the prepaid consumer's address is in the state (known address transaction). A known-address transaction occurs in the state under any of the following circumstances:

(A) The retail sale involves shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.

(B) If the prepaid consumer's address is known by the seller to be in the state, including if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith.

(C) The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.

(D) The mobile telephone number is associated with a location in this state.

(b) (1) A retail transaction shall occur at only one location for purposes of determining local charges. If the retail transaction is a point-of-sale transaction, the consumption of, use of, or access to, the prepaid mobile telephony service shall be presumed to be at that location.

(2) If the retail transaction is a known-address transaction, the location shall be as determined in descending order beginning with subparagraph (A) of paragraph (2) of subdivision (a); if subparagraph (A) of that paragraph is inapplicable, then pursuant to subparagraph (B) of that paragraph; if both subparagraphs (A) and (B) of that paragraph are inapplicable, then subparagraph (C) of that paragraph; and if subparagraphs (A), (B), and (C) of that paragraph are inapplicable, then subparagraph (D) of that paragraph. In a known address transaction, the consumption of, use of, or access to, the prepaid mobile telephony service shall be presumed to be at the known address.

(c) (1) A seller that relies in good faith on information provided by the board to match the location of a point-of-sale transaction to the applicable prepaid MTS surcharge amount and local charges, that collects that amount from the prepaid consumer, and that remits the amount to the board in compliance with this part, shall not be liable for any additional MTS surcharge or local charges and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer.

(2) For a known-address transaction, the seller may collect the prepaid MTS surcharge and local charges that correspond to the five-digit postal ZIP Code of the prepaid consumer's address. A seller that, with due diligence and in good faith, relies 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 amount, that collects that amount from the prepaid consumer, and that remits the amount to the board in compliance

with this part, shall not be liable for any additional MTS surcharge or local charges and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer, even if the five-digit postal ZIP Code of the prepaid consumer's address that the seller uses corresponds to more than one local charge.

42018. (a) Except as provided in subdivisions (b) and (c), if prepaid mobile telephony services are sold in combination with mobile data services or any other services or products for a single price, then the prepaid MTS surcharge and local charges shall apply to the entire price.

(b) If prepaid mobile telephone services are sold with a mobile telephone service communication device, commonly termed a cellular telephone, for a single, nonitemized price, then the prepaid MTS surcharge and local charges shall apply to the entire nonitemized price, except if the purchase price for the cellular phone component of the bundled charge is disclosed to the prepaid consumer on a receipt, invoice, or other written or electronic documentation provided to the prepaid consumer, the prepaid MTS surcharge and local charges may be calculated excluding the separately stated price of the cellular telephone.

(c) If a minimal amount of prepaid mobile telephony service is sold for a single, nonitemized price with a mobile telephony service communications device, the seller shall not apply the prepaid MTS surcharge or local charges to the transaction. For these purposes, a service allotment denominated as 10 minutes or less, or five dollars (\$5) or less, is a minimal amount.

CHAPTER 3. ADMINISTRATION

42020. (a) (1) The board shall administer and collect the prepaid MTS surcharge imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the prepaid MTS surcharge imposed by this part, and references to "feepayer" shall include a person required to pay the surcharge imposed by this part, which includes the seller, who shall be required to register with the board.

(2) Notwithstanding Article 1.1 (commencing with Section 55050) of Chapter 3 of Part 30, any person required, or that elects, to remit amounts due under Part 1 (commencing with Section 6001) by electronic funds transfer pursuant to Article 1.2 (commencing with Section 6479.3) of Chapter 5 of Part 1 shall remit prepaid MTS surcharge amounts due under this section by electronic funds transfer.

(b) (1) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(2) The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted

in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(c) The board shall establish procedures to be utilized by a seller to document that a sale is not a retail transaction.

(d) The board shall establish procedures for sharing of information, other than information protected under Section 19542, related to the collection of the prepaid MTS surcharge upon the request of the Public Utilities Commission or the Office of Emergency Services.

(e) The total combined annual expenses incurred for administration and collection by the board pursuant to this part and Part 21.1 (commencing with Section 42100) shall be allocated by the board on a pro rata basis according to revenues collected by the board for: (1) that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge, (2) that portion of the prepaid MTS surcharge that is for the Public Utilities Commission surcharges, and (3) local charges. The board shall annually prepare a report showing the amount of both reimbursed and unreimbursed costs incurred by it in administering the collection of the prepaid MTS surcharge.

(f) This section applies only to those remittances of the prepaid MTS surcharge or local charges that are required to be remitted to the board pursuant to this part and as this section is made applicable to Part 21.1 (commencing with Section 42100) pursuant to subdivision (a) of Section 42103.

42021. The board shall establish remittance schedules and methods for payment of the prepaid MTS surcharge that utilize existing methods established under the Sales and Use Tax Law (Part 1 (commencing with Section 6001)), including all of the following:

(a) The prepaid MTS surcharge, minus the amount retained by the seller pursuant to subdivision (e) of Section 42010, is due and payable to the board quarterly on or before the last day of the month following each calendar quarter.

(b) On or before the last day of the month following each calendar quarter, a return for the preceding calendar quarter shall be filed using electronic media with the board.

(c) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(d) This section applies only to those remittances of the prepaid MTS surcharge or local charges that are required to be remitted to the board pursuant to this part and as this section is made applicable to Part 21.1 (commencing with Section 42100) pursuant to subdivision (a) of Section 42103.

42022. Every seller shall register with the board. The board shall establish a method for registration of sellers under this part that utilizes the existing

registration process for a seller’s permit established pursuant to Section 6066 of the Sales and Use Tax Law (Part 1 (commencing with Section 6001)). Every application for registration 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.

42023. (a) The Prepaid Mobile Telephony Services Surcharge Fund is hereby created in the State Treasury. The Prepaid MTS 911 Account and the Prepaid MTS PUC Account are hereby created in the fund. The Prepaid Mobile Telephony Services Surcharge Fund shall consist of all surcharges, interest, penalties, and other amounts collected and paid to the board pursuant to this part, less payments of refunds and reimbursements to the board for expenses incurred in the administration and collection of the prepaid MTS surcharge.

(b) All moneys in the Prepaid Mobile Telephony Services Surcharge Fund attributable to the prepaid MTS surcharge shall be deposited as follows:

(1) That portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge shall be deposited into the Prepaid MTS 911 Account. All moneys deposited into the Prepaid MTS 911 Account shall be transferred to the State Emergency Telephone Number Account in the General Fund.

(2) That portion of the prepaid MTS surcharge that is for the Public Utilities Commission surcharges shall be deposited into the Prepaid MTS PUC Account. All moneys deposited in the Prepaid MTS PUC Account shall be allocated and transferred to the respective universal service funds, created pursuant to Chapter 1 (commencing with Section 270) of, and to the Public Utilities Commission Utilities Reimbursement Account, created pursuant to Chapter 2.5 (commencing with Section 401) of, Part 1 of Division 1 of the Public Utilities Code.

42024. This part shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 9. Part 21.1 (commencing with Section 42100) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21.1. LOCAL PREPAID MOBILE TELEPHONY SERVICES COLLECTION ACT

42100. (a) This part shall be known and may be cited as the Local Prepaid Mobile Telephony Services Collection Act.

(b) The Legislature finds and declares all of the following:

(1) Maintaining effective and efficient communications services, 911 emergency systems, communications-related public policy programs to

promote universal service, and various local programs across the state benefit all persons with access to the telecommunications system.

(2) Providers of end-use telecommunications services, including providers of mobile voice telecommunications services, which the Federal Communications Commission terms mobile telephony service, are required to collect and remit utility users taxes and local 911 or access charges (local charges) imposed by over 150 cities and counties in California on end-users of such mobile telephony services, as required by existing state or local law.

(3) Local charges on telecommunication services represent an important source of tax revenue for many cities and counties and are used to pay for such essential governmental services as public safety, streets, parks, libraries, senior centers, and many more.

(4) Prepaid mobile telephony services are an important and growing segment of the communications industry. Prepaid mobile telephony services, unlike postpaid mobile telephony services, are frequently sold by a third-party seller that is not the provider of mobile telephony services, and collecting local charges from prepaid consumers of mobile telephony services at the time of the retail transaction is necessary and the most efficient and competitively neutral means for the collection of those local charges.

(5) The collection of prepaid mobile telephony services by third-party sellers and the remittance of those local charges to the board involves administrative costs and responsibilities that are unique to prepaid mobile telephony services, and therefore justify unique reimbursement and tax rate simplification measures, which are fair and reasonable.

(c) It is a matter of statewide concern that the local charges for local prepaid mobile telephony services be collected in a uniform manner in order for the collection to be fair and uniform on a statewide basis.

(d) It is the intention of the Legislature that this part shall preempt the provisions pertaining to the tax or charge rate, base, and method of collection contained in all local ordinances, rules, or regulations concerning the imposition of a local charge upon the consumption of prepaid mobile telephony services to the extent those provisions are inconsistent with the provisions of this part and Part 21 (commencing with Section 42001). It is not the intent of the Legislature to otherwise preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges.

42101. For purposes of this part, all of the following definitions shall apply:

(a) "Local charge" means the utility user taxes as described in Section 42102, and charges for access to communication services or to local "911" emergency telephone systems, as described in Section 42102.5.

(b) "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 refund or a claim arising under the ordinance.

(c) "Board," "direct seller," "local agency," "local jurisdiction," "mobile telephony service," "person," "prepaid consumer," "prepaid mobile telephony service," "prepaid MTS provider," "prepaid MTS surcharge" and

“seller” have the same meaning as those terms are defined in Section 42004 of the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001)).

42101.5. (a) 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 Part 21 (commencing with Section 42001) if, on or before September 1, 2015, the local agency shall enter into a contract with the board for the board to perform the functions set forth in Section 42103. In the contract, the local agency shall: (1) certify to the board that its ordinance applies its local charge to prepaid mobile telephony services and that the local agency agrees to indemnify, and hold and save harmless, the board, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and, (2) certify to the board the amount of the local 911 charge, as set out in Section 42102.5, or the applicable tiered rate for a utility user tax, as set out in Section 42102.

(b) In the event that a local agency adopts a new local charge that is imposed on prepaid mobile telephony services after September 1, 2015, the local agency shall enter into a contract with the board to perform the functions set forth in Section 42103, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year. In the contract, the local agency shall certify to the board: (1) that its ordinance applies its local charge to prepaid mobile telephony services and that the local agency agrees to indemnify, and hold and save harmless, the board, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and, (2) the amount of the local 911 charge, as set out in Section 42102.5, or the applicable tiered rate for a utility user tax, as set out in Section 42102.

(c) In the event that a local agency increases its local charge after September 1, 2015, the local agency shall provide the board with written notice of the increased local charge on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

(d) In the event that a local agency reduces or eliminates a local charge on prepaid mobile telephony services, the local agency shall provide the board with written notice pursuant to subdivision (c) of Section 42010.

(e) Notwithstanding subdivision (a), through and including December 31, 2015, a prepaid MTS provider may elect to remit the local charge to the appropriate local taxing jurisdiction based on the applicable tax rate of Section 42102, Section 42102.5, or both, and those remittances shall be deemed to be in full compliance with the local ordinance imposing a local charge on prepaid mobile telephony service.

42102. (a) Notwithstanding any other law, on and after January 1, 2016, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a utility user tax on the consumption of prepaid mobile telephony service in the city, county, or city and county at the rate as specified in an ordinance authorized pursuant to

Section 7284.2 or any other law is suspended, and the utility user tax rate to be applied instead during the period under any ordinance as so adopted is the applicable of the following:

(1) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of less than 1.5 percent, the rate shall be 0 percent.

(2) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 1.5 percent or more but less than 2.5 percent, the rate shall be 1.5 percent.

(3) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 2.5 percent or more but less than 3.5 percent, the rate shall be 2.5 percent.

(4) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 3.5 percent or more but less than 4.5 percent, the rate shall be 3.5 percent.

(5) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 4.5 percent or more but less than 5.5 percent, the rate shall be 4.5 percent.

(6) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 5.5 percent or more but less than 6.5 percent, the rate shall be 5.5 percent.

(7) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 6.5 percent or more but less than 7.5 percent, the rate shall be 6.5 percent.

(8) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 7.5 percent or more but less than 9 percent, the rate shall be 7.5 percent.

(9) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 9 percent or more, the rate shall be 9 percent.

(b) Subdivision (a) is a self-executing provision that operates without regard to any decision or act on the part of any city, county, or city and county. A change in a utility user tax rate resulting from either the suspension of, or the termination of the suspension of, a utility user rate adopted by a city, county, or city and county set forth in subdivision (a) is not subject to voter approval under either statute or Article XIII C of the California Constitution.

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a utility user tax at any rate on the consumption of communication services, including a utility user tax on the consumption of prepaid mobile telephony service, except that during the period on and after January 1, 2016, any utility user tax rate on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

(d) On and after January 1, 2016, this part shall be all of the following:

(1) The exclusive method for both of the following:

(A) Collecting the local utility user taxes, local 911 charges, and any other local charges imposed on consumers using prepaid mobile telephony services.

(B) Defining the scope of the tax or charge with respect to prepaid mobile telephony services.

(2) For the taxation of prepaid mobile telephony services only, the complete substitute for the utility user tax rate set out in the local ordinance with the applicable tiered rate as established by the Legislature.

(3) This part shall not preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges.

42102.5. (a) Notwithstanding any other law, on and after January 1, 2016, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, for access to communication services or access to local “911” emergency telephone systems in the city, county, or city and county at the rate as specified in an ordinance is suspended, and the rate to be applied instead during that period under any ordinance as so adopted is the applicable of the following:

(1) In the case of a city, county, or city and county that has adopted an ordinance to impose a charge that applies to prepaid mobile telephony service for access to communication services or access to local “911” emergency telephone systems in the city, county, or city and county at the rate of less than one dollar (\$1) per month per access line, including any adjustments for inflation, the rate shall be 0 percent.

(2) In the case of a city, county, or city and county that has adopted an ordinance to impose a charge that applies to prepaid mobile telephony service for access to communication services or access to local “911” emergency telephone systems in the city, county, or city and county at a specified percentage or at the rate of one dollar (\$1) per month per access line, including any adjustments for inflation, or more, the rate shall be the specified percentage or the rate obtained by dividing the dollar amount by 50, rounded to the nearest one-tenth of 1 percent.

(b) Subdivision (a) is a self-executing provision that operates without regard to any decision or act on the part of any city, county, or city and county. A change in an access charge rate resulting from either the suspension of, or the termination of the suspension of, a charge adopted by a city, county, or city and county set forth in subdivision (a) is not subject

to voter approval under either statute or Article XIII C of the California Constitution.

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a charge at any rate, that applies to prepaid mobile telephony services, for access to communication services or access to local “911” emergency telephone systems in the city, county, or city and county, except that during the period on and after January 1, 2016, any charge on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

42103. (a) The board shall perform all functions incident to the collection of the local charges of a local jurisdiction or local agency and shall collect and administer the local charges in the manner prescribed for the collection of the prepaid MTS surcharge in the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001)), subject to the limitations set forth in Section 42105. For purposes of this part, the references in the Fee Collection Procedures Law to “fee” shall include the local charge imposed by this part, and references to “feepayer” shall include a person required to pay the local charge imposed by this part, which includes the seller.

(b) All local charges collected by the board shall be deposited in the Local Charges for Prepaid Mobile Telephony Services Fund which is hereby created in the State Treasury, and shall be held in trust for the local taxing jurisdiction, and shall not be used for any other purpose. Local charges shall consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the board, less payments for refunds and reimbursement to the board for expenses incurred in the administration and collection of the local charges. The board shall transmit the funds to the local jurisdictions periodically as promptly as feasible. The transmittals required under this section shall be made at least once in each calendar quarter. The board shall furnish a quarterly statement indicating the amounts paid and withheld for expenses of the board and subject to subdivision (e) of Section 42020.

(c) The board shall prescribe and adopt rules and regulations as may be necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

(d) The board’s audit duties under this part shall be limited to verification that the seller complied with this part.

(e) Subject to the confidentiality requirements of Sections 7284.6, 7284.7, and 19542, the board shall make available to a requesting local jurisdiction or local agency any information that is reasonably available to the board regarding the proper collection and remittance of a local charge of the local jurisdiction or local agency by a seller, including a direct seller.

(f) The board may contract with a third party for purposes of this part, solely in connection with the following board duties:

(1) To allocate and transmit collected local charges in the Local Charges for Prepaid Mobile Telephony Services Fund pursuant to subdivision (b) to the appropriate local jurisdictions.

(2) To audit proper collection and remittance of the local charge pursuant to this part.

(3) To respond to requests from sellers, consumers, boards, and others regarding issues pertaining to local charges that are within the scope of the board's duties.

(g) For purposes of this part, any third-party contract under subdivision (e) shall be subject to the following limitations:

(1) Any third party shall, to the same extent as the board, be subject to subdivision (b) of Section 55381, relating to unlawful disclosures.

(2) A third-party contract shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered. For purposes of this section, "contingent fee" includes, but is not limited to, a fee that is based on a percentage of the tax liability reported on a return, a fee that is based on a percentage of the taxes owed, or a fee that depends on the specific tax result attained.

(h) Except for sharing of information pursuant to subdivision (e), this section does not apply to direct sellers.

42105. (a) The local jurisdiction or local agency that has adopted an ordinance to impose a local charge that applies to prepaid mobile telephony service shall be solely responsible for:

(1) Defending any claim regarding the validity of the ordinance in its application to prepaid mobile telephony service.

(2) Interpreting any provision of the ordinance, except to the extent specifically superseded by this statute.

(3) Responding to any claim for refund by a customer arising under subdivision (b), (c), or (d). The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

(4) Certifying that the local jurisdiction's or local agency's ordinance applies the local charge to prepaid mobile telephony services and agreeing to indemnify and hold harmless the board, its officers, agents, and employees for any and all liability for damages that may result from collection of the local charge.

(5) Reallocation of local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.

(6) Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the local jurisdiction's or local agency's ordinance.

(b) A consumer may rebut the presumed location of the retail transaction to the city or county clerk of the local jurisdiction, as provided in subdivision (b) of Section 42014, by filing a claim and declaration under penalty of perjury on a form established by the city or county clerk of the local jurisdiction or local agency indicating the actual location of the retail sale. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

(c) A consumer that is exempt from the local charge under the local enactment may file a claim for a refund from the local jurisdiction or local

agency in accordance with the refund provisions of the local enactment that allows the claim to be filed.

(d) In connection with any actions or claims relating to or arising from the invalidity of a local tax ordinance, in whole or in part, the seller shall not be liable to any consumer as a consequence of collecting the tax. In the event a local jurisdiction or local agency is ordered to refund the tax, it shall be the sole responsibility of the local jurisdiction or local agency to refund the tax. In any action seeking to enjoin collection of a local charge by a seller, in any action seeking declaratory relief concerning a local charge, in any action seeking a refund of a local charge, or in any action seeking to otherwise invalidate a local charge, the sole necessary party defendant in the action shall be the local jurisdiction or local agency on whose behalf the local charge is collected, and the seller collecting the local charge shall not be named as a party in the action. There shall be no recovery from the state for the imposition of any unconstitutional or otherwise invalid local charge that is collected pursuant to this part.

42106. (a) For purposes of this section:

(1) “Quarterly local charges” means the total amount of local charges transmitted by the board to a city, county, or city and county for a calendar quarter.

(2) “Refund” means the amount of local charges deducted by the board from a city’s, county’s, or city and county’s quarterly local charges in order to pay the city’s, county’s, or city and county’s share of a local charge refund due to one taxpayer.

(3) “Offset portion” means that portion of the refund which exceeds the greater of fifty thousand dollars (\$50,000) or 20 percent of the city’s, county’s, or city and county’s quarterly local charges.

(b) Except as provided in subdivision (c), if the board has deducted a refund from a city’s, county’s, or city and county’s quarterly local charges which includes an offset portion, then the following provisions apply:

(1) Within three months after the board has deducted an offset portion, the city, county, or city and county may request the board to transmit the offset portion to the city, county, or city and county.

(2) As promptly as feasible after the board receives the city’s, county’s, or city and county’s request, the board shall transmit to the city, county, or city and county the offset portion as part of the board’s periodic transmittal of local charges.

(3) The board shall thereafter deduct a pro rata share of the offset portion from future transmittals of local charges to the city, county, or city and county over a period to be determined by the board, but not less than two calendar quarters and not more than eight calendar quarters, until the entire amount of the offset portion has been deducted.

(c) The board shall not transmit the offset portion of the refund to the city, county, or city and county if that transmittal would reduce or delay either the board’s payment of the refund to the taxpayer or the board’s periodic transmittals of local charges to other cities, counties, or city and county.

42107. A local jurisdiction or local agency shall pay to the board its pro rata share of the board's cost of collection and administration as established pursuant to subdivision (e) of Section 42020.

42109. The board shall annually prepare a report showing the amount of both reimbursed and unreimbursed costs incurred by it in administering the collection of local charges pursuant to this part.

42110. (a) Notwithstanding Section 55381, it is unlawful for any person, other than an officer or employee of a county, city and county, city, or district, who obtains access to information contained in, or derived from, prepaid mobile telephony services surcharge and local charge records of the board pursuant to subdivision (b), to retain that information after that person's contract with the county, city and county, city, or district has expired.

(b) (1) When requested by resolution of the legislative body of any county, city and county, city, or district, the board shall permit any duly authorized officer or employee of the county, city and county, city, or district, or other person designated by that resolution, to examine all of the prepaid mobile telephony services surcharge and local charge records of the board pertaining to the ascertainment of those prepaid mobile telephony services surcharge and local charges to be collected for the county, city and county, city, or district by the board pursuant to contract entered into between the board and the county, city and county, city, or district pursuant to this part. Except as otherwise provided in this section, this subdivision does not allow any officer, employee, or other person authorized or designated by a county, city and county, city, or district to examine any sales or transactions and use tax records of any taxpayer. The costs that are incurred by the board in complying with a request made pursuant to this subdivision shall be deducted by the board from those revenues collected by the board on behalf of the county, city and county, city, or district making the request.

(2) The resolution of the legislative body of the county, city and county, city, or district shall certify that any person designated by the resolution, other than an officer or employee, meets all of the following conditions:

(A) Has an existing contract with the county, city and county, city, or district to examine those prepaid mobile telephony services surcharge and local charge records.

(B) Is required by that contract to disclose information contained in, or derived from, those prepaid mobile telephony services surcharge and local charge records only to an officer or employee of the county, city and county, city, or district who is authorized by the resolution to examine the information.

(C) Is prohibited by that contract from performing consulting services for a seller during the term of that contract.

(D) Is prohibited by that contract from retaining the information contained in, or derived from, those prepaid mobile telephony services surcharge and local charge records, after that contract has expired.

(3) Information obtained by examination of board records pursuant to this subdivision shall be used only for purposes related to the collection of

the prepaid mobile telephony services surcharge and local charges by the board pursuant to the contract, or for purposes related to other governmental functions of the county, city and county, city, or district set forth in the resolution.

(c) If the board believes that any information obtained pursuant to subdivision (b) has been disclosed to any person not authorized or designated by the resolution of the legislative body of the county, city and county, city, or district, or has been used for purposes not permitted by subdivision (b), the board may impose conditions on access to its local charge records that the board considers reasonable, in order to protect the confidentiality of those records.

(d) Predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid local charges or amounts of local charges required to be collected, interest, and penalties.

42111. This part shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 10. (a) For purposes of this section the following terms have the following meanings:

(1) “Local charges” has the same meaning as defined in Section 42101 of the Revenue and Taxation Code.

(2) “Prepaid MTS collection acts” mean the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code) and the Local Prepaid Mobile Telephony Services Collection Act (Part 21.1 (commencing with Section 42100) of Division 2 of the Revenue and Taxation Code) and the related implementing statutes found in Sections 1, 2, 5, and 7 of this act that will repeal as of January 1, 2020, unless extended by the Legislature.

(3) “Prepaid MTS surcharge” has the same meaning as defined in Section 42004 of the Revenue and Taxation Code.

(b) To assist the Legislature in determining whether to extend the prepaid MTS collection acts beyond their repeal date of January 1, 2020, the State Board of Equalization, by no later than July 1, 2017, shall prepare both of the following:

(1) A report identifying, for the 2016 calendar year, the actual revenues collected by the board through the prepaid MTS surcharges and local charges, the number of sellers remitting prepaid MTS surcharges and local charges, including the number of individual seller locations remitting local charges pursuant to the prepaid MTS collection acts, and the board’s actual costs of implementation of the prepaid MTS collection acts.

(2) A revised estimate, for the 2017, 2018, and 2019 calendar years, of the annual revenues to be collected by the board through the prepaid MTS surcharges and local charges and the board’s annual cost of implementation of the prepaid MTS collection acts for each of those calendar years, including

any other significant anticipated change in revenues or board implementation costs if the acts are extended beyond their repeal date of January 1, 2020.

(c) Subdivision (b) only applies to those remittances that are required to be remitted to the board pursuant to the prepaid MTS collection acts.

SEC. 11. (a) For purposes of this section, the following terms have the following meanings:

(1) “Local charges” has the same meaning as defined in Section 42101 of the Revenue and Taxation Code.

(2) “Prepaid MTS collection acts” mean the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code) and the Local Prepaid Mobile Telephony Services Collection Act (Part 21.1 (commencing with Section 42100) of Division 2 of the Revenue and Taxation Code) and the related implementing statutes found in Sections 1, 2, 5, and 7 of this act that will repeal as of January 1, 2020, unless extended by the Legislature.

(3) “Prepaid MTS surcharge” has the same meaning as defined in Section 42004 of the Revenue and Taxation Code.

(b) The repeal of any provision of the prepaid MTS collection acts shall not affect the billing or collection of the prepaid MTS surcharge, the calculation, billing, or collection of a pro-rata deficiency pursuant to Section 41033 of the Revenue and Taxation Code, the liability for which accrued prior to January 1, 2020, the making of any refunds and effecting of any credits, the disposition of money collected, nor shall the repeal affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before that repeal; but all rights and liabilities under that law shall continue, and may be enforced in the same manner, as if the repeal had not been made.

SEC. 12. The Legislature finds and declares that the law in effect prior to the imposition of the prepaid MTS surcharge as a result of the enactment of this act is the subject of ongoing and potential litigation. No inference shall be drawn from the enactment of this act with respect to any remittance requirements of a prepaid MTS provider pursuant to the law as it existed prior to the enactment of this act. Additionally, nothing in this act shall affect any remittance requirements of a prepaid mobile telephony services provider for any service other than prepaid mobile telephony services. Nothing in this act shall affect the federal remittance requirements of a prepaid mobile telephony services provider.

SEC. 13. It is the intent of the Legislature that the remittance obligations of a prepaid mobile telephony services provider, relating to emergency telephone users surcharge and any charges imposed by the Public Utilities Commission pursuant to Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code or for purposes of the universal services programs, shall remain applicable for each of the following:

(a) The collection of surcharges, the liability for which accrued prior to January 1, 2016.

(b) The making of any refunds and the effecting of any credits for payments made on claims of liability that accrued prior to January 1, 2016.

(c) The disposition of money collected on any liability that accrued prior to January 1, 2016.

(d) The commencement of any action or proceeding pursuant to the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code).

SEC. 14. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 15. (a) Section 5.5 of this bill incorporates amendments to Section 41030 of the Revenue and Taxation Code proposed by both this bill and Senate Bill 1211. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, but this bill becomes operative first, (2) each bill amends Section 41030 of the Revenue and Taxation Code, and (3) this bill is enacted after Senate Bill 1211, in which case Section 41030 of the Revenue and Taxation Code, as amended by Section 5 of this bill, shall remain operative only until the operative date of Senate Bill 1211, at which time Section 5.5 of this bill shall become operative.

(b) Sections 5 and 5.5 of this bill would amend Section 41030 of the Revenue and Taxation Code and would repeal that section on January 1, 2020. Section 6 of this bill would add Section 41030 to the Revenue and Taxation Code as it read prior to its amendment by either Section 5 or 5.5 of this bill. Section 6.5 of this bill incorporates amendments to Section 41030 of the Revenue and Taxation Code proposed by Senate Bill 1211. Section 6.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 41030 of the Revenue and Taxation Code, and (3) this bill is enacted after Senate Bill 1211, in which case Section 6 of this bill shall not become operative.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide a standardized collection mechanism as soon as possible by which state and local charges are collected from end-users of prepaid mobile telephony services, thereby permitting needed financial

support for programs necessary to serve the public or telecommunications users, it is necessary that this act take effect immediately.

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Memorandum

To: Ms. Cynthia Bridges
Executive Director, (MIC:73)

Date: December 24, 2015

From: 
Randy Ferris
Chief Counsel

Subject: **Board Meeting, January 26-28, 2016**
Item J - Chief Counsel's Rulemaking Calendar
Fee Collection Procedures Regulation 3500, *Application of the Fee Collection Procedures Law*

We request your approval to place proposed changes to Fee Collection Procedures Regulation 3500, *Application of the Fee Collection Procedures Law*, on the Chief Counsel's Rulemaking Calendar for the January 26-28, 2016, Board meeting. Regulation 3500 lists fees and taxes collected pursuant to the Fee Collection Procedures Law. It was adopted January 27, 2010, and has not been amended since its adoption.

The proposed changes update Regulation 3500 to clarify that the fees and taxes collected pursuant to the Fee Collections Procedures Law include the following three new taxes and fees:

- Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services Collection Act;
- The Lumber Products Assessment; and
- The Prepaid Mobile Telephony Services Surcharge required to be collected by sellers other than direct sellers.

The proposed changes also update the regulation's "reference" note to include references to Public Resources Code section 4629.5 and Revenue and Taxation Code (RTC) sections 42020 and 42103, which are the provisions that provide that these three new taxes and fees are collected pursuant to the Fee Collections Procedures Law.

Assembly Bill No. 1492 (Stats. 2012, ch. 289) added Public Resources Code section 4629.5 to impose the Lumber Products Assessment on certain purchases of specified lumber products and engineered wood products, beginning January 1, 2013, and section 4629.5 specifies that the Board "shall administer and collect the assessment . . . pursuant to the Fee Collection Procedures Law." Assembly Bill No. 1717 (Stats. 2014, ch. 885) enacted the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (RTC, § 42001 et seq.) and the Local Prepaid Mobile Telephony Services Collection Act (Local Act) (RTC, § 42100 et seq.). The Prepaid MTS Act imposes a prepaid MTS surcharge on certain transactions involving prepaid MTS on and after January 1, 2016. The Local Act provides that certain local charges imposed

by a local agency on prepaid MTS shall be collected at the same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid MTS Act. The Local Act also provides in RTC section 42103, subdivision (b) that the Board “shall collect and administer the local charges in the manner prescribed for the collection of the prepaid MTS surcharge in the [Prepaid MTS Act].”

The Prepaid MTS Act further provides in RTC section 42020, subdivision (a)(1) that “The [B]oard shall administer and collect the prepaid MTS surcharge . . . pursuant to the Fee Collection Procedures Law.” However, section 42020 goes on to provide, in subdivision (f), that: “This section applies only to those remittances of the prepaid MTS surcharge or local charges that are required to be remitted to the [B]oard pursuant to [the Prepaid MTS Act].” RTC section 42010, subdivision (d) specifies that sellers, other than direct sellers, are required to remit the prepaid MTS surcharge and local charges they collect to the Board pursuant to the Prepaid MTS Act. Also, RTC section 42010, subdivision (f) specifies that for a direct seller: (1) “[t]hat portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the commission”; (2) “[t]hat portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the [B]oard pursuant to the Emergency Telephone Users Surcharge Act” (RTC, § 41001 et seq.); and (3) “[l]ocal charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge.” Therefore, the proposed changes to Regulation 3500 clarify that the Board collects the “Prepaid Mobile Telephony Services Surcharge” and “Local Charges” required to be collected by sellers other than direct sellers pursuant to the Fee Collection Procedures Law and make the regulation consistent with the Prepaid MTS Act and Local Act.

Staff will request the Board’s authorization to make the changes to Regulation 3500 under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes are appropriate for processing under Rule 100 because the changes add references to Public Resources Code section 4629.5 and RTC sections 42020 and 42103 to the regulation’s reference note, and make the provisions of the regulation consistent with those newly enacted statutes, which state that the new taxes and fees are collected pursuant to the Fee Collection Procedures Law. Further, the proposed changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of Regulation 3500 illustrating the proposed changes.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at (916) 323-3091.

Recommendation by:


Randy Ferris, Chief Counsel

Approved:


Cynthia Bridges, Executive Director

Approved:



Lynn Bartolo, Acting Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the 1-26-16 Board Meeting



Joann Richmond, Chief
Board Proceedings Division

Attachment: Proposed Changes to Regulation 3500

cc: Mr. David Gau (MIC:101)
Ms. Lynn Bartolo (MIC:57)
Ms. Joann Richmond (MIC:80)
Mr. Robert Tucker (MIC:82)
Ms. Susanne Buehler (MIC:92)
Mr. Bradley M. Heller (MIC:82)
Ms. Kirsten Stark (MIC:50)
Mr. Robert Zivkovich (MIC:57)

Proposed Changes to Regulation 3500

Regulation 3500. Application of the Fee Collection Procedures Law.

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services Collection Act, Lumber Products Assessment, Marine Invasive Species Fee, Natural Gas Surcharge, Prepaid Mobile Telephony Services Surcharge required to be collected by sellers other than direct sellers, and Water Rights Fee.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 4629.5, 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 42020, 42103 and 44003, Revenue and Taxation Code; Section 1537, Water Code.

Tuesday, January 26, 2016

CHIEF COUNSEL MATTERS**RULEMAKING****Petition to amend Sales and Use Tax Regulation 1569, *Consignees and Lienors of Tangible Personal Property for Sale***

Scott Claremon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Regulation 1569 to add language that would allow the original pledger to redeem personal property from a pawnbroker within six months of the expiration of the grace period as a non-taxable event ([Exhibit 1.6](#)).

Speaker: Bill Duplissea, Lobbyist, California Pawn Brokers Association

Action: Ms. Harkey moved to grant the petition to amend Regulation 1569. The motion was seconded by Ms. Ma. Ms. Harkey withdrew her motion.

Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board referred the petition to the Legislative Committee on concept to expedite legislation that accomplishes the goal.

Fee Collection Procedures Regulation 3500, *Application of the Fee Collection Procedure Law*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to add references to the Lumber Products Assessment and the Prepaid Mobile Telephony Services Surcharge and Local Charges required to be collected by sellers other than direct sellers ([Exhibit 1.7](#)).

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved authorization to make Rule 100 changes to Regulation 3500 as recommended by staff.

ADMINISTRATIVE SESSION

In honor of the *California Women Lead* and the *2016 Woman of the Year* recipients, the Board recognized Toni Atkins, Kristin Olsen and Nancy McFadden who have each been instrumental in demonstrating the extraordinary capabilities of women in leadership in California government ([Exhibit 1.8](#)).

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

JANUARY 26, 2016

CHIEF COUNSEL MATTERS

J SECTION 100 CHANGES

J2 FEE COLLECTION PROCEDURES REGULATION 3500,

APPLICATION OF THE FEE COLLECTION PROCEDURE LAW

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Sen. George Runner (Ret.)
Vice Chair

Fiona Ma, CPA
Member

Diane L. Harkey
Member

Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings
Division

For Board of
Equalization Staff:

Bradley Heller
Tax Counsel IV
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 JANUARY 26, 2016

4 ---oOo---

5 MS. RICHMOND: Our next matter is a Section
6 100 change. Item J2, Fee Collection Procedures
7 Regulation 3500, Application of the Fee Collection
8 Procedure Law.

9 MR. HORTON: Thank you, Mr. Heller. Please
10 place it on the record expeditiously.

11 MR. HELLER: Absolutely.

12 Good evening, Chairman Horton, Members of
13 the Board. I'm Bradley Heller from the Board's
14 Legal Department.

15 I'm here to request that the Board vote to
16 authorize staff to complete Rule 100 changes to
17 Regulation 3500.

18 MR. HORTON: Thank you very much.

19 Member --

20 MS. HARKEY: So move.

21 MS. MA: So move.

22 MR. HORTON: -- Harkey moves. Member Ma
23 seconds.

24 Without objection, Members --

25 MR. HELLER: Thank you.

26 MR. HORTON: -- such will be the order.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on January 26, 2016 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 3 constitute a complete and accurate transcription of the shorthand writing.

Dated: January 28, 2016

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter

