AGENDA – October 5, 1999 Business Taxes Committee Meeting
Emergency Telephone Users Surcharge Regulations 2401 and 2406

Action 1 – Consent Regulation 2401 Definitions. Regulation 2406 Liability for Surcharge Billed Through Billing Agents.	Adopt proposed language as agreed upon by staff and industry.
Action 2 – Authorization to Publish	Direct the publication of the proposed amendments to Regulations 2401 and 2406 as adopted in the above action.

Issue Paper Number 099-037

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

BOARD OF EQUALIZATION
KEY AGENCY ISSUE

BILLING AGGREGATORS AND THE EMERGENCY TELEPHONE USERS SURCHARGE

I. Issue

Whether billing aggregators may report and remit the Emergency Telephone Users surcharge (9-1-1 surcharge) on behalf of their telephone service supplier clients, and, if so, the procedure for such reporting.

II. Staff Recommendation

Adopt the attached regulations (Attachment 1) which allows billing aggregators to remit the surcharge and file a single return each reporting period as agent on behalf of multiple service suppliers. Each service supplier would be required to provide the Board of Equalization written authorization for the billing aggregator to file returns on the service supplier's behalf. The Board staff proposes to add a check-off box and space to the 9-1-1 return for the service supplier to use to notify the board that it has authorized a billing aggregator to file on its behalf. The regulation allows a service supplier to utilize the services of a billing aggregator and authorizes the Board staff to request essential service supplier account information for audit and compliance purposes directly from the billing aggregator. Since the billing aggregator acts only as the service supplier's agent, the service supplier ultimately remains liable for the remittance of the proper amount of surcharge to the Board.

III. Other Alternative(s) Considered

- Allow the billing aggregators to act as agent for service suppliers but require the billing aggregator to file separate returns on behalf of each individual service supplier client.
- Require service suppliers individually to remit the surcharge and file their own returns without engaging a billing aggregator.

IV. Background

The purpose of this issue paper is to describe the way in which service suppliers are relying on billing aggregators to bill service charges and collect payments (including various taxes and the surcharge), recognize that the use of billing aggregators is a valuable tool for service suppliers and beneficial both to the service supplier and to the state, and establish a procedure for the Board to receive returns and remittances from billing aggregators on behalf of their service supplier clients.

The 9-1-1 law became operative on July 1, 1977. The law imposes a surcharge calculated as a percentage of amounts paid for intrastate telephone communication services to fund statewide emergency telephone operations. The 9-1-1 law requires each service supplier providing intrastate telephone communication services in California to collect the surcharge from each service user at the time it collects its billings from the service user. Additionally, the 9-1-1 law requires each service supplier to file a return and remit the surcharge to the Board based on the amount collected from its customers (service users) for intrastate telephone communication services.
The telecommunications industry has changed dramatically since the inception of the 9-1-1 law. Until the 1984 federal deregulation of long distance carriers, the taxpayer base for the 9-1-1 program had consisted of large, publicly traded long distance service suppliers and well-established local exchange carriers. Prior to deregulation, there were fewer than 100 service suppliers registered with the Board to collect and remit the 9-1-1 surcharge. Keeping track of which entity owed the surcharge was a relatively simple task.

After long distance service was deregulated, a large number of smaller companies began providing long distance service within California. Generally, the small long distance service suppliers purchase blocks of time from major telecommunications companies that possess telephone lines (e.g., AT & T, MCI) and provide intrastate and interstate telephone communication services to California customers. Currently, there are nearly 500 service suppliers registered to collect the 9-1-1 surcharge in California.

In order to bill a customer for the services it provides and collect the 9-1-1 surcharge, a service supplier must determine the originating, terminating and "billed to" numbers of a call record. Typically, only the major telecommunication companies have their own direct billing systems and databases. In order for a small long distance service supplier to bill its customers, it may need to enter into agreements with local exchange carriers in areas in which it does business. Under these agreements, the local exchange carriers collect and forward amounts charged for services provided by the small long distance service supplier. The small long distance service supplier then reports and remits the 9-1-1 surcharge to the Board.

Many of the small long distance service suppliers who do not enter into agreements with local exchange carriers to collect the amounts they bill their service users may utilize the services of billing aggregators to collect their charges for long distance services provided to service users. The billing aggregator acts as a billing and collection agent for the small long distance service suppliers. A billing aggregator may also act as agent for medium or large long distance service suppliers for certain casual traffic.

Billing aggregators have entered into agreements with most of the local exchange carriers in the country to include the charges for services provided by the billing aggregators' clients in the bills the local exchange carriers send to service users. Thus, the billing aggregators have the ability to bill service users for nearly every long distance phone call made in the country. Either the local exchange carrier computes the taxes due on the service charges pursuant to a contract with a billing aggregator, or the billing aggregator provides the local exchange carrier with account-ready information (taxes already computed

on the service charges) that it received from its service supplier clients. The billing aggregator combines the call records of all its clients, and provides the combined data to the local exchange carrier for insertion in its bills to the service users.

The local exchange carrier bills the service user for each call provided by the billing aggregator's clients in a separate area of the bill. The combined long distance calls are shown under the name of the billing aggregator. Generally, the local exchange carrier uses its tax matrix to determine the federal, state, and local tax and surcharge liability for the calls on each bill. The portion of the bill that shows the charges billed on behalf of the billing aggregator, as well as the tax associated with those charges, is distinguished from the local exchange carrier's portion of the bill. The local exchange carrier treats the billing aggregator as though it is the long distance service supplier by forwarding the funds it collects to the billing aggregator. The billing aggregator then distributes the money to the service suppliers it represents. Based on the information received from the local exchange carrier, the billing aggregator reports and remits the 9-1-1 surcharge on behalf of all service suppliers it represents in the aggregate.
There are currently four billing aggregators of which the Board is aware representing approximately 300 service suppliers. One of these billing aggregators has consistently remitted the 9-1-1 surcharge on behalf of its clients since the second quarter 1995. The other three billing aggregators started remitting the 9-1-1 surcharge with the October 1997 return, and there is evidence that some billing aggregators have placed 9-1-1 surcharge amounts for previous periods in escrow accounts pending resolution of this matter. While billing aggregators perform an important service for many service suppliers, the amount of 9-1-1 surcharge collected for service suppliers by billing aggregators represents one half of one percent (.5%) of the total 9-1-1 surcharge collected in 1998.

As an accommodation to billing aggregators and service suppliers, the Excise Taxes Division has administratively allowed the billing aggregators to register with the Board and remit the 9-1-1 surcharges collected on behalf of their service supplier clients. At this time, the funds remitted are applied to an account established under the name of the billing aggregator.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends allowing a billing aggregator to file a single return each reporting period as agent on behalf of all its service supplier clients, pay the surcharge with a single check, and provide, when requested by the Board, information about the individual service suppliers on whose behalf the return was filed. While it is not possible to separately allocate a specific amount of 9-1-1 surcharge to a particular service supplier when a billing aggregator has collected the amounts billed, it will be possible for the Board to request the documentation submitted to the billing aggregator by the local exchange carrier, thereby verifying the collection of the 9-1-1 surcharge and remittance to the Board. The service supplier would remain responsible to ensure the proper amount of surcharge is remitted on its behalf to the Board.

Since a billing aggregator is not a service supplier, the Board would not directly audit the billing aggregator or bill it for amounts determined to be due. Rather, the Board might audit the billing aggregator to determine the surcharge liability of one of the billing aggregator's service supplier

clients. If it were discovered that a service supplier owed additional 9-1-1 surcharge, Board audit staff would send a "Notice of Determination" to the service supplier, who is required by Revenue and Taxation Code Section 41056 to keep records as necessary to determine the amount of 9-1-1 surcharge due.

Under the staff recommendation, the service supplier would be required to inform the Board in writing of its decision to utilize a billing aggregator to report and remit its 9-1-1 surcharge liability to the Board. Board staff proposes to amend the 9-1-1 return to add space for the service supplier to indicate whether it is using a billing aggregator to collect service charges. The service supplier would continue to receive an individual return because the service supplier would still be ultimately responsible to pay the correct amount of surcharge to the Board. In addition, the Board would require that the billing aggregator identify itself and its service supplier clients to the Board and, for ease of administration, would establish a billing aggregator account for the purpose of crediting remittances sent to the Board on behalf of service suppliers.

B. Pros of the Staff Recommendation

- Provides a convenient method for small long distance service suppliers with limited resources to bill and collect charges for services rendered and to pay the surcharge in conformity with the law. Also provides a convenient method for larger long distance service suppliers to bill "casual" charges for services provided outside their service areas.
- Continues the administrative procedure currently followed by the Board in handling billing aggregator returns.
- No change in audit procedure would be required.
- Billing aggregators could remit payments on behalf of service suppliers who have not registered with the Board and received a 9-1-1 surcharge account number.

C. Cons of the Staff Recommendation

- The 9-1-1 surcharge would be collected and paid as a total for all service suppliers' charges instead of as an amount based on each individual service supplier's charges billed. The state will verify that it has collected all 9-1-1 surcharge amounts collected by the local exchange carrier and that those amounts were correctly computed on the charges submitted to the billing aggregator and, in turn, to the local exchange carrier without auditing each individual service supplier.
- Requires regulatory changes.
- The billing aggregator's service supplier client will be assessed statutory interest on audit deficiencies, even though the billing aggregator may have reported the amount of surcharge for all its service suppliers.
- The Board of Equalization may have difficulty obtaining information to support a finding that what was actually reported by the billing aggregator was correct.

D. Statutory or Regulatory Change

This recommendation would require a change in the 9-1-1 regulations to define billing aggregator and to specify that a billing aggregator may file a return on behalf of a service supplier only if the service supplier has authorized the billing aggregator to represent it before the Board and has notified the Board of the agency relationship.

E. Administrative Impact

This recommendation will increase slightly the workload of the compliance section, and will increase the workload of the audit staff since it will be more complicated and difficult to verify that a service supplier has collected and paid the surcharge on behalf of a particular service supplier, since the billing aggregator will be collecting and remitting the surcharge on an aggregate basis for multiple service supplier accounts.

F. Fiscal Impact

1. Cost Impact

There are no additional costs expected.

2. Revenue Impact

The billing aggregator may begin remitting monies on behalf of service suppliers not currently registered to collect the 9-1-1 surcharge, resulting in collection of amounts that are not currently being collected. The amount of additional revenue cannot be determined, but it is not considered to be significant.

G. Taxpayer/Customer Impact

This recommendation would provide small service suppliers without sufficient billing capabilities a convenient way to comply with the 9-1-1 law. This recommendation also takes into account that service suppliers are already using billing aggregators to bill and collect charges for telephone services that the service suppliers do not otherwise have the capacity to collect.

H. Critical Time Frames

The Board should adopt regulations to authorize and implement this approach to collect the 9-1-1 surcharge to accommodate the system which has already developed.

VI. Alternative 1

A. Description of the Alternative

Under this alternative, billing aggregators would be recognized by the Board as agents of their service supplier clients. However, instead of filing one return on behalf of multiple service suppliers, the billing aggregator would be required to file a separate return on account of each service supplier client. The billing aggregator would be allowed to send all returns in a single envelope and include a single check to cover all of the returns. Under this alternative, the billing aggregator would not be required to be registered as a service supplier or assigned an account number, since it is not a "service supplier" under Revenue and Taxation Code Section 41007.

Under this alternative, the service supplier would be required to inform the Board in writing of its decision to utilize a billing aggregator to report and remit its 9-1-1 surcharge liability to the Board. Upon verification, Board staff would simply update the mailing address on the registration screen to the address of the billing aggregator. The billing aggregator would begin receiving the service supplier's returns and complete the 9-1-1 surcharge returns, supplying the information required on the return and remitting the surcharge to cover all the billing aggregator's clients. The service supplier would still be responsible to pay the correct amount of surcharge to the Board.

Upon receipt of the service suppliers' returns and remittance from the billing aggregator, the Cashier Unit would apply the remittance to the individual service suppliers' accounts. Returns and payments would be posted to the service suppliers' accounts, as identified in the Board's records, and account information on the Special Taxes Automated Revenue System (STARS) would remain the same. This procedure would not require any fund transfers on the payments, since the billing aggregator and the Cashier Unit would have already allocated the funds to the proper service supplier account.

In order to implement this alternative, staff would need to identify which service suppliers utilize a billing aggregator to ensure that duplicate returns are sent to the billing aggregator.

B. Pros of Alternative 1

- Provides a method for small long distance service suppliers with limited resources to conform to the law. Also provides a convenient method for larger long distance service suppliers to bill "casual" charges for services provided outside their service areas.
- No change in law or regulation required.
- No increase in staff required.
- Simplifies audit trail.

C. Cons of Alternative 1

- Since the cost to obtain detailed account and billing records from the local exchange carrier would be prohibitively expensive for the billing aggregator and service supplier, this alternative will require that billing aggregators estimate the amount of 9-1-1 tax allocated for each service supplier client.
- Proposal may require temporary manual return mailing process.
- Cost to the service supplier may increase since the billing aggregator may need to increase its charges to cover their additional costs.
- Because it is will be too costly to obtain detailed billing information from the local exchange carrier as to each individual service supplier, the amount of 9-1-1 surcharge allocated to each service supplier is a proportion of all calls. If a billing aggregator files an amended return to correct the proportion of surcharge reported to each service supplier, substantial staff time will be required to adjust the surcharge amounts posted to the service suppliers' accounts. This will also be the result if an adjustment is required to comply with audit findings.
- The billing aggregator's service supplier client will be assessed statutory interest on audit deficiencies, even though the billing aggregator may have reported the amount of surcharge for all its service suppliers. The Board of Equalization may have difficulty obtaining information to support a finding that what was actually reported was correct.
- Should a billing aggregator file a return late, or an amended return, it may impact all service suppliers it represents.

D. Statutory or Regulatory Change

None necessary. The billing aggregator is operating in a capacity similar to an accountant.

E. Administrative Impact

None. There will be no significant increase in the taxpayer base. Also, since a separate return will be filed for each individual service supplier, the returns will be processed in due course without additional data entry and fund transfers required. Thus, the number of staff required to process returns and apply payments will not change. Additionally, the Cashier Unit has the capability to process multiple returns with a single check. Adopting this recommendation would not have a significant impact on the Cashier Unit.

F. Fiscal Impact

1. Cost Impact

There are no additional costs expected. Any additional process involving mailing service supplier returns to billing aggregators can be handled by existing staff.

2. Revenue Impact

Smaller service suppliers that are not remitting may begin to report and remit the surcharge due. The amount of additional revenue cannot be determined, but is not considered significant.

G. Taxpayer/Customer Impact

This alternative would require the billing aggregators to obtain billing detail from the local exchange carrier for each service supplier they represent. This information may not be available to the billing aggregators. Additionally, the local exchange carriers providing this information, if available, may charge the billing aggregators to provide billing detail of each individual service supplier, and the billing aggregators will likely pass on these additional costs to their service supplier clients.

H. Critical Time Frames

As soon as the final decision is made, the Excise Taxes Division must inform all billing aggregators and service suppliers, in writing, in order to ensure the compliance of all parties.

VII. Alternative 2

A. Description of Alternative 2

Under this alternative, all service suppliers, including the small long distance service suppliers who have contracts with billing aggregators, would be required to file their own returns and remit the surcharge on their own behalf. The Board would mail the returns to the service supplier's business address. Additionally, the Board would not register billing aggregators for the 9-1-1 program.

B. Pros of Alternative 2

- This alternative eases the collection and audit task of the Board by ignoring the role of billing aggregators and requiring service suppliers to individually register, report and remit the 9-1-1 surcharge to the Board.
- Ensures that all service suppliers are responsible for reporting and remitting their own 9-1-1 surcharge.
- Would not require any changes in the 9-1-1 law or regulations.

C. Cons of Alternative 2

- This alternative does not recognize billing aggregators and does not meet the needs of this sector of the industry.

D. Statutory or Regulatory Change

None required.

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

Adopting this alternative is not expected to increase costs, since this alternative has been the policy since 1977, when the 9-1-1 surcharge program commenced.

2. Revenue Impact

This alternative is not expected to result in an increase in revenue, but could result in some small service suppliers not registering or paying the 9-1-1 surcharge.

G. Taxpayer/Customer Impact

If the Board adopts this alternative, many smaller service suppliers either would have to develop accounting systems to track all of their service users' telephone calls or file their own returns containing information furnished by a billing aggregator. (The Board would send a return to the service supplier, and the billing aggregator would provide the service supplier with return information and the funds collected from the local exchange carrier. The service supplier would then send the return and payment to the Board.)

H. Critical Time Factors

If the Board adopted this alternative, the Excise Taxes Division would send a written notice to all registered service suppliers as soon as possible, and take steps to notify other service suppliers of the obligation to report and remit the surcharge.

Prepared by: Special Taxes Department, Excise Taxes Division

Current as of: 9/23/99

TITLE 18. PUBLIC REVENUES
DIVISION 2. STATE BOARD OF EQUALIZATION--BUSINESS TAXES
CHAPTER 5.5. EMERGENCY TELEPHONE USERS SURCHARGE LAW
ARTICLE 1. IMPOSITION OF SURCHARGE

Regulation 2401. Definitions

(a) Service Supplier. "Service Supplier" means any person supplying intrastate telephone communication services to any service user in this state.

(b) Intrastate Telephone Communication Services. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes telephonic quality communication for which there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication as well as a service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time),to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

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

(d) Billing Aggregator. “Billing Aggregator” shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to (i) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents (ii) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers and (iii) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract. A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such the time and in such form as the Board requests.

DRAFT

AUTHORITY:

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41007 and 41021, Revenue and Taxation Code.

HISTORY:

1. New subsection (c) and new Note filed 4-1-97; operative 10-1-97 pursuant to Government Code section 11343.4(c) (Register 97, No. 14).

DRAFT

TITLE 18. PUBLIC REVENUES
DIVISION 2. STATE BOARD OF EQUALIZATION--BUSINESS TAXES
CHAPTER 5.5. EMERGENCY TELEPHONE USERS SURCHARGE LAW
ARTICLE 1. IMPOSITION OF SURCHARGE

Regulation 2406. Liability for Surcharge; Liability for Surcharge Remitted by Billing Aggregator; Liability for Surcharge Billed Through Billing Agents

(a) The surcharge is required to be remitted by the service supplier which provided the intrastate telephone communication services.

(b) Where a return is filed and surcharge remitted by a billing aggregator on behalf of one or more service suppliers, the service supplier will be deemed to have remitted the surcharge if all of the following conditions have been met:

(1) The service supplier has registered with the Board in accordance with Regulation 2421.

(2) The service supplier has notified the Board in writing that the billing aggregator is authorized to act on its behalf to prepare and file returns and remit the surcharge to the Board, and such authorization is still in effect.

(3) The service supplier has provided to the Board and to the billing aggregator its written consent for the billing aggregator to disclose to the Board any and all records concerning the activities conducted on behalf of the service supplier related to the surcharge.

(4) The billing aggregator does either (A) or (B).

(A) files a separate return for each service supplier on whose behalf the return is filed which includes the name, address, account number and amount of surcharge remitted; or

(B) files a single return for more than one service supplier; provided that the billing aggregator, at such time and in such form as the board requests, shall identify the service suppliers on whose behalf it filed the return and provide documentation supporting the return.

(c) A service supplier acting as a billing agent for another service supplier, reseller or billing aggregator is not liable for remitting the surcharge on services provided by or billed on behalf of the other service supplier, reseller or billing aggregator even though those charges may be included, as a separate part of a billing, with charges for services it did provide to the service user. A billing agent providing only billing services is not a service supplier and is not required to remit the surcharge collected on behalf of a service supplier that provided the service.

AUTHORITY:
Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41021 and 41023, Revenue and Taxation Code.

HISTORY:
1. New section filed 4-1-97; operative 10-1-97 pursuant to Government Code section 11343.4(c) (Register 97, No. 14).

DRAFT