

Amend Revenue and Taxation Code Sections 41030, 41031, 41032, 41136, 41136.1, 41137, 41137.1, 41138, 41139, 41140, 41141, 41142, 45855, 45863, 45981, and 45982 and amend Public Resources Code Section 42463 to reflect recent changes in California state government organizational structure.

Source: Property and Special Taxes Department

Correct the responsible state agency reference in the Emergency Telephone Users (911) Surcharge Act to conform to the Governor's Reorganization Plan

Revenue and Taxation Code Sections 41030, 41031, 41032, 41136, 41136.1, 41137, 41137.1, 41138, 41139, 41140, 41141 and 41142

Existing Law

Under existing law, the 911 Surcharge Act (Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code), imposes a surcharge on amounts paid by every person in the state for (1) intrastate telephone communication services in this state, and (2) Voice over Internet Protocol (VoIP) service that provides access to the "911" emergency system by utilizing the digits 9-1-1 by any service user in this state.

Until January 1, 2010, Section 41030 requires the Department of General Services (DGS) to annually determine the surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The DGS is required to make its determination of the surcharge rate each year no later than October 1st and notify the Board of Equalization (BOE) of the new rate, pursuant to Section 41031. Immediately upon notification by the DGS, Section 41032 requires the BOE to publish the new rate in its minutes and notify service suppliers of the new rate, as described. The surcharge rate is presently 0.50 percent of the amounts paid for intrastate telephone service and VoIP service in this state.

The surcharge is paid to the BOE and deposited in the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund. In part, the funds in this account are used to pay the DGS for its cost to administer the 911 emergency telephone number system.

Background

Effective May 10, 2009, the Governor's Reorganization Plan (GRP) 1 consolidated state information technology functions under the office of the State Chief Information Officer (OCIO). Among other things, the GPR transferred all the duties, functions, employees, property, and related funding of the DGS's Division of Telecommunications to the OCIO. The Telecommunications Division was previously responsible for determining the 9-1-1 surcharge rate each year and for the administration of the 9-1-1 emergency telephone number system.

Related Legislation

On April 2, 2009, AB 1266 (Huber) was amended to codify the GRP 1. The bill was scheduled to be heard by Assembly Appropriations on May 28, 2009; however, the hearing was postponed by the committee.

This Proposal

This proposal is a housekeeping measure that would simply make the necessary state agency reference correction, from the DGS to the OCIO, under the 911 Surcharge Act to conform to the GRP 1.

Correct the responsible state agency reference in the Integrated Waste Management Fee Law to conform to Senate Bill 63

Revenue and Taxation Code Sections 45855, 45863, 45981, and 45982, and Public Resources Code Section 42463

Existing Law

Integrated Waste Management (IWM) Fee Law. Under current law, Division 30 (commencing with Section 40000) of the Public Resources Code (PRC), known as the California Integrated Waste Management Act of 1989, imposes an IWM fee on each operator of a disposal facility based on the amount, by weight or volumetric equivalent, as determined by the California Integrated Waste Management Board (CIWMB), of all solid waste disposed of at each disposal site.

The IWM fee is collected and administered by the BOE in cooperation with the CIWMB pursuant to the Integrated Waste Management Fee Law (Part 23 (commencing with Section 45001) of Division 2 of the Revenue and Taxation Code (RTC)).

Covered Electronic Waste Recycling Fee (eWaste Act). Under existing law, the eWaste Act (Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the PRC) requires a consumer to pay a fee of a specified amount upon the purchase of a new or refurbished covered electronic device.

The BOE collects and administers the eWaste fees in partnership with the CIWMB. For purposes of the eWaste Act, PRC Section 42463 contains definitions for various terms, including, but not limited to, the term “board,” which is defined to mean the CIWMB. The term “board” is also defined as the CIWMB in PRC Section 41110, which governs the California Integrated Waste Management Act of 1989, including the eWaste Act.

Background

Effective January 1, 2010, Senate Bill 63 (Chapter 21, Statutes of 2009), among other things, will abolish the CIWMB and transfer its duties and responsibilities to the Department of Resources Recycling and Recovery (DRRR), within the California Natural Resources Agency, which the bill also creates.

Among other things, Senate Bill 63 amended various sections of the PRC and the Government Code to replace "CIWMB" with "DRRR," including PRC Section 40400, which now reads, in part: "Any reference in any law or regulation to the ... California Integrated Waste Management Board shall hereafter apply to the Department of Resources Recycling and Recovery." Section 40401 was likewise amended to read, in part: "Except as otherwise specified by statute, the Department of Resources Recycling and Recovery succeeds to and is vested with all of the authority, duties, powers, purposes, responsibilities, and jurisdiction of the former California Integrated Waste Management Board."

Senate Bill 63 did not, however, amend any of the RTC sections of the Integrated Waste Management Fee Law that reference the CIWMB. Senate Bill 63 also did not revise the definition of "board" for purposes of the eWaste Act.

Related Legislation

On September 10, 2009, ABx3 84 (Gaines) was introduced, and AB 1150 (Gaines) was amended, to change certain references to the CIWMB to the DRRR in conformance with the changes made by Senate Bill 63 (Chapter 21, Statutes of 2009). The bills would also require the DTSC to assume authority, duties, powers, purposes, responsibilities, and jurisdiction of the board, as described, and would change the DTSC's name to the Department of Toxics and Waste Management.

ABx3 84 is awaiting assignment to the appropriate policy committee for its first hearing and AB 1150 is in the Assembly Committee on Natural Resources.

This Proposal

This proposal is a housekeeping measure that would simply make the necessary state agency reference correction (from IWMB to the DRRR) to the Integrated Waste Management Fee Law in the RTC to conform to Senate Bill 63.

This proposal would also delete the definition of "board" contained in the eWaste Act in the PRC. The term is already correctly defined in the California Integrated Waste Management Act of 1989 (Section 40110), which governs the eWaste Act.

Section 42463 of the Public Resources Code is amended to read:

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Account" means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) "Authorized collector" means any of the following:

(1) A city, county, or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) An entity that collects, handles, consolidates, and transports covered electronic devices and has filed applicable notifications with the department pursuant to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

~~(e)~~ "Board" means the ~~California Integrated Waste Management Board~~.

~~(d)~~(c) "Consumer" means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

~~(e)~~(d) "Department" means the Department of Toxic Substances Control.

~~(f)~~(e) (1) Except as provided in paragraph (2), "covered electronic device" means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) "Covered electronic device" does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air-conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

~~(g)~~(f) "Covered electronic waste" or "covered e-waste" means a covered electronic device that is discarded.

~~(h)~~(g) "Covered electronic waste recycling fee" or "covered e-waste recycling fee" means the fee imposed pursuant to Article 3 (commencing with Section 42464).

~~(i)~~(h) "Covered electronic waste recycler" or "covered e-waste recycler" means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

~~(j)~~(i) "Discarded" has the same meaning as defined in subdivision (b) of Section 25124 of the Health and Safety Code.

~~(k)~~(j) "Electronic waste recovery payment" means an amount established and paid by the board pursuant to Section 42477.

~~(l)~~(k) "Electronic waste recycling payment" means an amount established and paid by the board pursuant to Section 42478.

~~(m)~~(l) "Hazardous material" has the same meaning as defined in Section 25501 of the Health and Safety Code.

~~(n)~~(m) "Manufacturer" means either of the following:

(1) A person who manufactures a covered electronic device sold in this state.

(2) A person who sells a covered electronic device in this state under that person's brand name.

~~(o)~~(n) "Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, "person" also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

~~(p)~~(o) "Recycling" has the same meaning as defined in subdivision (a) of Section 25121.1 of the Health and Safety Code.

~~(q)~~(r) "Refurbished," when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

~~(s)~~(s) "Retailer" means a person who makes a retail sale of a new or refurbished covered electronic device. "Retailer" includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

~~(t)~~(t) (1) "Retail sale" has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) "Retail sale" does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(t)(u) "Vendor" means a person that makes a sale of a covered electronic device for the purpose of resale to a retailer who is the lessor of the covered electronic device to a consumer under a lease that is a continuing sale and purchase pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(u)(v) "Video display device" means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

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

41030. ~~The Department of General Services~~office of the State Chief Information Officer 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 Department of General Services~~office of the State Chief Information Officer 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 such surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

Section 41031 of the Revenue and Taxation Code is amended to read:

41031. ~~The Department of General Services~~office of the State Chief Information Officer shall make its determination of such surcharge rate each year no later than October 1 and shall notify the board of the new rate, which shall be fixed by the board to be effective with respect to charges made for intrastate telephone communication services and VoIP service on or after January 1 of the next succeeding calendar year.

Section 41032 of the Revenue and Taxation Code is amended to read:

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

Section 41136 of the Revenue and Taxation Code is amended to read:

41136. Funds in the State Emergency Telephone Number Account shall, when appropriated by the Legislature, be spent solely for the following purposes:

- (a) To pay refunds authorized by this part.
- (b) To pay the State Board of Equalization for the cost of the administration of this part.
- (c) To pay the ~~Department of General Services~~office of the State Chief Information Officer for its costs in administration of the "911" emergency telephone number system.
- (d) To pay bills submitted to the ~~Department of General Services~~office of the State Chief Information Officer by service suppliers or communications equipment companies for the installation of, and ongoing expenses for, the following communications services supplied to local agencies in connection with the "911" emergency phone number system:
 - (1) A basic system.
 - (2) A basic system with telephone central office identification.
 - (3) A system employing automatic call routing.
 - (4) Approved incremental costs.
- (e) To pay claims of local agencies for approved incremental costs, not previously compensated for by another governmental agency.
- (f) To pay claims of local agencies for incremental costs and amounts, not previously compensated for by another governmental agency, incurred prior to the effective date of this part, for the installation and ongoing expenses for the following communication services supplied in connection with the "911" emergency phone number system:
 - (1) A basic system.
 - (2) A basic system with telephone central office identification.
 - (3) A system employing automatic call routing.
 - (4) Approved incremental costs. Incremental costs shall not be allowed unless the costs are concurred in by the ~~Division of Telecommunications of the Department of General Services~~office of the State Chief Information Officer.
- (g) To pay the ~~Division of Telecommunications of the Department of General Services~~office of the State Chief Information Officer for the costs associated with the pilot program authorized by Article 6.5 (commencing with Section 53125) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.

Section 41136.1 of the Revenue and Taxation Code is amended to read:

41136.1. For each fiscal year, moneys in the State Emergency Telephone Number Account not appropriated for a purpose specified in Section 41136 shall be held in trust for future appropriation for upcoming, planned "911" emergency telephone number projects that have been approved by the Department of General Services office of the State Chief Information Officer, even if the projects have not yet commenced.

Section 41137 of the Revenue and Taxation Code is amended to read:

41137. The ~~Department of General Services~~ office of the State Chief Information Officer shall pay, from funds appropriated from the State Emergency Telephone Number Account by the Legislature, as provided in Section 41138, bills submitted by service suppliers or communications equipment companies for the installation and ongoing costs of the following communication services provided local agencies by service suppliers in connection with the "911" emergency telephone number system:

- (a) A basic system.
- (b) A basic system with telephone central office identification.
- (c) A system employing automatic call routing.
- (d) Approved incremental costs that have been concurred in by the Communications Division office of the State Chief Information Officer.

Section 41137.1 of the Revenue and Taxation Code is amended to read:

41137.1. The ~~Department of General Services~~ office of the State Chief Information Officer shall pay, from funds appropriated from the State Emergency Telephone Number Account by the Legislature, as provided in Section 41138, claims submitted by local agencies for approved incremental costs and for the cost of preparation of final plans submitted to the ~~Communications Division~~ office of the State Chief Information Officer for approval on or before October 1, 1978, as provided in Section 53115 of the Government Code.

Section 41138 of the Revenue and Taxation Code is amended to read:

41138. (a) It is the intent of the Legislature that the reimbursement rates for "911" emergency telephone number equipment shall not exceed specified amounts negotiated with each interested supplier and approved by the ~~department~~ office of the State Chief Information Officer. The ~~department~~ office of the State Chief Information Officer shall negotiate supplier pricing to ensure cost effectiveness and the best value for the "911" emergency telephone number system. The ~~department~~ office of the State Chief Information Officer shall pay those bills as provided in Section 41137 only under the following conditions:

- (1) The ~~department~~ office of the State Chief Information Officer shall have received the local agency's "911" emergency telephone number

system plan by July 1 of the prior fiscal year and approved the plan by October 1 of the prior fiscal year.

(2) The Legislature has appropriated in the Budget Bill an amount sufficient to pay those bills.

(3) The ~~department~~office of the State Chief Information Officer has reviewed and approved each line item of a request for funding to ensure the necessity of the proposed equipment or services and the eligibility for reimbursement.

(4) The amounts to be paid do not exceed the pricing submitted by the supplier and approved by the ~~department~~office of the State Chief Information Officer. Extraordinary circumstances may warrant spending in excess of the established rate, but shall be preapproved by the ~~department~~office of the State Chief Information Officer. In determining the reimbursement rate, the ~~department~~office of the State Chief Information Officer shall utilize the approved pricing submitted by the supplier providing the equipment or service.

(b) Nothing in this section shall be construed to limit an agency's ability to select a supplier or procure telecommunications equipment as long as the supplier's pricing is preapproved by the ~~department~~office of the State Chief Information Officer. Agencies shall be encouraged to procure equipment on a competitive basis. Any amount in excess of the pricing approved by the ~~department~~office of the State Chief Information Officer shall not be reimbursed.

Section 41139 of the Revenue and Taxation Code is amended to read:

41139. From funds appropriated by the Legislature from the Emergency Telephone Number Account, the ~~department~~office of the State Chief Information Officer shall begin paying such bills as provided in Sections 41137, 41137.1, and 41138 in the 1977-78 fiscal year for plans submitted by local agencies by July 1, 1976, to the ~~department~~office of the State Chief Information Officer which the ~~department~~office of the State Chief Information Officer has approved.

Section 41140 of the Revenue and Taxation Code is amended to read:

41140. The ~~Department of General Service~~office of the State Chief Information Officer shall reimburse local agencies, from funds appropriated from the Emergency Telephone Number Account by the Legislature, for amounts not previously compensated for by another governmental agency, which have been paid by such agencies for approved incremental costs or to service suppliers or communication equipment companies for the following communications services supplied in connection with the "911" emergency phone number, provided such local agency plans had been approved by the ~~department~~office of the State Chief Information Officer:

(1) A basic system.

- (2) A basic system with telephone central office identification.
- (3) A system employing automatic call routing.
- (4) Approved incremental costs.

Section 41141 of the Revenue and Taxation Code is amended to read:

41141. Claims for reimbursement shall be submitted by local agencies to the ~~Communications Division in the Department of General Services~~office of the State Chief Information Officer, which shall determine payment eligibility and shall reduce the claim for charges which exceed the approved incremental costs, approved contract amounts, or the established tariff rates for such costs. No claim shall be paid until funds are appropriated by the Legislature.

Section 41142 of the Revenue and Taxation Code is amended to read:

41142. Notwithstanding any other provision of this article, if the Legislature fails to appropriate an amount sufficient to pay bills submitted to the ~~Department of General Services~~office of the State Chief Information Officer by service suppliers or communications equipment companies for the installation and ongoing communications services supplied local agencies in connection with the "911" emergency phone number system, and to pay claims of local agencies which, prior to the effective date of this part, paid amounts to service suppliers or communications equipment companies for the installation and ongoing expenses in connection with the "911" emergency phone number system, the obligation of service suppliers and local agencies to provide "911" emergency telephone service shall terminate and such service shall not again be required until the Legislature has appropriated an amount sufficient to pay such bills or claims. Nothing in this part shall preclude local agencies from purchasing or acquiring any communication equipment from companies other than the telephone service suppliers.

Section 45855 of the Revenue and Taxation Code is amended to read:

45855. Any information regarding solid wastes which is available to the board shall be made available to the ~~California Integrated Waste Management Board~~California Department of Resources Recycling and Recovery.

Section 45863 of the Revenue and Taxation Code is amended to read:

45863. The board shall, in cooperation with the ~~California Integrated Waste Management Board~~California Department of Resources Recycling and Recovery, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include the determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

Section 45981 of the Revenue and Taxation Code is amended to read:

45981. (a) The board shall provide any information obtained under this part to the ~~California Integrated Waste Management Board~~California Department of Resources Recycling and Recovery.

(b) The ~~California Integrated Waste Management Board~~California Department of Resources Recycling and Recovery and the board may utilize any information obtained pursuant to this part to develop data on the generation or disposal of solid waste within the state. Notwithstanding any other provision of this chapter, the ~~California Integrated Waste Management Board~~California Department of Resources Recycling and Recovery may make waste generation and disposal data available to the public.

Section 45982 of the Revenue and Taxation Code is amended to read:

45982. Neither the ~~California Integrated Waste Management Board~~California Department of Resources Recycling and Recovery, nor any person having an administrative duty under Part 9 (commencing with Section 15600) of Division 3 of Title 2 of the Government Code shall disclose the business affairs, operations, or any other proprietary information pertaining to a fee payer, except a fee payer which is a public agency, which was submitted to the board in a report or return required by this part, or permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by Section 45981 or this section. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.