

Amend Revenue and Taxation Code (RTC) Section 42010 to (1) clarify that direct sellers must electronically report the emergency telephone users surcharge portion of the prepaid Mobile Telephony Services (MTS) surcharge to the Board of Equalization (BOE) pursuant to the Emergency Telephone Users (911) Surcharge Act,¹ and (2) specify the account or fund into which direct seller remittances are deposited. Amend RTC 42023 to add clarifying expenditure language and the agency responsible to allocate moneys deposited into the Prepaid MTS 911 Account and Prepaid MTS PUC Account, respectively. (Housekeeping)

Source: Legal Department, Property and Special Taxes Department, and Administration Department

<p>Direct Sellers: Electronic Return Filing <i>Revenue and Taxation Code Section 42010</i></p>

Existing Law. 911 Surcharge Act. The 911 Surcharge Act imposes a surcharge on amounts paid by every person in the state for both of the following:

- Intrastate telephone communication service, and
- Voice over Internet Protocol (VoIP) service that provides access to California users of the “911” emergency system by utilizing the digits 9-1-1.

The 911 Surcharge Act requires a service supplier to collect the surcharge from each service user at the time of billing.

RTC Section 41051 provides that the 911 surcharge is due monthly to the BOE. The surcharge amount that a service supplier collects in one calendar month must be remitted (paid) to the BOE on or before the last day of the second month following the month in which the surcharges were collected.

RTC Section 41052 requires a service supplier to file a monthly return with the BOE on or before the last day of the second month following each month in which the surcharges were collected.

Prepaid MTS Collection Acts (Collection Acts).² The Collection Acts impose a prepaid MTS surcharge and local charge on each prepaid consumer as a percentage of the sales price of each retail transaction. The Collection Acts require the seller to collect the prepaid MTS surcharge and local charge at the time of the retail transaction. The prepaid MTS surcharge calculation includes:

- The 911 surcharge rate, and
- The CPUC reimbursement fee and telecommunications universal service surcharges.

¹ Part 20 (commencing with Section 41001) of Division 2 of the RTC.

² Prepaid MTS Surcharge Collection Act (Part 21 (commencing with Section 42001)) and Local Prepaid MTS Collection Act (Part 21.1 (commencing with Section 42100) of Division 2 of the RTC).

The local charge is the combined total of the local charge rates, as calculated pursuant to RTC Sections 42102 and 42102.5, which the local jurisdiction has adopted. The local charge is collected at the same time and in the same manner as the prepaid MTS surcharge.

RTC Section 42004 defines a “seller” to mean “a person that sells prepaid mobile telephony service to a person in a retail transaction.” The term seller *includes a direct seller*. Section 42004 defines a “direct seller” to mean:

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 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).

RTC Section 42010 requires a direct seller to pay to the BOE that portion of the prepaid MTS surcharge that consists of the 911 surcharge under the 911 Surcharge Act. Direct sellers must pay the CPUC surcharge and local charge portion of the prepaid MTS surcharge directly to the CPUC and local agencies, respectively.

RTC Section 42021(b) requires a seller to file a quarterly return using electronic media. Section 42021(d) states that the “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.”

The Issue. Shortly prior to enactment of the Collection Acts, the bill was amended to add a new subdivision (d) to Section 42021. Section 42021(d) states that the section applies only to prepaid MTS surcharge and local charge payments required to be paid to the BOE pursuant to the Collection Acts.

Section 42021(d) was not intended to exclude a direct seller from the requirement to file returns electronically. However, Section 42021(d) could be construed to exclude direct sellers from the Collection Act’s new mandatory electronic return filing requirement.

Background. In 2014, Assembly Bill (AB) 1717 (Ch. 885) enacted the Collection Acts to create standardization with respect to the method used to collect

communications taxes, fees, surcharges, utility user taxes, and other telecommunication charges from end-use consumers of prepaid MTS.

This Proposal. This proposal amends RTC Section 42010 to clarify that a direct seller is required to file electronic returns when paying to the BOE that portion of the prepaid MTS surcharge that is for the 911 surcharge, consistent with the enacting legislation's intent. Requiring direct sellers to electronically file returns when remitting the required payments pursuant to the 911 Surcharge Act makes the prepaid MTS surcharge much easier to administer, and allows BOE to obtain timely and accurate information from direct sellers.

Prepaid MTS Surcharge: Deposit and Allocation
Revenue and Taxation Code Sections 42010 and 42023

Existing law. 911 Surcharge Act. Article 2 (commencing with Section 41135) of Chapter 7 provides that all amounts paid monthly to the BOE under to the 911 Surcharge Act are deposited into the State Emergency Telephone Number Account (SETNA) in the General Fund. Article 2 further specifies how moneys in the SETNA must be spent, upon appropriation by the Legislature.

Prepaid MTS Surcharge Collection Act. RTC Section 42023 requires the BOE to deposit all prepaid MTS surcharge revenues into the Prepaid Mobile Telephony Services Surcharge Fund (Prepaid MTS Surcharge Fund). Deposited amounts include all surcharges, interest, penalties, and other amounts collected and paid to the BOE, less payments of refunds and reimbursement to the BOE for administration and collection expenses. All moneys in the Prepaid MTS Surcharge Fund shall be deposited as follows:

- The 911 surcharge portion of the prepaid MTS surcharge will be deposited into the Prepaid MTS 911 Account. All moneys deposited into the Prepaid MTS 911 Account shall be transferred to the SETNA in the General Fund.
- The CPUC surcharges portion of the prepaid MTS surcharge 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 and to the PUC Reimbursement Account.

The Issues. The Prepaid MTS Surcharge Collection Act requires a direct seller to pay the 911 surcharge portion of the MTS surcharge to the BOE pursuant to the 911 Surcharge Act. This requirement implies that the BOE deposit these amounts into the SETNA along with payments under the 911 Surcharge Act. However, the language is not clear.

Additionally, the Prepaid MTS Surcharge Collection Act requires non-direct seller prepaid MTS surcharge collections ultimately to be transferred from the Prepaid MTS 911 Account to the SETNA, and from the Prepaid MTS PUC Account to the respective universal service funds and PUC reimbursement Account. However, the language does not specify how those amounts transferred to the SETNA are spent, or how moneys transferred from the Prepaid MTS PUC Account are

allocated to the respective universal service funds and the PUC Reimbursement Account.

This Proposal. This proposal amends RTC Section 42010 to clearly provide that amounts paid by direct sellers shall be deposited into the SETNA. The proposal also amends Section 42023 to make clear how non-direct seller prepaid MTS surcharge collections deposited into the Prepaid MTS 911 Account and transferred to the SETNA, and deposited into the Prepaid MTS PUC Account, are allocated and appropriated.

SECTION 1. Section 42010 of the Revenue and Taxation Code is amended to read:

42010. (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. The amounts remitted to the Public Utilities Commission pursuant to this paragraph shall be deposited into the respective universal service funds, created pursuant to Chapter 1 (commencing with Section 270) of, or 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, as applicable.

(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, with a return filed with the board using electronic media. The amounts remitted to the board pursuant to this paragraph shall be deposited into the State Emergency Telephone Number Account in the General Fund.

SEC. 2. Section 42023 of the Revenue and Taxation Code is amended to read:

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 and be appropriated pursuant to Article 2 (commencing with Section 41135) of Chapter 7 of Part 20 of Division 2 of the Revenue and Taxation Code.

(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. The Public Utilities Commission shall allocate the moneys deposited into the Prepaid MTS PUC Account to the respective universal service funds and to the Public Utilities Commission Utilities Reimbursement Account, and shall report to the Controller at the beginning of each calendar month for the month preceding, or other period as determined necessary by the Public Utilities Commission, on its allocation of such funds.

SEC. 3. 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 allow sufficient time to promulgate and adopt regulations necessary to implement the recently enacted Prepaid Mobile Telephony Services Surcharge Act and Local Prepaid Mobile Telephony Services Collection Act, it is necessary that this act take effect immediately.