



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: SEPTEMBER 16, 2015, TIME: 10:00 A.M.

Action Items & Status Report Items**Agenda Item No.: 1****Title: Proposed Amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*****Issue:**

Whether the Board should approve amending Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to remove ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and to provide safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel.

Committee Discussion:

Staff introduced the issue. There was no discussion of this item.

Committee Action:

Upon motion by Mr. Runner and seconded by Ms. Stowers, without objection, the Committee approved and authorized for publication the proposed amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. A copy of the proposed amendments to Regulation 1432 is attached.

Agenda Item No.: 2**Title: Proposed Prepaid Mobile Telephony Services Regulations 2460, 2461, and 2462; and, Proposed Amendments to Emergency Telephone Users Surcharge Regulations 2401, 2422, and 2413****Issue:**

Whether the Board should initiate rulemaking to interpret, clarify, and make specific the statutes regarding the application of the prepaid mobile telephony services (prepaid MTS) surcharge and local charges to the purchase of prepaid MTS.

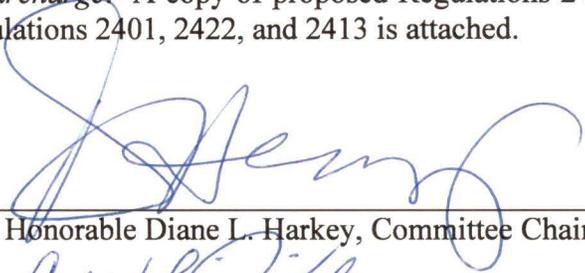
Committee Discussion:

Staff introduced the issue. Mr. Fran Mancia, on behalf of MuniServices, LLC and 60 local agencies and jurisdictions, expressed support for the proposed and amended regulations. He also explained that MuniServices, LLC has been working collaboratively with staff to meet the

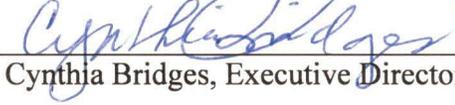
jurisdictions' contractual requirements. Mr. Horton encouraged the ongoing efforts. He noted that those jurisdictions that had not contracted with the Board by September 1, 2015, have another opportunity to contract with the Board by December 1. Mr. Horton directed staff to advise direct carriers and retailers of those jurisdictions that have not contracted with the Board so they may avoid a potential issue with Business and Professions Code section 17200.

Committee Action:

Upon motion by Mr. Runner and seconded by Mr. Horton, without objection, the Committee approved and authorized for publication the proposed Prepaid Mobile Telephony Services Regulations 2460, *Administration*; 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*; 2462, *Refunds of Excess Charges Collected*; and proposed amendments to Emergency Telephone Users Surcharge Regulations 2401, *Definitions*; 2422, *Returns and Payment*; and 2413, *Exemptions from Surcharge*. A copy of proposed Regulations 2460, 2461, 2462, and proposed amendments to Regulations 2401, 2422, and 2413 is attached.



Honorable Diane L. Harkey, Committee Chair



Cynthia Bridges, Executive Director

BOARD APPROVED

at the 9-16-15 Board Meeting



Joann Richmond, Chief
Board Proceedings Division

1432. Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.~~(a) Power Take-Off Equipment.~~

~~(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off.~~

~~(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.~~

(a) DIESEL FUEL USED FOR PURPOSES OTHER THAN OPERATING MOTOR VEHICLES UPON THE HIGHWAYS OF THIS STATE.

(1) A person may claim a refund for tax paid on diesel fuel that is not used to operate a motor vehicle upon a highway in California.

(A) For purposes of this regulation, equipment used to operate a motor vehicle upon a highway in California is defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any equipment, accessories, or amenities used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, power windows and locks, heated seats, radios, Bluetooth equipment, cell phones, media players, and other similar equipment, accessories, or amenities.

Additional examples of equipment, accessories, or amenities that are used to operate a motor vehicle upon a highway in California include, but are not limited to, alternators, generators, air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, diesel particulate filter generation systems, and other similar equipment.

(B) Equipment, accessories, or amenities other than equipment used to operate a motor vehicle upon a highway in California, which is operated from the same fuel tank as the motor vehicle, is considered "auxiliary equipment." Equipment powered from a separate fuel source or tank than is used to operate the motor vehicle would not be considered auxiliary equipment.

“Auxiliary equipment” includes, but is not limited to, equipment found on a boom truck (block boom), bulk feed truck, car carrier with a hydraulic winch, carpet cleaning van, cement mixer, cement pumper, distribution truck (hot asphalt), dump trailer, dump truck, fire truck, garbage truck ((automated side loader, manual side loader, single drive front end loader, dual drive front end loader, single drive rear end loader, dual drive rear end loader, roll-off truck, lugger truck, recycling truck (compaction and non-compaction), one-pass truck, and container delivery truck)), leaf truck, lime spreader, line trucks with digger, derrick or aerial lift, log trucks with self loader, mobile crane, pneumatic tank truck, refrigeration truck, salt spreader (dump with spreader), seeder truck, semi-wrecker, service trucks with a jackhammer or pneumatic drill, sewer cleaning truck (sewer jet, sewer vactor), snow plow, spray truck, super suckers (port-o-let trucks), sweeper truck, tank transport, tank truck, truck with a hydraulic winch, transfer trailer, and wrecker.

(2) Safe-Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe-harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Distribution truck (hot asphalt)</u>	<u>15%</u>
<u>Dump trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
<u>Garbage truck</u>	<u>35%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>
<u>Line truck with digger, derrick or aerial lift</u>	<u>20%</u>

<u>Log truck with self loader</u>	<u>20%</u>
<u>Mobile crane</u>	<u>25%</u>
<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration truck</u>	<u>20%</u>
<u>Salt spreader (dump with spreader)</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet/vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super sucker (port-o-let trucks)</u>	<u>25%</u>
<u>Sweeper truck</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank truck</u>	<u>15%</u>
<u>Truck with hydraulic winch</u>	<u>15%</u>
<u>Transfer trailer</u>	<u>20%</u>
<u>Wrecker</u>	<u>15%</u>
<u>Other Auxiliary Equipment</u>	<u>10%</u>

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment

not listed in subdivision (a)(2), the “other” category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

(b) OFF-HIGHWAY USE.

(1) A person may claim a refund for tax paid on diesel fuel used off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling as described in subdivision (d).

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.

(3) As used in subdivision (2), "incidentally operated" does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the motor vehicle under the Vehicle Code.

(c) REFUNDS.

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment or ~~the diesel fuel in power take-off equipment~~ to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use ~~any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes~~ the percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe-harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed. The safe-harbor percentages cannot be claimed for periods prior to April 1, 2016.

(d) IDLE TIME.

Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling, and no refunds will be allowed for the diesel fuel tax paid on diesel fuel ~~which is~~ used ~~to~~ while idling a motor vehicle on the highway. If the motor vehicle is idling on the highway while auxiliary equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the ~~power take-off~~ auxiliary equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

Regulation 2460, Administration

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

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

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

(2) “Direct seller” means a prepaid MTS provider or service supplier, as defined in Revenue and Taxation Code section 41007, that makes a sale of prepaid MTS directly to a prepaid consumer for any purpose other than for resale in the regular course of business.

A direct seller includes, but is not limited, to any of the following:

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

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

(C) A “retailer engaged in business in this state,” as defined by Revenue and Taxation Code section 6203, that is a member of the same commonly controlled group, as defined in Revenue and Taxation Code section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of section 25106.5 of title 18 of the California Code of Regulations, as an entity described in subparagraph (A) or (B).

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

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

(5) “Local charge” or “local charges” means the utility user taxes as described in Revenue and Taxation Code section 42102, and charges for access to communication services or to local “911” emergency telephone systems, as described in Revenue and Taxation Code section 42102.5.

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

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

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

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(9) “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.

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

(11) “Prepaid consumer” means a person who purchases prepaid MTS in a retail transaction.

(12) “Prepaid mobile telephony services” or “prepaid MTS” means the right to utilize and/or access mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars and are utilized by means of a mobile device.

For these purposes, “telecommunications service” and “information service” have the same meanings as defined in section 153 of title 47 of the United States Code.

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

(14) “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 Revenue and Taxation Code section 42010, that is required to be collected by a seller from a prepaid consumer.

(15) “Public Utilities Commission” or “Commission” means the Public Utilities Commission created by section 1 of article XII of the California Constitution.

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

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

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

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

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

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

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

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

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

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

(19) “Seller” means a person that sells prepaid MTS to a person in a retail transaction.

(b) Registration. Every person that sells prepaid MTS to a person in a retail transaction is required to register with the Board pursuant to Revenue and Taxation Code section 42022. Direct sellers are required to be registered with the Board under the Emergency Telephone Users Surcharge Law (commencing with Revenue and Taxation Code section 41001). Direct sellers are not required to register as a seller of prepaid MTS. A seller, other than a direct seller, shall register for a Prepaid MTS Account.

Every application for registration shall be made in a form prescribed by the Board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the Board may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the Board.

(c) Payment of Prepaid MTS Surcharge and Local Charges by Purchasers. Every consumer of prepaid MTS in this state is liable for the prepaid MTS surcharge and any local charges until those amounts are paid to the Board, unless a receipt, as provided by subdivision (d), is obtained from a registered seller.

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

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to the consumer in the receipt that the price of the prepaid MTS includes applicable taxes and fees.

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

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

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

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

(e) Payment and Returns.

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

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

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

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

(A) The emergency telephone users surcharge.

(B) The Public Utilities Commission surcharges.

(C) The local charges.

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

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

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

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

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

(B) That portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the Board pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Revenue and Taxation Code section 41001)) with a return filed online with the Board through the Board’s website for those retail transactions with a prepaid consumer in the state.

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

For direct sellers, the prepaid MTS surcharge is due and payable to the Board under the same reporting and payment period as their emergency telephone users (911) surcharge account, as provided by California Code of Regulations, title 18, section 2422, *Returns, Reporting and Payment*.

(f) Records. A seller of prepaid MTS shall maintain and make available for examination on request by the Board or its authorized representatives, records in the manner set forth in California Code of Regulations, title 18, section 4901, *Records*.

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

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

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

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

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

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

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

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

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

(i) Local Charges

(1) Ordinances in effect as of September 1, 2015. On and after January 1, 2016, a local charge imposed by a local agency on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with Revenue and Taxation Code section 42001) provided that, on or before September 1, 2015, the local agency enters into a contract with the Board pursuant to Revenue and Taxation Code section 42101.5.

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

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

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

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

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

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

(j) Posting and Calculation of Combined Rates

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

(A) The surcharge rate reported pursuant to subdivision (d) of Revenue and Taxation Code section 41030; and

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

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

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

(3) New Local Charges and Increases to Existing Local Charges. After September 1, 2015, the Board shall post on its website, for each local jurisdiction, the combined total of the rates of the prepaid MTS surcharge and the rate(s) of local charges, as calculated pursuant to Sections 42102 and 42102.5, that each local jurisdiction has adopted and provided written notice to the Board of, on or before December 1 of each year, as provided in subdivision (i). The Board shall post the combined total of the rates of the prepaid MTS surcharge and rate(s) of local charges on its website by March 1, of each year. The posted combined total of the rates of the prepaid MTS surcharge and rate(s) of local charges shall be the rate that applies

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to all retail transactions during the calendar year beginning April 1 following the posting, unless there is a later change in the combined rate.

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Regulation 2461. Exemptions, Deductions, Credits, and Specific Applications of Tax.

Reference: Sections 42010, 42012, 42018, and 42020, Revenue and Taxation Code.

(a) In General. This regulation explains the exemptions, deductions, credits, and specific applications of the prepaid MTS surcharge and local charges to the following types of transactions:

- (1) Sales for resale
- (2) Bad debts
- (3) Bundled transactions
- (4) Lifeline transactions
- (5) Transactions in which a surcharge or local charge was paid to another state

(b) Sales for Resale.

The burden of proving that a sale of prepaid MTS is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the prepaid MTS are purchased for resale. If timely taken in proper form as set forth in subdivision (b)(1)(A) and in good faith from a person who is engaged in the business of selling prepaid MTS and who holds a Prepaid MTS Account as required by Regulation 2460, Administration, the certificate relieves the seller from the duty of collecting the prepaid MTS surcharge and local charges. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the prepaid MTS, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the prepaid MTS to the purchaser. A resale certificate remains in effect until revoked in writing.

(1) Form of Certificate.

(A) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the prepaid MTS described in the document if it contains all of the following essential elements:

1. The signature of the purchaser, purchaser's employee or authorized representative of the purchaser.
2. The name and address of the purchaser.
3. The number of the Prepaid MTS Account held by the purchaser. If the purchaser is not required to hold a Prepaid MTS Account because the purchaser makes no sales of prepaid MTS in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a Prepaid MTS Account in lieu of a Prepaid MTS Account number.
4. A statement that the prepaid MTS described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "not subject to surcharge," "exempt," or similar terminology is not acceptable.

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5. Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the grounds that it is undated.)

(B) A document containing the essential elements described in subdivision (b)(1)(A) is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation.

(C) Blanket Resale Certificate. If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is subject to the prepaid MTS surcharge or local charges, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the prepaid MTS to the purchaser (whichever is the later), or that the prepaid MTS surcharge or local charges were paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(1)(D) below.

(D) Qualified Resale Certificate. If a purchaser wishes to designate on each purchase order whether the prepaid MTS being purchased are for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the prepaid MTS covered by the order is purchased for resale. The use of the phrases "for resale," "resale = yes," "not subject to surcharge," "surcharge = no," or similar terminology on a purchase order, indicating that the prepaid MTS surcharge or local charges should not be added to the sales invoice will be regarded as designating that the prepaid MTS described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1)(A). However, a purchase order where the applicable amount of the prepaid MTS surcharge or local charges is shown as \$0 or is left blank will not be accepted as designating that the prepaid MTS is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the prepaid MTS is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (b), it will be presumed that the prepaid MTS covered by that purchase order was not purchased for resale and that sale or purchase is subject to the prepaid mobile telephony services surcharge or local charges. If the purchase order includes both prepaid MTS to be resold and prepaid MTS to be used, the purchase order must specify which prepaid MTS are purchased for resale and which prepaid MTS are purchased for use.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(E) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the prepaid MTS surcharge or local charges from the seller's billing, provides a Prepaid MTS Account to the seller, or informs the seller that the transaction is "not subject to the surcharge" does not relieve the seller from the liability for the prepaid MTS surcharge or local charges nor from the burden of proving the sale was for resale.

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(2) Good Faith.

In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1)(A) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale prepaid MTS of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific prepaid MTS is being purchased for resale in the regular course of business.

(3) Improper Use of Certificate.

Any person, including any officer or employee of a corporation, who gives a resale certificate for prepaid MTS which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable for the amount of prepaid MTS surcharge or local charges that would be due if he or she had not given such resale certificate.

(4) Other Evidence to Rebut Presumption of Imposition of the Prepaid MTS Surcharge or Local Charges.

A sale for resale is not subject to the prepaid MTS surcharge or local charges. A person who purchases prepaid MTS for resale and who subsequently uses the prepaid MTS owes the prepaid MTS surcharge on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the prepaid MTS surcharge. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in subdivision (b)(1)(A), the seller will be relieved of liability for the prepaid MTS surcharge or local charges only where the seller shows that the prepaid MTS or local charges:

(A) Were in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding them for sale in the regular course of business, or

(B) Are being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding them for sale in the regular course of business, or

(C) Were consumed by the purchaser and the prepaid MTS surcharge or local charges were reported directly to the Board by the purchaser on the purchaser's return, or

(D) Were consumed by the purchaser and the prepaid MTS surcharge or local charges were paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(5) Use of XYZ Letters.

A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for the surcharge under subdivision (b)(4). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that the prepaid MTS surcharge was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the prepaid MTS purchased from the seller. An XYZ letter will include certain information and request responses to certain

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questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(A) An XYZ letter may include the following information: seller's name and Prepaid MTS Account number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the prepaid MTS purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's Prepaid MTS Account number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(B) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the prepaid MTS in question were:

1. Purchased for resale and resold, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

2. Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

3. Purchased for resale but consumed or used; or

4. Purchased for use.

5. When the purchaser answers either (3) or (4) affirmatively (box checked), the XYZ letter will inquire further whether:

A. The prepaid MTS surcharge or local charges were paid directly to the Board on the purchaser's return, and if so, in what amount;

B. The prepaid MTS surcharge or local charges were added to the billing of the seller and remitted to the seller, and if so, in what amount;

C. The prepaid MTS surcharge or local charges were paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

D. The purchaser confirms that the purchase is subject to the prepaid MTS surcharge or local charges.

(C) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in subparagraphs 1, 2, or 3 of subdivision (b)(5)(B) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (b)(6). However, the Board is not required to relieve a seller from liability for the collection of the prepaid MTS surcharge or local charges based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether the prepaid MTS surcharge or local charges was paid by the

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purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for collection of the prepaid MTS surcharge or local charges.

(D) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of the prepaid MTS surcharge or local charges under subdivision (b)(4) with respect to the questioned or unsupported transaction(s).

(6) Purchaser's Liability for the Prepaid MTS Surcharge or Local Charges.

A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1)(A) and that otherwise appears valid on its face, or who otherwise purchases prepaid MTS that is accepted by the Board as purchased for resale pursuant to subdivision (b)(5) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for the prepaid MTS surcharge or local charges on the purchase price of the prepaid MTS. The prepaid MTS surcharge or local charges is due at the time the prepaid MTS is first stored or used and must be reported and paid by the purchaser with the purchaser's return for the period in which the prepaid MTS is first so stored or used.

(c) Bad Debts.

A seller of prepaid MTS is relieved from liability to collect the prepaid MTS surcharge insofar as the measure of the surcharge is represented by accounts found worthless and charged off for income tax purposes (which include circumstances where the seller's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the seller is not required to file income tax returns and the seller's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles. A seller may claim a bad debt deduction provided that the prepaid MTS surcharge was actually paid to the state.

This deduction should be taken on the return filed for the period in which the amount was found worthless and charged off for income tax purposes or, if the seller is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.

Failure to take the deduction on the proper return will not in itself prevent the allowance of a refund measured by an amount for which a seller could have taken a timely deduction provided a claim for refund is filed with the Board within the limitation periods specified in section 55222, 55222.1, and 55222.2 of the Revenue and Taxation Code.

(1) Amount Subject to Deduction.

(A) Receipts Subject to the Prepaid MTS Surcharge. If the amount of an account found to be worthless and charged off is comprised in part of receipts not subject to the prepaid MTS surcharge such as sales for resale or sales subject to a Lifeline exemption and in part of receipts subject to the prepaid MTS surcharge, a bad debt deduction may be claimed only with respect to the unpaid amount upon which the prepaid MTS surcharge has been paid. The allowable amount of deduction shall be adjusted for amounts claimed as retailer reimbursement. It shall be presumed that retailer reimbursement was claimed on all previously reported amounts subject to the prepaid MTS surcharge. In determining that amount, all payments and credits to the account may be applied: (1) ratably against

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the various elements comprising the amount the purchaser contracted to pay (pro rata method); (2) may be applied as provided in the contract of sale (contract method); or (3) may be applied by another method which reasonably determines the amount subject to the prepaid MTS surcharge (alternative method). When claiming a bad debt deduction or refund using an alternative method, the seller must include a clear explanation of that method. After having applied payments and credits using one method and claiming a deduction or refund based on such method, a seller shall not thereafter reapply the payments or credits using another method with respect to such losses previously claimed.

(B) Expenses of Collection. No deduction is allowable for expenses incurred by the seller in attempting to enforce collection of any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(2) Worthless Account Subsequently Collected. If any account found worthless and charged off is thereafter collected by the seller, in whole or in part, the amount subject to the prepaid MTS surcharge so collected shall be included in the first return filed after such collection and tax shall be paid on such amount with the return. The same percentage of the account which the seller claimed as an allowable bad debt deduction or refund shall be used to determine the percentage of the recovery subject to the prepaid MTS surcharge. The percentage subject to the prepaid MTS surcharge of any amounts received from a third party for the sale of an account after the seller has found them to be worthless and has claimed a bad debt deduction or refund are regarded as amounts subsequently collected for purposes of this provision, and the seller must include such amounts in the first return filed after receipt of such amounts and pay the prepaid MTS surcharge thereon.

(3) Records. In support of deductions or claims for refund for bad debts, sellers must maintain adequate and complete records showing:

(A) Date of original sale.

(B) Name and address of purchaser.

(C) Amount purchaser contracted to pay.

(D) Amount on which seller paid the prepaid MTS surcharge.

(E) The jurisdiction(s) where the local prepaid MTS surcharge, when applicable, were allocated.

(F) All payments or other credits applied to the account of the purchaser.

(G) Evidence that the uncollectible portion of gross receipts on which the prepaid MTS surcharge was paid actually has been legally charged off as a bad debt for income tax purposes (whether or not the income tax return has yet been filed) or, if the seller is not required to file income tax returns and the seller's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles.

(H) The percentage subject to the prepaid MTS surcharge of the amount charged off as a bad debt properly allocable to the amount on which the seller reported and paid the prepaid MTS surcharge.

(d) Bundled Transactions.

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(1) The prepaid MTS surcharge and local charges apply to the entire selling price when there is a sale of prepaid MTS in combination with mobile data services or any other services or products for a single price.

(2) The prepaid MTS surcharge and local charges apply to the entire selling price when there is a sale of prepaid MTS in combination with a mobile telephone communication device for a single nonitemized price, except as provided in subparagraphs (A) or (B).

(A) The purchase price of the mobile telephone communication device in the bundled transaction is disclosed to the customer on a receipt, invoice, or other documentation provided to the customer. In such an instance, the prepaid MTS surcharge and local charges shall only apply to the remaining charge after excluding the selling price of the mobile telephone communication device; or

(B) The amount of the prepaid MTS sold with the mobile telephone communication device is a minimal amount. In such an instance, the prepaid MTS surcharge and local charges do not apply to the entire selling price.

For the purposes of this subdivision, the amount of prepaid MTS will be deemed as minimal if the service allotment is for 10 minutes or less or is five dollars or less.

(e) Lifeline Transactions.

A lifeline transaction is a transaction in which a person purchases prepaid MTS from a seller authorized to provide lifeline service under the state or federal lifeline programs. The state lifeline program means the program furnishing lifeline voice communication service pursuant to the Moore Universal Telephone Service Act. The purchase in a retail transaction in this state of prepaid MTS, 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 or federal lifeline programs. The seller must retain sufficient documentation supporting amounts claimed as subject to the lifeline program.

(2) The seller is authorized to provide lifeline service under the state or federal lifeline programs. If the seller is not an authorized provider of lifeline service, the exemption does not apply.

(3) The exemption is applied only to the amount paid for the portion of the prepaid MTS that the lifeline program specifies is exempt from the prepaid MTS surcharge.

(f) Transactions in Which a Surcharge or Local Charge was Paid to Another State.

A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer of prepaid MTS 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.

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APPENDIX A

California Resale Certificate - Prepaid Mobile Telephony Services

The burden of proving that a sale of prepaid MTS is not a retail transaction is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the prepaid MTS are purchased for resale. If timely taken in proper form and in good faith from a person who is engaged in the business of selling prepaid MTS and who holds a Prepaid MTS account as required by Regulation 2460, Administration, this certificate relieves the seller from the duty of collecting the prepaid MTS surcharge and local charges. If the purchaser is not required to hold a Prepaid MTS Account because the purchaser makes no sales of prepaid MTS in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a Prepaid MTS Account in lieu of a Prepaid MTS Account number.

I HEREBY CERTIFY:

1. I hold valid California prepaid MTS Account Number: _____ .

2. This certificate is for the purchase from _____ of the property described below.

[Vendor's name]

3. I will resell the item(s) described in paragraph 4, which I am purchasing for resale in the regular course of my business operations, and I will do so prior to making any storage, use, or other consumption of the item(s) other than retention, demonstration, and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, ***I will owe the prepaid MTS surcharge and local charges***, based on the sales price of the prepaid MTS, or as otherwise provided by law.

I further understand that if any tangible personal property is involved, the transaction might also be subject to sales or use tax in this state, and this certificate does not relieve me of any obligations imposed pursuant to California's Sales and Use Tax Law.

4. Description of property to be purchased:

<u>Name of Purchaser</u>	
<u>Signature of Purchaser, Purchaser's Employee or Authorized Representative</u>	
<u>Printed Name of Person Signing</u>	<u>Title</u>

<u>Address of Purchaser</u>	
<u>Telephone Number</u>	<u>Date</u>

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Regulation 2462, Refunds of Excess Charges Collected

Reference: Sections 42010, and 42105, Revenue and Taxation Code.

(a) Excess Charges Collected. Except as otherwise provided in subdivision (c), when an amount represented by a seller to a prepaid consumer of prepaid MTS as constituting charges for the prepaid MTS surcharge or local charges is in excess of the prepaid MTS surcharge or local charges imposed, or is otherwise erroneously or illegally charged or computed under the representation that it was owed as part of the prepaid MTS surcharge or local charges when it is not owed as part of the prepaid MTS surcharge or local charges and is actually paid by the consumer to the seller, the amount so paid constitutes excess charges collected. The seller may refund the excess charges collected to the prepaid consumer who paid the amount to the seller even if the seller has not yet secured a credit or refund from the Board. Any excess charges collected and not refunded to the customer constitute a debt owed to the State, or 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 charges.

(b) Claim for Refund. Except as otherwise provided in subdivision (c), every person required to pay the prepaid MTS surcharge or local charges, including the seller, may apply to the Board for a claim for refund of any amount that has been erroneously or illegally collected or computed and paid to the Board. In order to be timely, the claim for refund must be filed with the Board within the limitation period specified in sections 55222, 55222.1, and 55222.2 of the Revenue and Taxation Code.

(c) Filing a Claim for Refund with the Local Jurisdiction or Local Agency. A prepaid consumer must file a claim for refund for the local charges with the local jurisdiction or local agency, and not the Board, in the following circumstances:

- (1) When a prepaid consumer chooses to rebut the presumed location of a retail transaction, as provided in subdivision (b) of section 42014 of the Revenue and Taxation Code, the prepaid consumer shall file 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.
- (2) A prepaid consumer that is exempt from the local charges under the local enactment may file a claim for a refund with the local jurisdiction or local agency in accordance with the refund provisions of the local enactment that allows the claim to be filed.
- (3) In connection with any actions or claims relating to or arising from the invalidity of a local tax ordinance, in whole or in part.

(d) Relief from Liability. A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer under the conditions set forth in subdivision (g)(1) and (g)(2) of Regulation 2460, Administration.

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Regulation 2401. Definitions.

Reference: Sections 41007, 41011, 41015, 41046 , ~~and~~ 41021, and 42004 Revenue and Taxation Code.

(a) Service Supplier.

(1) "Service Supplier" means both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1.

(2) Notwithstanding paragraph (1):

(A) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(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 either:

(1) A telephonic quality communication for which there is a toll charge for the service that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication; or

(2) 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 a predetermined amount of units or dollars of telephonic communications or 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.

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(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:

- (1) 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;
- (2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and
- (3) 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 time and in such form as the Board requests.

(e) Prepaid Telephone Calling Card. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

(f) Mobile Telephony Service. "Mobile telephony service" has the same meaning as defined in section 224.4 of the Public Utilities Code.

(g) Prepaid Mobile Telephony Services. "Prepaid mobile telephony services" or "prepaid MTS" means the right to utilize and/or access mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars and are utilized by means of a mobile device. For these purposes, "telecommunications service" and "information service" have the same meanings as defined in section 153 of title 47 of the United States Code.

(h) Direct Seller. "Direct seller" means a prepaid MTS provider or service supplier, as defined in Revenue and Taxation Code section 41007, that makes a sale of prepaid MTS directly to a prepaid consumer for any purpose other than for resale in the regular course of business.

A direct seller includes, but is not limited, to any of the following:

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

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

(3) A “retailer engaged in business in this state,” as defined by Revenue and Taxation Code section 6203, that is a member of the same commonly controlled group, as defined in Revenue and Taxation Code section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of section 25106.5 of title 18 of the California Code of Regulations, as an entity described in paragraph (1) or (2).

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Regulation 2422. Returns, Reporting and Payment.

Reference: Sections 41033, 41051, 41052, and 41053, 42010, and 42021, Revenue and Taxation Code.

Returns filed under the Emergency Telephone User Surcharge law must comply with the four requirements listed below:

(a) On or before the last day of the second month of following each reporting period, as assigned by the Board, calendar quarter every service supplier shall file an emergency telephone users surcharge return on a form prescribed by the Board for the preceding calendar month, quarter or calendar year. The return shall be signed by a responsible officer or agent of the service supplier and shall be accompanied by a payment for the surcharge due. All remittances shall be payable to the State Board of Equalization.

(b) A direct seller of prepaid MTS is required to file a return online with the Board through the Board's website on or before the due date prescribed above.

(c) A direct seller is required to report to the Board the amount of the prepaid MTS surcharge collected for the prior fiscal year by September 1 of each year starting with fiscal year 2016-17.

(d) At the time of filing each surcharge return the service supplier or direct seller shall provide the Board with a list containing the names and addresses of any service users or prepaid consumers who have refused to pay the surcharge, the date the surcharge was billed to each customer, the amount of each unpaid surcharge, and the reasons, if any, given by the users for refusing to make such payment. On and after January 1, 1982, such information shall be provided for a service user or prepaid consumer only if the cumulative uncollected amount for that user totals \$3.00 or more.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Regulation 2413. Exemptions from Surcharge.

Reference: Sections 41019 and 41027, Revenue and Taxation Code.

The surcharge does not apply to:

(a) Charges for service or equipment furnished by a service supplier subject to public utilities regulation during any period when the same or similar service or equipment is also available for sale or lease from other than a service supplier subject to public utility regulation.

(b) Charges for service when imposition of such surcharge would be in violation of the Constitution of the United States, the United States Code, or the laws of the State of California. These include charges for service to:

(1) The United States, its unincorporated agencies and instrumentalities, or any state of the United States.

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.

(3) The American National Red Cross, its chapters and branches.

(4) Insurance companies, including title insurance companies, subject to taxation under California Constitution, Article XIII, Section 28.

(5) Banks, including national banking associations, located within the limits of this state. The exemption for state banks and national banking associations has been repealed beginning with the bank's income year for Bank and Corporation Tax purposes commencing on or after January 1, 1981. The service supplier shall collect the surcharge from each state bank and each national banking association beginning with the first regular billing period applicable to that bank which commences on or after the date the bank becomes subject to the surcharge.

(6) Enrolled Indians who are service users subscribing for service from within the limits of an Indian reservation.

~~(7) Foreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States.~~

~~(7) Federal credit unions organized in accordance with the provisions of the Federal Credit Union Act.~~

(c) Toll charges used in the collection and dissemination of news for public press.

(d) Charges for wide-area telephone service used by common carriers in the conduct of their business.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(e) Charges for intrastate telephone communication services which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.