

Memorandum

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

Date: December 24, 2015

From: 
Randy Ferris
Chief Counsel

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

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

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

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

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

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

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

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

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

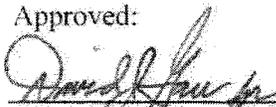
Attached is a strikeout and underlined version of Regulation 3500 illustrating the proposed changes.

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

Recommendation by:


Randy Ferris, Chief Counsel

Approved:


Cynthia Bridges, Executive Director

Approved:



Lynn Bartolo, Acting Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the 1-26-16 Board Meeting



Joann Richmond, Chief
Board Proceedings Division

Attachment: Proposed Changes to Regulation 3500

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

Proposed Changes to Regulation 3500

Regulation 3500. Application of the Fee Collection Procedures Law.

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

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