



STATE BOARD OF EQUALIZATION

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State Controller

CYNTHIA BRIDGES
Executive Director

September 4, 2015

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed Prepaid Mobile Telephony Services Regulations 2460, *Administration*; 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*; and 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*. The proposed and amended regulations 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. This issue will be presented at the Board's September 16, 2015 Business Taxes Committee meeting.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m. on September 16, 2015** in Room 121 at the address shown above.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sale and Use Tax Department

SB:rsw

Enclosures

cc: (all with enclosures, via email and/or hardcopy as requested)
Honorable Jerome E. Horton, Chairman, Third District
Senator George Runner (Ret.), Vice Chair, First District
Honorable Fiona Ma, CPA, Member, Second District
Honorable Diane L. Harkey, Member, Fourth District

Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)
Ms. Kari Hammond, Board Member's Office, Third District
Mr. David Hunter, Board Member's Office, Third District
Ms. Shellie Hughes, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, First District
Mr. Alan Giorgi, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. Jim Kuhl, Board Member's Office, Second District
Ms. Kathryn Asprey, Board Member's Office, Second District
Mr. John Vigna, Board Member's Office, Second District
Mr. Tim Morland, Board Member's Office, Second District
Ms. Lizette Mata, Board Member's Office, Second District
Mr. Russell Lowery, Board Member's Office, Fourth District
Mr. Ted Matthies, Board Member's Office, Fourth District
Ms. Lisa Renati, Board Member's Office, Fourth District
Mr. Clifford Oakes, Board Member's Office, Fourth District
Ms. Lynne Kinst, Board Member's Office, Fourth District
Mr. Ramon Salazar, State Controller's Office (MIC 73)
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. David Gau (MIC 101)
Ms. Lynn Bartolo (MIC 57)
Mr. Todd Gilman (MIC 70)
Mr. Wayne Mashihara (MIC 47)
Mr. Kevin Hanks (MIC 49)
Mr. Mark Durham (MIC 67)
Mr. Richard Parrot (MIC 57)
Ms. Sandy Barrow (MIC 31)
Mr. Robert Tucker (MIC 82)
Mr. Jeff Vest (MIC 85)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Mr. Bradley Heller (MIC 82)
Mr. Stephen Smith (MIC 82)
Mr. John Thiella (MIC 73)
Mr. Andrew Kwee (MIC 82)
Ms. Kirsten Stark (MIC 50)
Ms. Lynn Whitaker (MIC 50)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Ms. Laureen Simpson (MIC 70)
Ms. Karina Magana (MIC 47)
Mr. Bradley Miller (MIC 92)
Mr. Bill Benson (MIC 67)
Mr. Michael Patno (MIC 50)
Mr. Robert Wilke (MIC 50)

Issue Paper Number 15-009



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed Rulemaking Regarding Prepaid Mobile Telephony Services

I. 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.

II. Alternative 1 – Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed Prepaid Mobile Telephony Services Regulations 2460, *Administration*; 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*; and 2462, *Refunds of Excess Charges Collected* as set forth in Exhibits 2, 3, and 4 respectively. Staff's proposed regulations provide guidance to sellers and purchasers of prepaid MTS with respect to registration and reporting requirements, payment and collection of the prepaid MTS surcharge, exemptions, credits, and claims for refund procedures. The proposed regulations also provide guidance to local agencies or jurisdictions with respect to local charges, certain notice requirements, contracting with the Board of Equalization (BOE), and the BOE's posting and calculation of combined rates.

Staff also recommends that the Board approve and authorize publication of the proposed amendments to Emergency Telephone Users Surcharge Regulations 2401, *Definitions*; 2422, *Returns and Payment*; and 2413, *Exemptions from Surcharge*, as set forth in Exhibits 5, 6, and 7 respectively. Staff's proposed amendments to Regulations 2401 and 2422 provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. Staff's proposed amendments to Regulation 2413 ensure consistency with guidance provided by the U.S. Department of State, Office of Foreign Missions.

For a more detailed explanation of Alternative 1 - Staff Recommendation, refer to section VI of this paper.

III. Other Alternatives Considered

Do not approve proposed Regulations 2460, 2461, 2462 or proposed amendments to Regulations 2401, 2422, and 2413.

IV. Background

Assembly Bill 1717 (AB 1717) (Stats. 2014, Ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) and the Local Prepaid Mobile Telephony Services Collection Act (Local Act) (commencing with Revenue and Taxation Code (RTC) sections 42001 and 42100 respectively). The bill also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge (ETUS) Act (commencing with RTC section 41001).

Prepaid Mobile Telephony Services Surcharge Collection Act

General

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each prepaid consumer of prepaid MTS. A seller is required to collect the surcharge. The surcharge applies to the retail sales price from each retail transaction of prepaid MTS in this state. The prepaid MTS surcharge is in lieu of the surcharges and user fees imposed on amounts paid for prepaid MTS under the current law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the BOE, and local agencies or jurisdictions by providers and suppliers of telephone communication services.

Definition of Seller and Direct Seller

Pursuant to RTC section 42004, a “seller,” means a person that sells prepaid MTS to a person in a retail transaction. RTC section 42004 further provides that a “direct seller” means a prepaid MTS provider or service supplier¹ 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: a telephone corporation², a person that provides interconnected Voice over Internet Protocol (VoIP) service³, and a retailer that is a member of the same commonly controlled group or combined reporting group as a telephone corporation or provider of VoIP service.

According to the above definitions, the term seller is inclusive of direct sellers. However, as further discussed in this paper, a seller who is further defined as a direct seller has different registration and reporting requirements than those sellers who do not meet the definition of a direct seller.

Retail Sale Location / Transaction Location

A retail transaction occurs *in this state* for purposes of the surcharge if the consumer makes the retail transaction in person at a business location in this state (point-of-sale transaction). If this is not applicable, a retail transaction occurs in this state if the consumer’s address is in this state (known-address transaction). For these purposes, a known-address transaction occurs in this state under any one of the following circumstances:

- The retail sale involves the shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in this state.
- The prepaid consumer’s address is known by the seller to be in this state. The consumer’s

¹ Pursuant to RTC section 41007, a “service supplier” means: (1) a person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs and providing access to the “911” emergency system by utilizing the digits 9-1-1, (2) a person supplying Voice over Internet Protocol (VoIP) service to a service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1, or (3) a person supplying intrastate telephone communication services for whom the PUC Commission, by rule or order, modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.

² As defined pursuant to section 234 of the Public Utilities Code.

³ As defined in section 285 of the Public Utilities Code.

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address is considered to be known by the seller if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in this state and the records are not made or kept in bad faith.

- The prepaid consumer provides an address during consummation of the retail transaction that is in this state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.
- The mobile telephone number associates with a location in this state.

For purposes of determining a local charge, a retail transaction occurs at only one location. When the retail transaction occurs in person at a business location in this state (point-of-sale), it is presumed the consumption of, use of, or access to prepaid MTS occurs at the business location. If the retail transaction is not a point-of-sale transaction, it is presumed the consumption of, use of, or access to prepaid MTS occurs at the known address, and the location is determined by the circumstances bulleted above, in descending order.

Determining the Prepaid MTS Surcharge Rate

The BOE is required to calculate the prepaid MTS surcharge rate annually by November 1 by adding the ETUS rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC).

The BOE is required to post on its website the combined total of the rates of the prepaid MTS surcharge and the rate(s) of local charges for each local jurisdiction. (See page 6 for information regarding local charges.) The BOE is also required to separately post on its website individual rates for each of the PUC surcharges applicable to prepaid MTS, the ETUS rate, and each of the individual local charges applicable to prepaid MTS.

Administration

Registration

Every person that sells prepaid MTS to a person in a retail transaction in this state is required to register with the BOE. The BOE is required to establish a method for registration that uses the existing registration process for a permit or account under the Sales and Use Tax Law.

Every application for registration must be on a form prescribed by the BOE and shall set forth the name under which the applicant intends to transact business, the location of its place or places of business, and such other information as the BOE may require.

Payment and Collection

Every prepaid consumer of mobile telephony services in this state is liable for the prepaid MTS surcharge and any local charges until those amounts are paid to this state. However, a prepaid consumer's payment to a registered seller relieves the consumer from further liability. A seller is required to separately state the combined prepaid MTS surcharge and local charges on an invoice, receipt, or other similar document provided to the prepaid consumer, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction. A prepaid MTS provider must also offer prepaid consumers the option to make payment for additional prepaid usage directly to the prepaid MTS provider at the provider's retail location or website.

A prepaid MTS surcharge that is required to be collected by a seller and any amount unreturned to the prepaid consumer that is not owed as part of the surcharge but was collected under the seller's

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representation that it was owed as part of the surcharge, constitute a seller's debt to the state. A local charge shall be collected by a seller and any amount unreturned to the prepaid consumer that is not owed as part of the local charge, but was collected under the seller's representation that it was owed as part of the local charge, constitutes a seller's debt jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the charge.

Furthermore, a prepaid MTS surcharge that has been collected and not yet remitted to the BOE constitutes a seller's debt to the state. With respect to local charges collected and not yet remitted to the BOE, such amounts shall constitute a seller's debt jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the charge.

Seller Reimbursement of 2%

A seller that is not a direct seller is allowed to deduct and retain an 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 the ETUS, the PUC surcharges, and local charges.

Reporting

Pursuant to the Prepaid MTS Act, the prepaid MTS surcharge, less the two percent retailer reimbursement amount for sellers other than direct sellers, is due and payable to the BOE quarterly on or before the last day of the next month following each calendar quarter. However, the Fee Collections Procedure Law (FCPL) (commencing with RTC section 55001), also specifies that the BOE may require the payment of the amount due and filing of returns for periods other than a quarterly reporting period. In addition, a return must be filed with the BOE using electronic media at the time of payment.

For direct sellers, the portion of the prepaid MTS surcharge that consists of the ETUS is due and payable to the BOE under the same payment period as their ETUS account, on a return filed using electronic media. A direct seller is required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC and the portion that consists of the local charge to the local agency imposing the charge.

Electronic Funds Transfer

The BOE is generally authorized to administer and collect the prepaid MTS surcharge pursuant to the FCPL. However, with respect to electronic funds transfer (EFT), a seller that is required or elects to file EFT for sales and use tax purposes must remit the prepaid MTS surcharge by EFT.

Reliance on the BOE's Website

A seller may rely on the accuracy of the information posted on the BOE's website when collecting and remitting all amounts of the prepaid MTS surcharge and local charges. A direct seller must utilize the rates posted on the BOE's website when determining what amounts to collect and remit to the PUC, BOE, and each local jurisdiction or local agency.

A seller is discharged from any liability for additional prepaid MTS surcharge or local charges and is also relieved from refunding to the customer amounts collected and remitted to the BOE if:

- A seller relies in good faith on BOE-provided information to match either a point-of-sale transaction location, or the five digit postal ZIP Code of the prepaid consumer's known address, to the applicable MTS surcharge and local charges amount;
- A seller collects that amount from the prepaid consumer; and

- A seller remits the amount to the BOE in compliance with the Prepaid MTS Act.

The provisions above are applicable even if the ZIP code of the prepaid consumer's address in a known-address transaction corresponds to more than one local charge.

Exemptions/Deductions

Lifeline Exemption

A prepaid consumer's purchase of prepaid MTS, either alone or in combination with mobile data or other services, is exempt from the prepaid MTS surcharge, if all of the following apply:

- The prepaid consumer is certified as eligible for the state or federal lifeline program.
- The seller is an authorized lifeline service provider, under the state or federal lifeline program.
- The lifeline program specifies the portion of the charge that is exempt from the prepaid MTS surcharge.

Resale

As noted, the prepaid MTS surcharge and local charges apply to retail transactions that occur in this state. A retail transaction includes the purchase of prepaid MTS for any purpose other than resale in the regular course of business. As further discussed under staff's recommendation, proposed Regulation 2461 includes procedures for a seller to document that a sale is not a retail transaction.

Bad Debts

A seller is relieved from the liability to collect the prepaid MTS surcharge that became due and payable, insofar as the base upon which the surcharge is imposed is represented by accounts found to be worthless and charged off for income tax purposes. When applicable, the seller may claim a bad debt deduction on their return. If the seller is not required to file income tax returns, a bad debt deduction is allowed if the amount is charged off in accordance with generally accepted accounting principles.

If a seller subsequently collects any amounts for which a bad debt deduction was taken, the amount so collected is required to be reported and paid to the BOE on the first return subsequently filed.

Credit for Charges Paid to Other States

A credit against, but not to exceed, the prepaid MTS surcharge and local charges is allowed where the prepaid consumer paid ETUS, 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.

Bundled Transactions

The prepaid MTS surcharge and local charges apply to the entire price where prepaid MTS is sold in combination with mobile data services or any other services or products for a single non-itemized price. However, if the purchase price of a cellular telephone is disclosed to the consumer on a receipt, invoice, or other written electronic documentation provided to the prepaid consumer, the charge for the cellular telephone is not subject to the prepaid MTS surcharge and local charges. Furthermore, the prepaid MTS surcharges and local charges do not apply to a transaction where a minimal prepaid MTS amount is sold with a cellular telephone for a single, non-itemized bundled price. For these purposes, a minimal amount includes a service allotment denominated as 10 minutes or less, or \$5 or less.

Refunds*Refunds of Excess Collections*

A seller that collects an amount in excess of the prepaid MTS surcharge and local charges owed may refund those amounts to the prepaid consumer. The seller may refund those amounts even though the surcharge amount was paid to the BOE and no corresponding credit or refund has yet been secured.

Claims for Refund

Every person required to collect or pay the prepaid MTS surcharge or local charges, may apply to the BOE for a claim for refund of any amount that has been erroneously collected and paid to the BOE, unless otherwise specified.

Local Prepaid Mobile Telephony Services Collection Act*Legislative Intent*

The Local Act provides that it “is the intention of the Legislature that this part shall preempt the provisions pertaining to the tax or charge rate, base, and method of collection contained in all local ordinances, rules, or regulations concerning the imposition of a local charge upon the consumption of prepaid mobile telephony services, to the extent those provisions are inconsistent with the provisions of this part and Part 21 (commencing with Section 42000.) It is not the intent of the Legislature to otherwise preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax (UUT), local 911 charge, or any other local charges.”

General

On and after January 1, 2016, a local charge imposed by a local agency on prepaid MTS is required to be collected by a seller from the prepaid consumer at the same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid MTS Act; provided that on or before September 1, 2015, the local agency enters into a contract with the BOE to collect and administer the local charges.

Notwithstanding any other law, on and after January 1, 2016, AB1717:

- Suspends the utility user tax on the consumption of prepaid MTS in the city or county at the rate specified in its ordinance and replaces it with specific tiered rates set forth in statute, based on the existing city or county rate.
- Suspends a local charge applicable to prepaid MTS for communication services or local “911” emergency telephone access at a rate as specified in a local ordinance and replaces it with a rate as specified by statute.

Furthermore, on and after January 1, 2016, the Local Act shall be:

- The exclusive collection method for the local UUT, local 911 charges, and any other local charge imposed on consumers using prepaid MTS, and for defining the scope of the local tax or charge on prepaid MTS.
- The complete substitute for the UUT rate set forth in the local ordinance at the specified tiered rate. The bill also states that “this part shall not preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges.”

Contract

In the contract, the local agency must certify to the BOE that its ordinance applies its local charges to prepaid MTS and that the local agency agrees to indemnify, and hold harmless, the BOE, its officers,

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agents, and employees for any and all liability for damages that may result from collection pursuant to the contract. The local agency must also certify the amount of the “access to communications” or local 911 charge, or the applicable tiered rate for a UUT.

Administration

The BOE is required to perform all functions incident to the collection of the local charges of a city or county, except with respect to direct sellers. The BOE must collect such local charges from sellers, other than direct sellers, in the same manner as it collects the MTS surcharge under the Prepaid MTS Act, subject to specified limitations.

Local Jurisdiction Responsibilities

Those functions for which the local jurisdiction or local agency is solely responsible include:

- Defending any claim regarding the validity of the ordinance in its application to prepaid MTS.
- Interpreting any provision of the ordinance, except to the extent specifically superseded by the Local Act.
- Responding to specified customer claims for refund involving: (1) the presumed location of the retail transaction; (2) an exemption from the local charge under the local enactment; or (3) a challenge to the validity of a local tax ordinance, in whole or part.
- Reallocating local charges as a result of correcting errors relating to the location of the point of sale transaction of a seller, or the known address of a consumer, for up to two prior quarters from the date of knowledge of the error.
- Enforcing, including auditing, the collection and remittance of local charges by direct sellers pursuant to the local agency’s ordinance.

In the event a local agency adopts a new local charge after September 1, 2015, the Local Act requires the local agency to enter into a contract with the BOE, as provided, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year. With respect to a local agency that contracts with the BOE and thereafter increases its existing local charge, the local agency is required to notify the BOE in writing on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

However, when a local agency notifies the BOE in writing that a local charge is no longer imposed, has decreased, or is inaccurate, the BOE is required to promptly post the recalculated rate(s). The change becomes operative on the first day of the calendar quarter commencing more than 60 days from the date the local agency provided notification to the BOE of the inaccuracy.

BOE Duties

The Local Act allows the BOE to perform, or to contract with third parties to perform, the following duties of the BOE:

- Allocate and transmit collected local charges in the Prepaid Mobile Telephony Services Fund to the appropriate local jurisdictions.
- Audit proper collection and remittance of the local charge.
- Respond to requests from sellers, customers, boards, and others regarding local charges.

Existing disclosure laws apply to any third-party contract. Contingent fee arrangements, as payment for services rendered, are prohibited in any third-party contract.

Disclosing Information

The Local Act requires the BOE to make available to a requesting local agency any information that is reasonably available to the BOE regarding the proper collection and remittance of a local charge of that local agency by a seller, including a direct seller. Such information is subject to the confidentiality requirements of RTC sections 7284.6, 7284.7, and 19542.

Deposit of Local Revenues

All local charges collected by the BOE are to be deposited in the State Treasury and held in trust for the local taxing jurisdiction. Local charges consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the BOE, less payments for refunds and reimbursement to the BOE for expenses to administer and collect the local charges.

The BOE is required to periodically transmit the funds to the local jurisdictions as promptly as feasible and at least once in each calendar quarter. The BOE must also furnish a quarterly statement to the local jurisdictions indicating the amounts paid and costs withheld. A local agency shall pay to the BOE its pro rata share of the BOE's cost of collection and administration, based on revenues collected.

Emergency Telephone Users Surcharge (ETUS) Act*General*

On and after January 1, 2016, a prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the PUC surcharges, and the ETUS, imposed under current law on prepaid MTS.

Calculation of the Emergency Telephone Users Surcharges Collected / Guaranteed Funding

Beginning with the 2016-17 fiscal year, the BOE is required to determine annually, by November 1, the total amount of the prepaid MTS surcharge collected that is for the ETUS. The calculation shall be net of the two percent retailer reimbursement retention and less the expenses incurred and reimbursed to the BOE for the portion of the prepaid MTS surcharge that is for the ETUS. The BOE is required to post on its website by December 15 following the calculation, whether the total amount collected exceeds or is less than \$9.9 million dollars. The BOE is also required to post the assumptions, methodology and the calculation the BOE used to determine how much was collected for the ETUS pursuant to the prepaid MTS program.

Billing for Deficiency

For any fiscal year that less than \$9.9 million dollars was collected, the BOE shall calculate the deficiency and bill each direct seller or prepaid MTS provider its pro rata share of that deficiency based upon each direct seller's or prepaid MTS provider's percentage share of the total California intrastate prepaid MTS revenue as reported to the PUC, for the prior fiscal year.

A billing may not be issued any later than three years after the date the BOE determines there was a deficiency. The liability becomes final unless a timely petition for redetermination is filed within 60 days of the issuance of the billing. At the expiration of the 60-day period, interest begins to accrue. If a liability is not paid by the time it becomes final, a 10% penalty is added to the billed amount (exclusive of interest and penalties).

Within 45 days of a request by the BOE, the PUC is required to provide the BOE the following:

- The name and address of each prepaid MTS provider and direct seller;
- Each prepaid MTS provider's and direct seller's California intrastate prepaid MTS revenue;

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- Each prepaid MTS provider's and direct seller's percentage share of total California intrastate prepaid MTS revenue for the prior fiscal year; and
- Any other information the BOE deems necessary.

RTC section 41033 also requires each prepaid MTS provider or direct seller to report to the BOE the amount of that portion of the prepaid MTS that is for the ETUS, remitted by the provider or direct seller pursuant to ETUS Law for the prior fiscal year. The report is due on or before September 1 each year beginning with the 2016-17 fiscal year, and ending with the 2018-19 fiscal year.

V. Discussion

The Prepaid MTS Act authorizes the BOE to prescribe, adopt, and enforce regulations relating but not limited to the administration and enforcement, including collections, reporting, refunds, and appeals of the provisions of the Prepaid MTS Act. Likewise, the Local Act authorizes the BOE to prescribe and adopt rules and regulations for the administration and collection of local charges and the distribution of the local charges collected.

The statutes for both the prepaid MTS surcharges and local charges provide that, except for direct sellers, the collection and administration shall be in accordance with the FCPL. Direct sellers remit the ETUS portion of the prepaid MTS surcharge pursuant to the ETUS, and the local charges to the local jurisdiction pursuant to the applicable local ordinance. There are also specified limitations with respect to certain responsibilities of a local agency or local jurisdiction and electronic fund transfers.

With the BOE's responsibilities of administering a new program for the prepaid MTS surcharges and local charges, staff has consolidated guidance into the proposed "Prepaid Mobile Telephony Services Regulations" (Title 18, Division 2, proposed Chapter 5.7, commencing with proposed section 2460). Staff has made corresponding amendments as necessary within the existing ETUS regulations.

Interested Parties Comments

Staff distributed the Initial Discussion Paper and Second Discussion Paper for this issue on December 22, 2014 and February 20, 2015, respectively. Staff also conducted interested parties meetings to discuss the proposed prepaid MTS regulations and amended ETUS regulations on January 6, 2015 and March 4, 2015. During the interested parties process, there was general approval of the proposed and amended regulations. Interested parties also expressed their appreciation of the BOE's efforts to clarify this issue.

Other Comments

Staff received comments from Ms. Brenda Narayan, of MuniServices, LLC (MuniServices), in a letter dated March 19, 2015. In the letter, Ms. Narayan states that MuniServices had no specific recommendations regarding the proposed rulemaking. She also expresses their interest in the proper and cost effective implementation of AB 1717 and looks forward to offering helpful suggestions to reduce costs, where possible. She also explains that MuniServices looks forward to assisting local agencies and local jurisdictions to timely meet their obligation to enter into agreements with the BOE with respect to the administration and collection of the local charges. While these additional comments pertaining to contracting with the BOE are outside the scope of this rulemaking process, staff has shared the correspondence with the BOE staff responsible for leading the implementation of the statutes related to prepaid MTS and local charges.

Other Amendments

Regulation 2413, *Exemptions from Surcharge*, provides that the ETUS does not apply to 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. Pursuant to subdivision (b)(7), this includes charges for service to “[f]oreign 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.”

The U.S. Department of State, Office of Foreign Missions (OFM) notified the BOE that while foreign governments and accredited members are exempt from tax under the Vienna Convention on Consular Relations (VCCR), this exemption does not apply to "charges levied for specific services rendered." (VCCR Article 49.1(e).) Furthermore, OFM explained that it considers the ETUS as a charge for specific services rendered, and not a tax, for purposes of the tax exemption set forth in Article 49.1 of the Vienna Convention. In particular, the ETUS provides funds for official public safety answering points as well as the network and infrastructure that support 911 services. To that extent, foreign missions and their members are not exempt from the ETUS under the U.S. Constitution, the VCCR, or other treaties. Therefore, staff proposes to delete subdivision (b)(7) in Regulation 2413 to be consistent with the guidance provided by OFM, so that the non-exhaustive list of scenarios in subdivision (b) of Regulation 2413 does not misapply federal law and federal treaties.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Prepaid Mobile Telephony Services Regulations

Staff recommends the Board approve and authorize publication of the proposed Prepaid Mobile Telephony Services Regulations 2460, *Administration*; 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*; and 2462, *Refunds of Excess Charges Collected*.

Staff proposes to add Regulation 2460, *Administration*, as provided in Exhibit 2, to:

- Define key terms used in the proposed prepaid MTS regulations.
- Clarify that the term “direct seller” includes “a person that provides” Voice over Internet Protocol service and includes a retailer “engaged in business in this state” as defined by RTC section 6203.
- Clarify that the terms “prepaid mobile telephony services” and “prepaid MTS” mean the right to utilize and/or access mobile telecommunications services which are prepaid and utilized by a mobile device and not the “right to utilize a mobile device” to access the services.
- Clarify the registration requirements of direct sellers.
- Emphasize that the surcharge and local charges are imposed on the prepaid consumer and the sellers are obligated to collect and separately state the combined prepaid MTS surcharge and local charges.
- Facilitate compliance by specifying that a seller is obligated to provide a “receipt” to its customers and the receipt must contain certain elements, including 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.

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- Reiterate that direct sellers shall continue to remit the portion of the prepaid MTS surcharge that consists of the ETUS to the BOE pursuant to the ETUS Act, the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC, and the portion that consists of the local charge to the local agency imposing the charge.
- Specify that returns are required to be filed online with the BOE through the BOE's website and the amounts required to be reported to the BOE may be for quarterly periods other than calendar quarters and for periods other than quarterly periods.
- Clarify that a deduction for "seller reimbursement retention" must be taken in the corresponding period in which the sale of the prepaid MTS surcharge occurred, otherwise a claim for refund must be filed.
- Reference Sales and Use Tax Regulation 1707, *Electronic Funds Transfer*, for purposes of defining the term EFT. This is with respect to those sellers required to remit payment for the collected prepaid MTS surcharges and local charges by EFT because they are required, or have elected, to remit their sales and use tax liabilities by EFT.
- Reference Special Taxes Administration Regulation 4901, *Records*, with respect to a seller's record keeping requirements.
- Provide that relief of liability may be granted pursuant to Special Taxes Administration Regulations 4902, *Relief from Liability*, and 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*.
- Specify that a local agency or local jurisdiction must enter into a contract with the BOE by September 1, 2015 with respect to the collection and administration of existing local charges.
- Add an alternative effective date for the collection and administration of existing local charges when a local agency or jurisdiction is unable to contract with the BOE by September 1, 2015.
- Specify the contract due date and effective date for new local charges.
- Explain the advance notice requirements for increases, decreases, or expiring local charges, and the effective dates for such changes.
- State how the BOE shall annually calculate the prepaid MTS rate.
- Clarify that the total combined prepaid MTS rate and rate(s) of local charges calculated by the BOE by November 1, 2015 and posted by December 1, 2015 shall be the effective rate beginning January 1, 2016.
- Specify when the BOE shall post the combined prepaid MTS rate and rate(s) of local charges for changes made after September 1, 2015.

Staff proposes to add Regulation 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*, as provided in Exhibit 3, to:

- Prescribe the form of a resale certificate and establish an alternate process to document that a sale was not a retail transaction in the event a resale certificate is not timely obtained by the seller.
- Clarify when a seller may take a "bad debt" deduction, and that such deductions should be adjusted for any seller reimbursement retained by the seller. Staff also proposes the regulation specify the types of records a seller needs to maintain to support the bad debt deduction.

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- Specify the other types of transactions in which an exemption, deduction, or credit may apply including bundled transactions for a minimal amount of prepaid MTS, certain transactions for the Lifeline services, and certain transactions where state or local 911 taxes were previously paid to another state.

Staff proposes to add Regulation 2462, *Refunds of Excess Charges Collected*, as provided in Exhibit 4, to:

- Clarify that either a seller of prepaid MTS or a prepaid consumer may file a claim for refund, within the statute of limitation periods established by RTC sections 55222, 55222.1, and 55222.2.
- Specify that certain claims for refund of local charges must be made to the local agency or local jurisdiction, and not the BOE.

Emergency Telephone Users Surcharge Regulations

Staff also recommends that the Board approve and authorize publication of proposed amendments to Emergency Telephone Users Surcharge Regulations 2401, *Definitions*; 2422, *Returns and Payment*; and 2413, *Exemptions from Surcharge*.

Staff proposes to amend Regulations 2401, *Definitions* and 2422, *Returns and Payments*, as provided in Exhibits 5 and 6, to:

- Define the terms mobile telephony services, prepaid mobile telephony services, prepaid MTS, and direct sellers.
- Specify that a direct seller may be required to report and remit to the BOE on a monthly, quarterly, or calendar year basis and are required to file online with the BOE through the BOE's website.
- Revise the title of the regulation to include "Reporting" for purposes of clarification.
- Specify that a direct seller must report to the BOE annually by September 1 the amount of the prepaid mobile telephony services surcharge collected for the prior fiscal year; and at the time of filing each surcharge return, certain information with respect to service users who have refused to pay the surcharge.

Staff proposes to amend Regulation 2413, *Exemptions from Surcharge*, as provided in Exhibit 7, to:

- Ensure consistency with the OFM guidance specifying that foreign governments and career consular officers are not exempt from the ETUS under federal law or federal treaties.

B. Pros of Alternative 1

- Provides regulatory guidance to sellers, including direct sellers, of prepaid MTS regarding their registration and reporting requirements, including the process for filing returns.
- Clarifies the responsibility of a local agency or local jurisdiction with respect to their obligations to contract with the BOE, and their obligation to provide adequate written notice when adding, increasing, or decreasing local charges.
- Adds an alternative effective date for the collection and administration of existing local charges when a local agency or jurisdiction is unable to contract with the BOE by September 1, 2015.

- Ensures the non-exhaustive scenarios listed in subdivision (b) of Regulation 2413 do not misapply federal law and federal treaties with respect to a federal tax exemption for foreign consulates and career consular officers.

C. Cons of Alternative 1

None.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require a regulatory change.

E. Operational Impact of Alternative 1

Staff will publish the proposed Prepaid MTS Regulations 2460, 2461, 2462 and the proposed amendments to ETUS Regulations 2401, 2422, and 2413.

F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the new and amended regulations is generally considered routine. Any corresponding cost not reimbursed pursuant to RTC sections 42023 and 42103 would be absorbed within the BOE's existing budget.

However, the costs associated with the overall implementation of AB 1717 are substantial and AB 1717 did not contain an appropriation to the BOE for its FY 2014-15 administrative costs. A FY 2015-16 Spring Finance Letter was approved for implementation of AB 1717 and includes \$5.7 million and 22.3 positions in FY 2015-16, \$2.6 million and 18.9 positions in FY 2016-17, \$1.9 million and 13.4 positions in FY 2017-18 and \$1.8 million and 12.9 positions ongoing. The Budget Act of 2015-16 contains the following provision: "[t]he Department of Finance may augment the amounts appropriated in Schedule (1) by up to \$1,000,000 to implement Chapter 885 of the Statutes of 2014, if the number of registered retailers is expected to exceed 6,500 and it is determined that the State Board of Equalization requires additional resources to implement the statute. The Department of Finance shall authorize the augmentation not sooner than 30 days after notification in writing to the Joint Legislative Budget Committee." Senate Bill 84 (Stats. 2015, Ch. 25) added RTC sections 42023.5 and 42104 which authorize the Director of Finance to approve a short-term loan for FY 2015-16 from the General Fund to the Prepaid MTS Surcharge Fund and Local Charges for Prepaid MTS Fund with the intent to provide adequate cash flow for BOE's expenses to administer and collect the prepaid MTS surcharge and local charges.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Sellers and consumers of prepaid MTS, as well as local agencies or local jurisdictions, will have regulatory guidance to help them understand their obligations under the Prepaid MTS Act and Local Act.

H. Critical Time Frames of Alternative 1

None.

VII. Alternative 2

A. Description of Alternative 2

Do not approve the proposed Regulations 2460, 2461, 2462 or amendments to Regulations 2401, 2413, or 2422.

B. Pros of Alternative 2

The BOE will not incur the workload associated with publishing the proposed and amended regulations.

C. Cons of Alternative 2

Without further rulemaking, sellers and consumers of prepaid MTS, as well as local agencies or local jurisdictions may not have a clear understanding of their obligations under the Prepaid MTS Act or Local Act, which may lead to noncompliance with the provisions of those statutes.

D. Statutory or Regulatory Changes for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Taxpayers, BOE staff, and other affected persons may have different interpretations of the underlying statutes, which may lead to confusion or noncompliance.

H. Critical Time Frames for Alternative 2

None.

Preparer/Reviewer Information

Prepared by the Tax Policy Division, Sales and Use Tax Department; and the Program Policy and Administration Branch, Special Taxes and Fees Department.

Current as of: August 26, 2015

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Proposed Rulemaking Regarding Prepaid Mobile Telephony Services

I. 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.

II. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed Prepaid Mobile Telephony Services Regulations 2460, *Administration*; 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*; and 2462, *Refunds of Excess Charges Collected*, as set forth in Exhibits 2, 3, and 4 respectively. Staff's proposed regulations provide guidance to sellers and purchasers of prepaid mobile telephony services with respect to registration and reporting requirements, payment and collection of the prepaid MTS surcharge, exemptions, credits, and claims for refund procedures. The proposed regulations also provide guidance to local agencies or jurisdictions with respect to local charges, certain notice requirements, contracting with the BOE, and the BOE's posting and calculation of combined rates.

Staff also recommends that the Board approve and authorize publication of the proposed amendments to Emergency Telephone Users Surcharge Regulations 2401, *Definitions*; 2422, *Returns and Payment*; and 2413, *Exemptions from Surcharge*, as set forth in Exhibits 5, 6, and 7 respectively. Staff's proposed amendments to Regulations 2401 and 2422 provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. Staff's proposed amendments to Regulation 2413 ensure consistency with guidance provided by the U.S. Department of State, Office of Foreign Missions.

III. Other Alternative(s) Considered

Do not approve proposed Regulations 2460, 2461, 2462 or proposed amendments to Regulations 2401, 2422, and 2413.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact revenue.

The proposal provides the following:

- Provides regulatory guidance to sellers, including direct sellers, of prepaid MTS regarding their registration and reporting requirements, including the process for filing returns.
- Clarifies the responsibility of a local agency or local jurisdiction with respect to their obligations to contract with the BOE, and provide adequate written notice when adding, increasing, or decreasing local charges.
- Adds an alternative effective date for the collection and administration of existing local charges when a local agency or jurisdiction is unable to contract with the BOE by September 1, 2015.
- Ensures Regulation 2413 is consistent with the OFM's current policies with respect to the application of the ETUS to foreign consulates and career consular officers.

Other Alternatives Considered

There is nothing in Alternative 2 that would impact revenue. However, without further rulemaking, sellers and consumers of prepaid MTS, as well as local agencies or local jurisdictions may not have a clear understanding of their obligations under the prepaid MTS Surcharge Collection Act or Local Act which may lead to noncompliance with the provisions of those statutes.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Other alternatives considered – alternative 2 does not have a revenue impact.

Preparation

Mr. Bill Benson, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate has been reviewed by Mr. Mark Durham, Manager, Research and Statistics Section, Legislative and Research Division and Ms. Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of August 27, 2015.

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.

(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).

(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

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.

(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.

(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.

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

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

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.

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.

(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 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 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 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.

(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

<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>

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*.

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.

(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.

(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).

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.

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.

(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.