Proposed Text of

California Code of Regulations, Title 18, Section 2460,

Administration

(A new regulation to be added to the California Code of Regulations)

2460. Administration.

(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, the collection of which are subject to the provisions of the Local Prepaid Mobile Telephony Services Collection Act (commencing with Revenue and Taxation Code section 42100).

(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 claim for refund or other 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 imposed under the Prepaid Mobile Telephony Services Surcharge Collection Act (commencing with Revenue and Taxation Code section 42001) 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 Act (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), other than a direct seller, 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 (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 portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge is due and payable to the Board, 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 subdivision (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 surcharge and local charges, 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 requesting 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 the Prepaid Mobile Telephony Services Surcharge Collection Act (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's 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 website 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 Revenue and Taxation Code 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.

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