

Rulemaking File
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Emergency Telephone Users Surcharge

2401, *Definitions*, 2413, *Exemptions from Surcharge*, 2422, *Returns and Payment*

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OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: March 29, 2016
RE: Return of Rulemaking Materials **LW**
OAL Matter Number 2016-0212-02
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Emergency Telephone Users Surcharge."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-1201-04	REGULATORY ACTION NUMBER 2016-0212-02S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 28 2016

1:53 pm

2016 FEB 12 P 2:15

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2015 50-2	PUBLICATION DATE 12/11/2015	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Emergency Telephone Users Surcharge	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT AMEND 2401, 2413, 2422 REPEAL
TITLE(S) 18	

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE February 11, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 28 2016

Office of Administrative Law

Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2401

2401. Definitions.

(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" or "MTS" 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).

per agency
request

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, ~~and 41021~~ and 42004, Revenue and Taxation Code.

J.C., 03-28-2016

Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2413

2413. Exemptions from Surcharge.

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, ~~A~~article XIII, ~~S~~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.~~

~~(78) 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.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129, Revenue and Taxation Code.

Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2422

2422. Returns, Reporting, and Payment.

Returns filed under the Emergency Telephone Users Surcharge Act must comply with the four requirements listed below:

(a) On or before the last day of the second month 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~~ that calendar month, quarter or calendar year reporting period. 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 that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge that the direct seller remitted 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.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41024, 41033, 41051, ~~and~~ 41052, 41052.1, 41053 and 42010, Revenue and Taxation Code.

- e. the Board did not identify an incorporated by reference form by title and date of publication or issuance in the informative digest of the 45-day notice, as required by title 1, California Code of Regulations, section 20(c)(3); and, the Board did not include seven copies of the incorporated by reference form with the regulation text attached to the STD. 400 form, as required by Government Code section 11343 and title 1, California Code of Regulations, section 6(a).

All APA issues must be resolved prior to OAL's approval of any resubmission.

CONCLUSION

For the foregoing reasons, OAL disapproved the above-referenced rulemaking action. Pursuant to Government Code section 11349.4(a), the Board may re-submit this rulemaking action within 120 days of its receipt of this Decision of Disapproval.

The Board must document in the rulemaking file its approval of the final text after consideration of all public comments and relevant information, as well as resolve all other issues raised in this Decision of Disapproval.

If you have any questions, please contact me at (916) 323-6809.

Date: March 24, 2016

Richard L. Smith
Senior Attorney

For:
Debra M. Cornez
Director

Original: Paul Sanchez
Copy: Karen Robison

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916)

653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2016-0318-01
BOARD OF EDUCATION
Pupil Instruction: Courses Without Educational Contract

This emergency rulemaking action by the State Board of Education (Board) adopts section 1700, title 5 of the California Code of Regulations relating to district recordkeeping requirements for courses without educational content and previously completed courses as set forth in Education Code sections 51228.1 and 51228.2 (enacted by Statutes 2015, chapter 703 (AB 1012)).

Title 5
ADOPT: 1700
Filed 03/28/2016
Effective 03/28/2016
Agency Contact: Hillary Wirick (916) 319-0644

File# 2016-0212-02
BOARD OF EQUALIZATION
Emergency Telephone Users Surcharge

This regular rulemaking by the Board of Equalization (the "Board") amends sections 2401, 2413, and 2422 in title 18 of the California Code of Regulations. The amendments to Sections 2401 and 2422 implement, interpret, and make specific statutes regarding the prepaid mobile telephony service surcharge reporting requirements for a direct seller of prepaid mobile telephony service. The amendments to Section 2413 make this section consistent with guidance provided by the United States Department of State, Office of Foreign Missions, specifying that foreign governments and career consular officers are not exempt from the emergency telephone users surcharge under federal law.

Title 18
AMEND: 2401, 2413, 2422
Filed 03/28/2016
Effective 07/01/2016
Agency Contact: Richard Bennion (916) 445-2130

File# 2016-0211-03
CALIFORNIA GAMBLING CONTROL COMMISSION
Program for Responsible Gambling

This regulatory action by the California Gambling Control Commission updates the "Program for Responsible Gambling" standards and requirements in sections 12460-12466 of title 4 of the California Code of Regulations.

Rulemaking File Index
Title 18. Public Revenue
Emergency Telephone Users Surcharge

2401, *Definitions*, 2413, *Exemptions from Surcharge*, 2422, *Returns and Payment*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Business Taxes Committee Minutes, September 16, 2015](#)
 - Minutes
 - Chief, Tax Policy Division, memo dated September 4, 2015
 - BTC Agenda
 - Formal Issue Paper Number 15-009
 - Exhibit 1 Revenue Estimate
 - Exhibit 2 Text Regulation 2460
 - Exhibit 3 Text Regulation 2461
 - Exhibit 4 Text Regulation 2462
 - Exhibit 5 Text Regulation 2401
 - Exhibit 6 Text Regulation 2422
 - Exhibit 7 Text Regulation 2413
4. [Reporter's Transcript Business Taxes Committee, September 16, 2015](#)
5. [Estimate of Cost or Savings, December 7, 2015](#)
6. [Economic and Fiscal Impact Statements, December 1, 2015](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date December 11, 2015
 - Email sent to Interested Parties, December 11, 2015
 - CA Regulatory Notice Register 2015, Volume No. 50-Z
8. [Notice to Interested Parties, December 11, 2015](#)

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Regulation 2401, 2413, 2422
 - Regulation History
9. [Statement of Compliance](#)
10. [Reporter's Transcript, Item F1 January 26, 2016](#)
11. [Draft Minutes, January 26, 2016, and Exhibits](#)
 - Notice of Proposed Regulatory Action
 - Initial Statement of Reasons
 - Proposed Text of Regulations 2401, 2413, 2422
 - Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on February 11, 2016 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

February 11, 2016

A handwritten signature in cursive script, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Sections 2401, *Definitions*,
2413, *Exemptions from Surcharge*, and
2422, *Returns and Payment***

UPDATE OF INFORMATION IN THE INITIAL STATEMENT OF REASONS

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, sections (Regulations) 2401, *Definitions*, 2413, *Exemptions from Surcharge*, and 2422, *Returns and Payment*, on January 26, 2016. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulations 2401, 2413, and 2422 without making any changes.¹ The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on January 26, 2016, to comment on the proposed regulatory action.

The factual basis, specific purposes, and necessity for, the problems to be addressed by, and the anticipated benefits from the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 are the same as provided in the initial statement of reasons.

The Board anticipates that the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid mobile telephony services (MTS) by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to

¹ However, note that the Board added underlines, which were inadvertently omitted, to the lower case “a” replacing the capital “A” in subdivision (b)(4) and the lower case “s” replacing the capital “S” in subdivision (e) of the final text of the proposed amendments to Regulation 2413.

report service users, including prepaid consumers, who have refused to pay the surcharge.

- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

The adoption of proposed amendments to Regulations 2401, 2413, and 2422 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 2401, 2413, or 2422 or the proposed amendments to Regulation 2401, 2413, or 2422.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulations 2401, 2413, and 2422 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board's initial determination that the proposed regulatory action will not have a significant adverse economic impact on business, the Board's determination that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, and the Board's economic impact assessment, which determined that the Board's proposed regulatory action:

- Will neither create nor eliminate jobs in the State of California;
- Nor result in the elimination of existing businesses;
- Nor create or expand business in the State of California; and
- Will not affect the benefits of Regulations 2401, 2413, and 2422 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulations 2401, 2413, and 2422 may affect small businesses.

Necessity for Duplication

The proposed amendments to Regulation 2401 duplicate provisions from statutory definitions in Revenue and Taxation Code section 42004, which is cited in the regulation's "reference" note, and the Board has determined that the duplication is necessary to ensure that the proposed amendments to Regulation 2401 satisfy the clarity and consistency requirements of Government Code section 11349.1, subdivision (a).

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 does not impose a mandate on local agencies or school districts.

Public Comments

The Board did not receive any written public comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on January 26, 2016, to comment on the proposed regulatory action.

Determination Regarding Alternatives

By its motion on January 26, 2016, the Board determined that no alternative to the proposed amendments to Regulations 2401, 2413, and 2422 would be more effective in carrying out the purposes for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board did not reject any reasonable alternative to proposed amendments to Regulations 2401, 2413, and 2422 that would lessen any adverse impact the proposed regulatory action may have on small business.

No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

**Updated Informative Digest for the State Board of Equalization’s
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Sections 2401, *Definitions*,
2413, *Exemptions from Surcharge*, and
2422, *Returns and Payment***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, sections (Regulations) 2401, *Definitions*, 2413, *Exemptions from Surcharge*, and 2422, *Returns and Payment*, on January 26, 2016. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulations 2401, 2413, and 2422 without making any changes.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on January 26, 2016, to comment on the proposed regulatory action.

There have not been any changes to the applicable laws or the effects of, the objectives of, and anticipated benefits from the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulation action provides:

Summary of Existing Laws and Regulations

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with RTC section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and Regulation 2422. As relevant here, RTC sections 41051 and 41052

generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “‘mobile telephony service’ or ‘MTS’” means “commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], 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.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs 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 law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “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 supplier as defined in [RTC] 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, a telephone corporation, as defined in section 234 of the Public Utilities Code, a person that provides interconnected VoIP service, as defined in section 285 of the Public Utilities Code, 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 under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For seller’s, other than direct seller’s, the prepaid MTS surcharge is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and payable to the Board under the same reporting and payment periods as their 911 surcharge is due and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media, pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act’s definition of prepaid MTS into the Emergency Telephone Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge.

AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that “[f]or each fiscal year, beginning with the 2016–17 fiscal year” each “direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year.”

Also, as relevant here, the Board has adopted Regulation 2401 to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be “construed as imposing a [911] surcharge upon amounts paid by any person 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” The Board previously adopted Regulation 2413 to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply 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.” However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- “Although 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).”;
- “OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax”;
- OFM’s “view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services”; and
- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached to initial statement of reasons.)

Effects, Objectives, and Benefits of the Proposed Amendments to Regulations 2401, 2413, and 2422

Business Taxes Committee Process

There is currently an issue because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and

“direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and

- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to 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” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff’s draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase “right to utilize and/or access,” rather than “right to

access,” MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15-009, which recommended that the Board adopt staff’s revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms “mobile telephony services,” “prepaid mobile telephony services,” and “direct seller” in accordance with RTC sections 42004, and added a reference to RTC section 42004 to the regulation’s reference note.

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to “Article XIII, Section 28” in subdivision (b)(4) and the reference to “Section 4253” in subdivision (e) to “article XIII, section 28” and “section 4253,” respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include “Reporting” for purposes of clarification;
- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board’s website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.
- Clarified that, at the time of filing each return, direct sellers are required to report service users, included prepaid consumers, who

have refused to pay the surcharge, as required by RTC section 41052; and

- Added references to RTC sections 41033, 41053, and 42010 to the regulation's reference note.

Furthermore, Formal Issue Paper 15-009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15-009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancina, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff's recommendation to propose to adopt staff's revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary to have the effect and accomplish the objective of addressing the first issue referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary to have the effect and accomplish the objective of the second issue referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary to have the effect and accomplish the objective of addressing the third issue referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

The Board has performed an evaluation of whether the proposed amendments to Regulations 2401, 2413, and 2422 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments to Regulations 2401, 2413, and 2422, are not inconsistent or incompatible with existing state regulations. This is because Regulations 2401 and 2422 are the only state regulations that specifically implement, interpret, and makes specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. This is also because Regulation 2413 is the only regulation that specifically implements, interprets, and makes specific RTC section 41027 (discussed above). In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 2401, 2413, and 2422.



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

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

Action Items & Status Report Items

Agenda Item No.: 1

Title: Proposed Amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

Issue:

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

Committee Discussion:

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

Committee Action:

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

Agenda Item No.: 2

Title: Proposed Prepaid Mobile Telephony Services Regulations 2460, 2461, and 2462; and, Proposed Amendments to Emergency Telephone Users Surcharge Regulations 2401, 2422, and 2413

Issue:

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

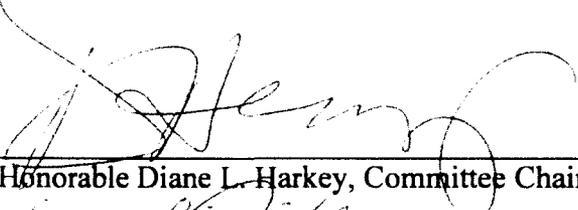
Committee Discussion:

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

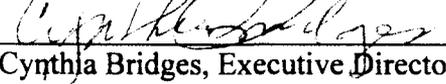
jurisdictions' contractual requirements. Mr. Horton encouraged the ongoing efforts. He noted that those jurisdictions that had not contracted with the Board by September 1, 2015, have another opportunity to contract with the Board by December 1. Mr. Horton directed staff to advise direct carriers and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

Committee Action:

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



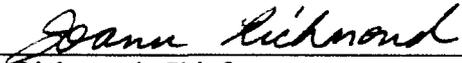
 Honorable Diane L. Harkey, Committee Chair



 Cynthia Bridges, Executive Director

BOARD APPROVED

at the 9-16-15 Board Meeting



 Joann Richmond, Chief
 Board Proceedings Division

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

~~(1) A person may claim a refund for tax paid on diesel fuel used to operate power take off equipment. Power take off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take o~~(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.

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

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

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

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

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

The proposed regulation contained in this document may not be adopted. Any version that is adopted may differ from this text.

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

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

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Dump trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
<u>Garbage truck</u>	<u>35%</u>
<u>Hot asphalt distribution truck</u>	<u>15%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>

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<u>Line truck with digger/derrick or aerial lift</u>	<u>20%</u>
<u>Log truck with self loader</u>	<u>20%</u>
<u>Mobile crane</u>	<u>25%</u>
<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration truck</u>	<u>20%</u>
<u>Salt spreader on dump truck</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet /vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super sucker</u>	<u>25%</u>
<u>Sweeper truck</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank truck</u>	<u>15%</u>
<u>Truck with hydraulic winch</u>	<u>15%</u>
<u>Transfer Trailer</u>	<u>20%</u>
<u>Wrecker</u>	<u>15%</u>
<u>Other Auxiliary Equipment</u>	<u>10%</u>

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

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conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment not listed in subdivision (a)(2), the "other" category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

(b) OFF-HIGHWAY USE.

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

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

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

(c) REFUNDS.

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

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(d) IDLE TIME.

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

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Regulation 2460, Administration

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

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

(1) "Board" means the State Board of Equalization.

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

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

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

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

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

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

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

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

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

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

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

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(9) “Ordinance” refers to an ordinance of a local jurisdiction or local agency imposing a local charge, including any local enactment relating to the filing of a refund or a claim arising under the ordinance.

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

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

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

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

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

(14) “Prepaid MTS surcharge” means the surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Revenue and Taxation Code section 42010, that is required to be collected by a seller from a prepaid consumer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Payment and Returns.

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

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

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

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

(A) The emergency telephone users surcharge.

(B) The Public Utilities Commission surcharges.

(C) The local charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Local Charges

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

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

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

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

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

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

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

(j) Posting and Calculation of Combined Rates

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

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

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

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

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

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

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

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

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

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

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

(b) Sales for Resale.

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

(1) Form of Certificate.

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

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

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

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

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

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

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

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

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(2) Good Faith.

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

(3) Improper Use of Certificate.

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

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

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

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

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

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

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

(5) Use of XYZ Letters.

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

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

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

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

1. Purchased for resale and resold, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;
2. Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;
3. Purchased for resale but consumed or used; or
4. Purchased for use.
5. When the purchaser answers either (3) or (4) affirmatively (box checked), the XYZ letter will inquire further whether:

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

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

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

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

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

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

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

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

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

(c) Bad Debts.

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

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

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

(1) Amount Subject to Deduction.

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

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

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

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

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

(A) Date of original sale.

(B) Name and address of purchaser.

(C) Amount purchaser contracted to pay.

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

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

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

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

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

(d) Bundled Transactions.

The proposed regulation contained in this document may not be adopted. Any version that is adopted may differ from this text.

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

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

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

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

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

(e) Lifeline Transactions.

A lifeline transaction is a transaction in which a person purchases prepaid MTS from a seller authorized to provide lifeline service under the state or federal lifeline programs. The state lifeline program means the program furnishing lifeline voice communication service pursuant to the Moore Universal Telephone Service Act. The purchase in a retail transaction in this state of prepaid MTS, either alone or in combination with mobile data or other services, by a consumer is exempt from the prepaid MTS surcharge if all of the following apply:

(1) The prepaid consumer is certified as eligible for the state or federal lifeline programs. The seller must retain sufficient documentation supporting amounts claimed as subject to the lifeline program.

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

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

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

A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer of prepaid MTS to the extent that the prepaid consumer has paid emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

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APPENDIX A

California Resale Certificate - Prepaid Mobile Telephony Services

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

I HEREBY CERTIFY:

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

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

[Vendor's name]

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

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

4. Description of property to be purchased:

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

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

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Regulation 2462, Refunds of Excess Charges Collected

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

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

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

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

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

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

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Regulation 2401. Definitions.

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

(a) Service Supplier.

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

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

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

(2) Notwithstanding paragraph (1):

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

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

(b) Intrastate Telephone Communication Services. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes either:

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

(2) A service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

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(c) Billing Agent. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) Billing Aggregator. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

- (1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;
- (2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and
- (3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such time and in such form as the Board requests.

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

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

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

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

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

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

The proposed regulation contained in this document may not be adopted. Any version that is adopted may differ from this text.

(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).

The proposed regulation contained in this document may not be adopted. Any version that is adopted may differ from this text.

Regulation 2422. Returns, Reporting and Payment.

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

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

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

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

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

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

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

Regulation 2413. Exemptions from Surcharge.

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

The surcharge does not apply to:

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

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

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

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

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

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

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

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

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

~~(78) Federal credit unions organized in accordance with the provisions of the Federal Credit Union Act.~~

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

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

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

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

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



STATE BOARD OF EQUALIZATION

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Fourth District, Orange County

BETTY T. YEE
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 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,

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.

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- 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



BOARD OF EQUALIZATION
REVENUE ESTIMATE

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

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.

APPENDIX A

California Resale Certificate - Prepaid Mobile Telephony Services

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

I HEREBY CERTIFY:

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

2. This certificate is for the purchase from _____ of the property described below.
[Vendor's name]

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

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

4. Description of property to be purchased:

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

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.~~

~~(78) 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.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

SEPTEMBER 16, 2015

BUSINESS TAXES COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

1
2 For the Board
of Equalization:

Diane L. Harkey
Chair

3
4 Jerome E. Horton
Member

5
6 Sen. George Runner (Ret.)
Member

7
8 Fiona Ma, CPA
Member

9
10 Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

11
12 Joann Richmond
Chief
13 Board Proceedings
Division

14
15 For the Department:

Susanne Buehler
Chief
16 Tax Policy Division
17 Kevin Smith
Tax Counsel III
18 Legal Department
19 Lisa Sherrod
Business Taxes
20 Administrator III
Special Taxes Department

21
22 Andrew Kwee
Tax Counsel III
Legal Department

23
24
25 Speaker:

---oOo---
Fran Mancina
Vice President
26 Government Relations
MuniServices

27
28 ---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 SEPTEMBER 16, 2015

4 ---oOo---

5 MR. HORTON: Ms. Richmond, what is our next
6 matter?

7 MS. RICHMOND: Our next matter is the
8 Business Taxes Committee. Ms. Harkey is the Chair
9 of that committee.

10 Ms. Harkey.

11 MS. HARKEY: Thank you. We have two issues
12 before the Businesses Taxes Committee. And Ms.
13 Buehler and her staff will be presenting.

14 MS. BUEHLER: Good morning. I'm Susanne
15 Buehler with the Sales and Use Tax Department.

16 We have two agenda items for your
17 consideration today. We will take each agenda item
18 and their respective action items separately before
19 moving to the next.

20 With me for Agenda Item 1 is Mr. Kevin
21 Smith from our Legal Department and Ms. Lisa Sherrod
22 from our Special Taxes and Fees Department.

23 Staff requests your approval and
24 authorization to publish proposed amendments to
25 Special Taxes and Fees Regulation 1432, Other
26 Nontaxable Uses of Diesel Fuel in a Motor Vehicle.

27 The proposed amendments define terms,
28 provide examples of qualifying equipment, and

1 provide safe-harbor percentages for nontaxable uses
2 of diesel fuel.

3 A person still has the option to claim a
4 refund using percentages other than the safe-harbor
5 percentage by submitting a study and obtaining Board
6 approval.

7 We would be happy to answer any questions
8 you may have on this topic.

9 MS. HARKEY: Are there any questions from
10 Members?

11 MR. RUNNER: Move staff recommendation.

12 MS. STOWERS: Second.

13 MS. HARKEY: Have a motion and a second.

14 Do we have any opposition?

15 Okay. So moved.

16 MS. BUEHLER: Thank you.

17 Joining me for Agenda Item 2 is Mr. Andrew
18 Kwee from our Legal Department.

19 Staff requests your approval and
20 authorization to publish proposed Prepaid Mobile
21 Telephony Services Regulations 2460, 2461 and 2462
22 and proposed amendments to Emergency Telephone User
23 Surcharge Regulations 2401, 2422 and 2413.

24 The proposed and amended regulations
25 interpret, clarify, and make specific the statutes
26 regarding the application of prepaid mobile
27 telephony services surcharge and the local charges
28 to the purchase of prepaid mobile telephony

1 services.

2 We do have speakers on this agenda item and
3 we'd be happy to answer any questions you may have
4 after their presentations.

5 MS. HARKEY: Thank you.

6 Do we have anyone from the public that
7 wishes to speak?

8 ---oOo---

9 FRAN MANCIA

10 ---oOo---

11 MR. MANCIA: Good morning.

12 MS. HARKEY: State your name and --

13 MR. MANCIA: Yes, thank you.

14 Good morning, Madam Chair and Members. My
15 name is Fran Mancía. I'm with MuniServices, and
16 we're here today on behalf of our company and our 60
17 California public agency utility tax compliance
18 service clients.

19 In total, our clients represent 70 percent
20 of the annual local utility user tax revenue
21 generated in the State of California. MuniServices
22 and public agencies are keenly interested in the
23 proper, timely and cost effective implementation of
24 these proposed regulations related to prepaid
25 telephony services which are before you for your
26 consideration.

27 For the past several years, we've worked
28 closely with Members, staff, the public, industry

1 and others to work the bills and the process
2 through, in a very collaborative and positive
3 manner. And we're very appreciative of everybody's
4 effort in that -- to that regard.

5 We've been especially focused recently on
6 the contracting process between locals and the BOE,
7 and we're confident the collaborative effort of all
8 those involved will result in a positive outcome for
9 the state and local representatives.

10 So we strongly support the Alternative A
11 and urge the Business Tax Committee to approve and
12 authorize publication of the proposed prepaid mobile
13 telephony service regulations, as well as the
14 regulations related to emergency telephone user
15 surcharge.

16 Thank you for your consideration.

17 MS. HARKEY: Thank you very much.

18 Any other from the public?

19 Members, any comment?

20 MR. HORTON: Um, Madam Chair.

21 MS. HARKEY: Yes.

22 MR. HORTON: I -- I just wanted to
23 encourage all those involved to continue the work
24 that they're doing. I think it's, uh -- it's been a
25 yeoman's effort over the last year to get the word
26 out, get the legislation passed and so forth.

27 On the recommendation side is, there are a
28 number of cities that did not make the first

1 deadline. I'm pleased that a significant number of
2 'em did. But those that didn't, and they have a
3 second bite at the apple in December, let's do what
4 we can to -- to, uh -- to make sure that they are
5 aware and they're engaging. And those who didn't,
6 let's disclose to the direct carriers, as well as
7 the retailers, those potential cities that may not
8 be -- may not have qualified for the first quarter,
9 so that they can avoid a potential 17200 issue.

10 MS. HARKEY: Thank you very much.

11 Any other comments?

12 No.

13 Thank you very much for your work; it's
14 greatly appreciated. This has been going on for
15 quite a while and trying to get this together with
16 all the parties. So I -- I really appreciate the
17 effort. It seems like we've got everyone on board
18 and I know that staff is working diligently to be
19 sure that everything comes in, in a timely fashion.

20 Thank you very much.

21 MR. RUNNER: Move staff recommendation.

22 MR. HORTON: Second, approval of proposed
23 regulation and amendments thereto.

24 MS. HARKEY: We have a first and a second
25 and -- or a motion and a second.

26 Any opposition?

27 Okay. So passed.

28 Thank you very much very, very much.

1 MS. BUEHLER: Thank you.

2 MS. HARKEY: That ends the session of the
3 Business Taxes Committee.

4 ---oOo---

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on September 16, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 8 constitute a complete and accurate transcription of the shorthand writing.

Dated: September 24, 2015

Kathleen Skidgel

KATHLEEN SKIDGEL
Hearing Reporter



**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

**Proposed Adoption of Prepaid Mobile Telephony Services Regulation Section 2401,
Definitions, Section 2413, Exemptions from Surcharge, and Section 2422, Returns and
Payment**

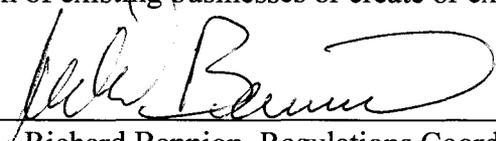
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date 12/2/15
Richard Bennion, Regulations Coordinator

Approved by  Date 12/7/15
Randy Ferris, Chief Counsel

**If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and
Chief, Board Proceedings Division, are Required**

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6615 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	EMAIL ADDRESS rbennion@boe.ca.gov	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 2401, Definitions, Section 2413, Exemptions from Surcharge, and Section 2422, Returns ...			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts business and/or employees e. Imposes reporting requirements
 b. Impacts small businesses f. Imposes prescriptive instead of performance
 c. Impacts jobs or occupations g. Impacts individuals
 d. Impacts California competitiveness h. None of the above (Explain below):

Please see the attached .

***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***

2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
 Between \$10 and \$25 million
 Between \$25 and \$50 million
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total
businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with
other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____
 - a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____

4. Will this regulation directly impact housing costs? YES NO
 If YES, enter the annual dollar cost per housing unit: \$ _____
 Number of units: _____

5. Are there comparable Federal regulations? YES NO
 Explain the need for State regulation given the existence or absence of Federal regulations: _____
 Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
 Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

***If YES, complete E2. and E3
If NO, skip to E4***

Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD 399 (REV 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

a. Implements the Federal mandate contained in _____

b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

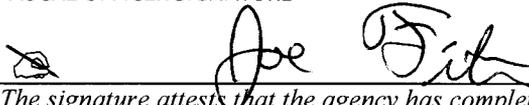
2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

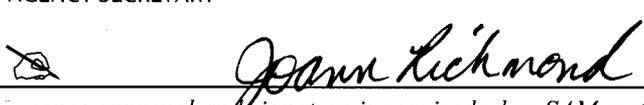


DATE

December 1, 2015

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

December 1, 2015

Agency approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

Exempt under SAM section 6615

DATE

**Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2013)) for Proposed Amendments to
California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment***

As explained in more detail in the initial statement of reasons, the State Board of Equalization (Board) is proposing to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 2401, *Definitions*, and 2422, *Returns and Payment*, to implement, interpret, and make specific the Revenue and Taxation Code (RTC) provisions regarding the prepaid mobile telephony service (MTS) surcharge reporting requirements of a direct seller of prepaid MTS, and provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board is also proposing to adopt amendments to delete subdivision (b)(7) from Regulation 2413, *Exemptions from Surcharge*, to make the regulation consistent with the guidance provided in the July 7, 2014, letter from the U.S. Department of State, Office of Foreign Missions (OFM), (attached to the initial statement of reasons), specifying that foreign governments and career consular officers are not exempt from the emergency telephone users (911) surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns required to be filed under the Emergency Telephone Users Surcharge Act, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

As explained in detail in the initial statement of reasons, all of the provisions in the proposed amendments to Regulations 2401, 2413, and 2422 are fully consistent with current law, including the provisions of Assembly Bill No. 1717 (AB 1717) enacting the Prepaid Mobile Telephony Surcharge Collection Act (commencing with RTC sections 42001), and adding statutes to and

amending statutes in the Emergency Telephone Users Surcharge Act (commencing with RTC section 41001). There is nothing in the proposed amendments to Regulations 2401, 2413, and 2422 that would significantly change how individuals and businesses would generally behave in response to current state and federal law, including the provisions of AB 1717, in the absence of the proposed regulatory action. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business that is in addition to whatever economic impact the provisions of AB 1717 will have on individuals and businesses. And, the Board has determined that the proposed adoption of the amendments to Regulations 2401, 2413, and 2422 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Furthermore, the Board has determined that proposed amendments to Regulations 2401, 2413, and 2422 do not impose any costs on any persons, including direct sellers, that are not already imposed under current law, including the provisions of AB 1717, and the Board has determined that there is nothing in the proposed amendments to Regulations 2401, 2413, and 2422 that would impact revenue. Therefore, based upon the foregoing information and all of the information in the rulemaking file, the Board has determined that the adoption of proposed amendments to Regulations 2401, 2413, and 2422:

- Will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states;
- Will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor affect the expansion of businesses currently doing business in the State of California;
- Will not have a significant effect on housing costs;
- Will result in no direct or indirect cost or savings to any state agency, and will result in no cost or savings in federal funding to the State of California;
- Will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies; and
- Will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

In addition, Regulations 2401, 2413, and 2422 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of the regulation to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed amendments to Regulations 2401, 2413, and 2422 may affect small businesses.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-1201-04	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

DEC 01 '15 DEC 11 '15

Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Definitions		TITLE(S) 18	FIRST SECTION AFFECTED 2401	2. REQUESTED PUBLICATION DATE December 11, 2015
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
TYPED NAME AND TITLE OF SIGNATORY	

TITLE 18. BOARD OF EQUALIZATION
The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 41128, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 2401, *Definitions*, Regulation 2413, *Exemptions from Surcharge*, and Regulation 2422, *Returns and Payment*. The proposed amendments to Regulations 2401 and 2422 implement, interpret, and make specific the statutes regarding the prepaid mobile telephony service surcharge reporting requirements for a direct seller of prepaid mobile telephony service. The proposed amendments to Regulation 2413 make the regulation consistent with guidance provided by the U.S. Department of State, Office of Foreign Missions, specifying that foreign governments and career consular officers are not exempt from the emergency telephone users surcharge under federal law.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on January 26-28, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on January 26, 27, or 28, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 2401, 2413, and 2422.

AUTHORITY

Regulations 2401, 2413, and 2422: RTC section 41128

REFERENCE

Regulation 2401: RTC sections 41007, 41011, 41015, 41016, 41021, and 42004.

Regulation 2413: RTC sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129.

Regulation 2422: RTC sections 41024, 41033, 41051, 41052, 41052.1, 41053 and 42010.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with RTC section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and Regulation 2422. As relevant here, RTC sections 41051 and 41052 generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “‘mobile telephony service’ or ‘MTS’” means “commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a

mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], 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.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs 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 law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “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 supplier as defined in [RTC] 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, a telephone corporation, as defined in section 234 of the Public Utilities Code, a person that provides interconnected VoIP service, as defined in section 285 of the Public Utilities Code, 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 under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For seller’s, other than direct seller’s, the prepaid MTS surcharge is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and payable to the Board under the same reporting and payment periods as their 911 surcharge is due and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media, pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act’s definition of prepaid MTS into the Emergency Telephone

Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge. AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that “[f]or each fiscal year, beginning with the 2016–17 fiscal year” each “direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year.”

Also, as relevant here, the Board has adopted Regulation 2401 to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be “construed as imposing a [911] surcharge upon amounts paid by any person 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” The Board previously adopted Regulation 2413 to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply 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.” However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- “Although 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.)”;
- “OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax”;
- OFM’s “view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services”; and
- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached to initial statement of reasons.)

Effects, Objectives, and Benefits of the Proposed Amendments to Regulations 2401, 2413, and 2422

Business Taxes Committee Process

There is currently an issue because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and “direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and
- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to 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” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff’s draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase “right to utilize and/or access,” rather than “right to access,”

MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15-009, which recommended that the Board adopt staff's revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms "mobile telephony services," "prepaid mobile telephony services," and "direct seller" in accordance with RTC sections 42004, and added a reference to RTC section 42004 to the regulation's reference note.

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to "Article XIII, Section 28" in subdivision (b)(4) and the reference to "Section 4253" in subdivision (e) to "article XIII, section 28" and "section 4253," respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include "Reporting" for purposes of clarification;
- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board's website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.
- Clarified that, at the time of filing each return, direct sellers are required to report service users, included prepaid consumers, who have refused to pay the surcharge, as required by RTC section 41052; and
- Added references to RTC sections 41033, 41053, and 42010 to the regulation's reference note.

Furthermore, Formal Issue Paper 15-009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15-009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancina, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff's recommendation to propose to adopt staff's revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary to have the effect and accomplish the objective of addressing the first issue referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary to have the effect and accomplish the objective of the second issue referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary to have the effect and accomplish the objective of addressing the third issue referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms "mobile telephony services," "prepaid mobile telephony services," "prepaid MTS," and "direct seller."
- Clarifying that returns, including direct sellers' returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board's website.

- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

The Board has performed an evaluation of whether the proposed amendments to Regulations 2401, 2413, and 2422 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments to Regulations 2401, 2413, and 2422, are not inconsistent or incompatible with existing state regulations. This is because Regulations 2401 and 2422 are the only state regulations that specifically implement, interpret, and makes specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. This is also because Regulation 2413 is the only regulation that specifically implements, interprets, and makes specific RTC section 41027 (discussed above). In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 2401, 2413, and 2422.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed adoption of the amendments to Regulations 2401, 2413, and 2422 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of Regulations 2401, 2413, and 2422 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Andrew Kwee, by telephone at (916) 323-3096, by e-mail at Andrew.Kwee@boe.ca.gov, or by mail at State Board of Equalization, Attn: Andrew Kwee, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Kwee.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on January 26, 2016, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 2401, 2413, and 2422 during the January 26-28, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 2401, 2413, and 2422. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored and strikeout versions of the text of Regulations 2401, 2413, and 2422 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 2401, 2413, and 2422, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 2401, 2413, and 2422 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that

the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 2401, 2413, and 2422, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, December 11, 2015 8:42 AM
To: Alonzo, Mary Ann (Legal); Anderson, Eboney; Angeja, Jeff (Legal); Armenta, Christopher; Asprey, Kathryn E; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; Block, Susan; BOE-Board Meeting Material; Bridges, Cynthia; Brown, Michele C; Buck, Alfred; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya P.; Dixon, Camille; Duran, David; Durham, Mark; Epolite, Anthony (Legal); Ferris, Randy (Legal); Folchi, Gino; Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Grant, Micah; Hamilton, Tabitha; Harrison, Michelle; Harvill, Mai; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Hite, Jay; Holmes, Dana; Hughes, Shellie L; Huxsoll, Cary; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); Lopez, Claudia; Lowery, Russell; Manuel, Charlene; Matsumoto, Sid; Matthies, Ted; McElhinney, Andrew; McGuire, Jeff; Miller, Brad; Moon, Richard (Legal); Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston Ratcliff, Natasha; Renati, Lisa; Richmond, Joann; Riley, Denise (Legal); Romano, Dario; Salazar, Ramon; Sarcos, Eric; Schultz, Glenna; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vandrick, Tanya; Vena, Emily (Legal); Wallentine, Sean; Whitaker, Lynn; Wiggins, Brian; Williams, Lee; Wilson, David; Zivkovich, Robert; Zumaeta, Jaclyn
Subject: State Board of Equalization - Announcement of Regulatory Change 2401, 2413, and 2422

The State Board of Equalization proposes to adopt amendments to Emergency Telephone Users Surcharge Regulations 2401, *Definitions*, 2413, *Exemptions from Surcharge*, and 2422, *Returns and Payment*. The amendments to Regulations 2401 and 2422 clarify direct sellers' prepaid mobile telephony service surcharge reporting requirements, and the amendments to Regulation 2413 make it consistent with guidance from the U.S. Department of State, Office of Foreign Missions. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California at 10:00 a.m., or as soon thereafter as the matter may be heard, on January 26-28, 2016.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/reg/reg_2401_2413_2422_2015.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Andrew Kwee, Tax Counsel III, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Andrew.Kwee@boe.ca.gov, telephone (916) 323-3096, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
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Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
Sent: Friday, December 11, 2015 9:27 AM
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Cc: Bennion, Richard
Subject: State Board of Equalization - Announcement of Regulatory Change 2401, 2413, and
2432

The State Board of Equalization proposes to adopt amendments to Emergency Telephone Users Surcharge Regulations 2401, *Definitions*, 2413, *Exemptions from Surcharge*, and 2422, *Returns and Payment*. The amendments to Regulations 2401 and 2422 clarify direct sellers' prepaid mobile telephony service surcharge reporting requirements, and the amendments to Regulation 2413 make it consistent with guidance from the U.S. Department of State, Office of Foreign Missions. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California at 10:00 a.m., or as soon thereafter as the matter may be heard, on January 26-28, 2016.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_2401_2413_2422_2015.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Andrew Kwee, Tax Counsel III, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Andrew.Kwee@boe.ca.gov, telephone (916) 323-3096, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
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Sent: Friday, December 11, 2015 9:26 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 2401, 2413, and 2432

The State Board of Equalization proposes to adopt amendments to Emergency Telephone Users Surcharge Regulations 2401, *Definitions*, 2413, *Exemptions from Surcharge*, and 2422, *Returns and Payment*. The amendments to Regulations 2401 and 2422 clarify direct sellers' prepaid mobile telephony service surcharge reporting requirements, and the amendments to Regulation 2413 make it consistent with guidance from the U.S. Department of State, Office of Foreign Missions. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California at 10:00 a.m., or as soon thereafter as the matter may be heard, on January 26-28, 2016.

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http://www.boe.ca.gov/regs/reg_2401_2413_2422_2015.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Andrew Kwee, Tax Counsel III, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Andrew.Kwee@boe.ca.gov, telephone (916) 323-3096, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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**AVAILABILITY OF STATEMENT OF REASONS,
TEXT OF PROPOSED AMENDMENTS, AND
RULEMAKING FILE**

DOJ will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at California Department of Justice, Charitable Trusts Section, 300 S. Spring St., Suite 1702, Los Angeles, CA 90013, and on the DOJ website at www.oag.ca.gov/charities. The rulemaking file consists of this notice, the text of proposed amendments, the initial statement of reasons, and any information upon which the DOJ is basing this proposal. Copies of these documents are also available upon request by contacting Jami L. Cantore, Deputy Attorney General, at the above listed address.

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

After considering all timely and relevant comments, DOJ may adopt the proposed regulations substantially as described in this notice. If DOJ makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulation amendments as revised. Please send requests for copies of any modified regulations to Jami L. Cantore, Deputy Attorney General, at the contact information above (Contact Person). DOJ will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT
OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Jami L. Cantore, Deputy Attorney General, at the above contact information.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the proposed amendments and related forms will be posted and available for downloading on our website: www.oag.ca.gov/charities.

TITLE 18. BOARD OF EQUALIZATION

**The State Board of Equalization Proposes to
Adopt Amendments to
California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 41128, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 2401, *Definitions*, Regulation 2413, *Exemptions from Surcharge*, and Regulation 2422, *Returns and Payment*. The proposed amendments to Regulations 2401 and 2422 implement, interpret, and make specific the statutes regarding the prepaid mobile telephony service surcharge reporting requirements for a direct seller of prepaid mobile telephony service. The proposed amendments to Regulation 2413 make the regulation consistent with guidance provided by the U.S. Department of State, Office of Foreign Missions, specifying that foreign governments and career consular officers are not exempt from the emergency telephone users surcharge under federal law.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on January 26–28, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on January 26, 27, or 28, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 2401, 2413, and 2422.

AUTHORITY

Regulations 2401, 2413, and 2422: RTC section 41128.

REFERENCE

Regulation 2401: RTC sections 41007, 41011, 41015, 41016, 41021, and 42004.

Regulation 2413: RTC sections 41003–41019, 41020–41049, 41052–41053, 41073–41095, and 41129.

Regulation 2422: RTC sections 41024, 41033, 41051, 41052; 41052.1, 41053 and 42010.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW PURSUANT TO GOVERNMENT
CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with RTC section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and Regulation 2422. As relevant here, RTC sections 41051 and 41052 generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “mobile telephony service” or “MTS” means “commercially available interconnected mobile

phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], 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.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs 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 law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “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 supplier as defined in [RTC] 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, a telephone corporation, as defined in section 234 of the Public Utilities Code, a person that provides interconnected VoIP service, as defined in section 285 of the Public Utilities Code, 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 under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For sellers, other than direct sellers, the prepaid MTS surcharge is due and pay-

able to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and payable to the Board under the same reporting and payment periods as their 911 surcharge is due and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media, pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act’s definition of prepaid MTS into the Emergency Telephone Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge. AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that “[f]or each fiscal year, beginning with the 2016–17 fiscal year” each “direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year.”

Also, as relevant here, the Board has adopted Regulation 2401 to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be “construed as imposing a [911] surcharge upon amounts paid by any person 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” The Board previously adopted Regulation 2413 to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply 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.” However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- “Although 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).”;
- “OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax”;
- OFM’s “view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services”;
- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached to initial statement of reasons.)

Effects, Objectives, and Benefits of the Proposed Amendments to Regulations 2401, 2413, and 2422

Business Taxes Committee Process

There is currently an issue because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and “direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and
- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC

section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to 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” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff’s draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase “right to utilize and/or access,” rather than “right to access,” MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15–009, which recommended that the Board adopt staff’s revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms “mobile telephony services,” “prepaid mobile telephony services,” and “direct sell-

er” in accordance with RTC section 42004, and added a reference to RTC section 42004 to the regulation’s reference note.

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to “Article XIII, Section 28” in subdivision (b)(4) and the reference to “Section 4253” in subdivision (e) to “article XIII, section 28” and “section 4253,” respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include “Reporting” for purposes of clarification;
- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board’s website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.
- Clarified that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge, as required by RTC section 41052; and
- Added references to RTC sections 41033, 41053, and 42010 to the regulation’s reference note.

Furthermore, Formal Issue Paper 15–009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15–009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancina, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff's recommendation to propose to adopt staff's revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary to have the effect and accomplish the objective of addressing the first issue referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary to have the effect and accomplish the objective of the second issue referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary to have the effect and accomplish the objective of addressing the third issue referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms "mobile telephony services," "prepaid mobile telephony services," "prepaid MTS," and "direct seller."
- Clarifying that returns, including direct sellers' returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board's website.
- Revising the title of Regulation 2422 to include "Reporting" for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.

- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

The Board has performed an evaluation of whether the proposed amendments to Regulations 2401, 2413, and 2422 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments to Regulations 2401, 2413, and 2422, are not inconsistent or incompatible with existing state regulations. This is because Regulations 2401 and 2422 are the only state regulations that specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. This is also because Regulation 2413 is the only regulation that specifically implements, interprets, and makes specific RTC section 41027 (discussed above). In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 2401, 2413, and 2422.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE
PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT
ASSESSMENT REQUIRED BY GOVERNMENT
CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed adoption of the amendments to Regulations 2401, 2413, and 2422 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of Regulations 2401, 2413, and 2422 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON
HOUSING COSTS

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Andrew Kwee, by telephone at (916) 323-3096, by e-mail at Andrew.Kwee@boe.ca.gov, or by mail at State Board of Equalization, Attn: Andrew Kwee, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Kwee.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on January 26, 2016, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 2401, 2413, and 2422 during the January 26-28, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 2401, 2413, and 2422. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF
REASONS AND TEXT OF
PROPOSED REGULATION

The Board has prepared underscored and strikeout versions of the text of Regulations 2401, 2413, and

2422 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 2401, 2413, and 2422, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

**SUBSTANTIALLY RELATED CHANGES
PURSUANT TO GOVERNMENT CODE
SECTION 11346.8**

The Board may adopt the proposed amendments to Regulations 2401, 2413, and 2422 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

If the Board adopts the proposed amendments to Regulations 2401, 2413, and 2422, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

**TITLE 21. DEPARTMENT OF
TRANSPORTATION**

Encroachment Permits Appeal Procedure

TO ALL INTERESTED PERSONS

The California Department of Transportation (Department) proposes to adopt the regulations described below in order to implement, clarify, and make specific the procedure for an applicant to appeal to the Department Director for a final decision on an encroachment permit that has been denied. Following the written comment period and the public hearing, if requested, and after considering all comments, objections, and recommendations regarding the proposed action, the proposed regulations may be adopted substantially as set forth without further notice.

AUTHORITY AND REFERENCE

California Streets and Highways Code, section 670 et seq. authorizes the Department to issue encroachment permits. It also requires the Department to adopt these proposed regulations, which would implement, interpret, and make specific the California Streets and Highways Code, section 671.5(c).

**INFORMATIVE DIGEST/ POLICY STATEMENT
OVERVIEW**

The Department proposes to adopt Article 2 Appeal, sections 1413, 1413.1, 1413.2, 1413.3, 1413.4, 1413.5, and 1413.6 in title 21, division 2, chapter 8 of the California Code of Regulations.

Streets and Highways Code, section 670 et seq. and section 671.5 respectively authorize the Department to issue permits and promulgate regulations to enforce the care and protection of state highways, and to set forth a procedure to appeal an encroachment permit application that has been denied.

The proposed regulatory action will implement a formal encroachment permits appeal procedure concerning the denial of an encroachment permit application by the district encroachment permit offices of the Department.

Anticipated Benefits of the Proposed Regulation:

The broad objective of the proposed regulation is to provide the public a plain language explanation of the appeal procedure after the District Permit Engineer has denied an application for an encroachment permit. The regulation provides due process and a transparent pro-



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

December 11, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 41128, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 2401, *Definitions*, Regulation 2413, *Exemptions from Surcharge*, and Regulation 2422, *Returns and Payment*. The proposed amendments to **Regulations 2401 and 2422** implement, interpret, and make specific the statutes regarding the prepaid mobile telephony service surcharge reporting requirements for a direct seller of prepaid mobile telephony service. The proposed amendments to Regulation 2413 make the regulation consistent with guidance provided by the U.S. Department of State, Office of Foreign Missions, specifying that foreign governments and career consular officers are not exempt from the emergency telephone users surcharge under federal law.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on January 26-28, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on January 26, 27, or 28, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 2401, 2413, and 2422.

AUTHORITY

Regulations 2401, 2413, and 2422: RTC section 41128

REFERENCE

Regulation 2401: RTC sections 41007, 41011, 41015, 41016, 41021, and 42004.

Regulation 2413: RTC sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129.

Regulation 2422: RTC sections 41024, 41033, 41051, 41052, 41052.1, 41053 and 42010.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with RTC section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and Regulation 2422. As relevant here, RTC sections 41051 and 41052 generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “‘mobile telephony service’ or ‘MTS’” means “commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], 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.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs 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 law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “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 supplier as defined in [RTC] 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, a telephone corporation, as defined in section 234 of the Public Utilities Code, a person that provides interconnected VoIP service, as defined in section 285 of the Public Utilities Code, 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 under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For seller’s, other than direct seller’s, the prepaid MTS surcharge is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and payable to the Board under the same reporting and payment periods as their 911 surcharge is due

and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media, pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act's definition of prepaid MTS into the Emergency Telephone Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge.

AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that “[f]or each fiscal year, beginning with the 2016–17 fiscal year” each “direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year.”

Also, as relevant here, the Board has adopted Regulation 2401 to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be “construed as imposing a [911] surcharge upon amounts paid by any person 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” The Board previously adopted Regulation 2413 to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply 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.” However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- “Although 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).”;
- “OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax”;
- OFM’s “view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services”; and

- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached to initial statement of reasons.)

Effects, Objectives, and Benefits of the Proposed Amendments to Regulations 2401, 2413, and 2422

Business Taxes Committee Process

There is currently an issue because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and “direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and
- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to 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” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff's draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase "right to utilize and/or access," rather than "right to access," MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15-009, which recommended that the Board adopt staff's revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms "mobile telephony services," "prepaid mobile telephony services," and "direct seller" in accordance with RTC sections 42004, and added a reference to RTC section 42004 to the regulation's reference note.

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to "Article XIII, Section 28" in subdivision (b)(4) and the reference to "Section 4253" in subdivision (e) to "article XIII, section 28" and "section 4253," respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include "Reporting" for purposes of clarification;
- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board's website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.
- Clarified that, at the time of filing each return, direct sellers are required to

report service users, included prepaid consumers, who have refused to pay the surcharge, as required by RTC section 41052; and

- Added references to RTC sections 41033, 41053, and 42010 to the regulation's reference note.

Furthermore, Formal Issue Paper 15-009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15-009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancia, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff's recommendation to propose to adopt staff's revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary to have the effect and accomplish the objective of addressing the first issue referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary to have the effect and accomplish the objective of the second issue referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary to have the effect and accomplish the objective of addressing the third issue referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.

- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

The Board has performed an evaluation of whether the proposed amendments to Regulations 2401, 2413, and 2422 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments to Regulations 2401, 2413, and 2422, are not inconsistent or incompatible with existing state regulations. This is because Regulations 2401 and 2422 are the only state regulations that specifically implement, interpret, and makes specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. This is also because Regulation 2413 is the only regulation that specifically implements, interprets, and makes specific RTC section 41027 (discussed above). In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 2401, 2413, and 2422.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost to any local agency or school district that is required to be

reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed adoption of the amendments to Regulations 2401, 2413, and 2422 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of Regulations 2401, 2413, and 2422 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected

private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Andrew Kwee, by telephone at (916) 323-3096, by e-mail at Andrew.Kwee@boe.ca.gov, or by mail at State Board of Equalization, Attn: Andrew Kwee, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Kwee.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on January 26, 2016, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 2401, 2413, and 2422 during the January 26-28, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 2401, 2413, and 2422. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored and strikeout versions of the text of Regulations 2401, 2413, and 2422 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 2401, 2413, and 2422, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 2401, 2413, and 2422 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 2401, 2413, and 2422, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,


Joann Richmond, Chief
Board Proceedings Division

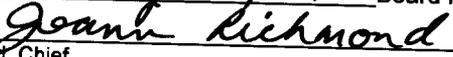
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STATE BOARD OF EQUALIZATION

BOARD APPROVED



At the January 26, 2016 Board Meeting


Joann Richmond, Chief
Board Proceedings Division

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code (RTC) section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and California Code of Regulations, title 18, section (Regulation) 2422, *Returns and Payment*. As relevant here, RTC sections 41051 and 41052 generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “‘mobile telephony service’ or ‘MTS’” means “commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], 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.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs 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 law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “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 supplier as defined in [RTC] 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, a telephone corporation,¹ a person that provides interconnected VoIP service,² 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 under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For seller’s, other than direct seller’s, the prepaid MTS surcharge is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and payable to the Board under the same reporting and payment periods as their 911 surcharge is due and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media,

¹ As defined in section 234 of the Public Utilities Code.

² As defined in section 285 of the Public Utilities Code.

pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act's definition of prepaid MTS into the Emergency Telephone Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge. AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that "[f]or each fiscal year, beginning with the 2016–17 fiscal year" each "direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year."

Also, as relevant here, the Board has adopted Regulation 2401, *Definitions*, to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be "construed as imposing a [911] surcharge upon amounts paid by any person 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" The Board previously adopted Regulation 2413, *Exemptions from Surcharge*, to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply 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." However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- "Although 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).";
- "OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax";
- OFM's "view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services"; and

- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached.)

Proposed Amendments

Business Taxes Committee Process

There is currently an issue (or “problem” within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and “direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and
- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue (or problem) because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to 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” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to

holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff's draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase "right to utilize and/or access," rather than "right to access," MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15-009, which recommended that the Board adopt staff's revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms "mobile telephony services," "prepaid mobile telephony services," and "direct seller" in accordance with RTC sections 42004, and added a reference to RTC section 42004 to the regulation's reference note.³

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to "Article XIII, Section 28" in subdivision (b)(4) and the reference to "Section 4253" in subdivision (e) to "article XIII, section 28" and "section 4253," respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include "Reporting" for purposes of clarification;

³ The Board add "or 'MTS'" to the text of Regulation 2401, subdivision (f), shown in exhibit 5 to Formal Issue Paper 15-009 to be consistent with RTC section 42004, subdivision (h).

- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;⁴
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board's website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.⁵
- Clarified that, at the time of filing each return, direct sellers are required to report service users, included prepaid consumers, who have refused to pay the surcharge, as required by RTC section 41052; and
- Added references to RTC sections 41033, 41053, and 42010 to the regulation's reference note.⁶

Furthermore, Formal Issue Paper 15-009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15-009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancia, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff's recommendation to propose to adopt staff's revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary for the specific purposes of addressing the first issue (or problem) referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct

⁴ The Board made minor, non-substantive changes to the text of the amendments to Regulation 2422, subdivision (a), shown in exhibit 6 to Formal Issue Paper 15-009 to clarify the requirements for a service supplier assigned a monthly reporting period.

⁵ The Board revised the text of new subdivision (c) shown in exhibit 6 to Formal Issue Paper 15-009 to make it consistent with RTC section 41033, subdivision (d), which only requires the reporting of "that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge, remitted by the provider or seller"

⁶ The Board added a reference to RTC section 41052.1 to the text of Regulation 2422's reference note shown in exhibit 6 to Formal Issue Paper 15-009 because the proposed amendments implement section 41052.1.

seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary for the specific purpose of addressing the second issue (or problem) referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary for the specific purposes addressing the third issue (or problem) referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

Furthermore, the proposed amendments to Regulation 2401 duplicate provisions from statutory definitions in RTC sections 42004. However, the Board has determined that the duplication is necessary to ensure that the proposed amendments to Regulation 2401 satisfy the clarity and consistency requirements of Government Code section 11349.1, subdivision (a).

The adoption of proposed amendments to Regulations 2401, 2413, and 2422 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 2401, 2413, and 2422 or the proposed amendments to Regulation 2401, 2413, and 2422.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-009, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its September 16, 2015, Business Taxes Committee meeting in deciding to propose the adoption of the amendments to Regulations 2401, 2413, and 2422, described above.

ALTERNATIVES CONSIDERED

The Board considered whether to propose adoption of amendments to Regulations 2401, 2413, and 2422 as recommended by staff in Formal Issue Paper 15-009 during its September 16, 2015, Business Taxes Committee meeting, or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the amendments are reasonably necessary for the reasons set forth above.

During the Board's September 16, 2015, Business Taxes Committee meeting, the Board decided to propose to adopt the amendments to Regulations 2401, 2413, and 2422 as recommended by staff because the Board determined that the adoption of the proposed amendments is reasonably necessary for all the reasons provided above. The Board did not reject any reasonable alternative to the proposed amendments to Regulations 2401, 2413, and 2422 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)(1)

The Board is proposing to adopt amendments to Regulations 2401 and 2422 to implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS, and provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board is proposing to adopt amendments to delete subdivision (b)(7) from Regulation 2413 to make the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

All of the provisions in the proposed amendments to Regulations 2401, 2413, and 2422 are fully consistent with current law, including the provisions of AB 1717 enacting the Prepaid Mobile Telephony Surcharge Collection Act, and adding statutes to and amending statutes in the Emergency Telephone Users Surcharge Act, and there is nothing in the proposed amendments to Regulations 2401, 2413, and 2422 that would significantly change how individuals and businesses would generally behave in response to current state and federal law, including the provisions of AB 1717, in the absence of the proposed regulatory action. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business that is in addition to whatever economic impact the provisions of AB 1717 will have on individuals and businesses. And, the Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422, is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, the Board has determined that adoption of proposed amendments to Regulations 2401, 2413, and 2422 does not impose any costs on any persons, including businesses, which are not already imposed by state and federal law, including the provisions of AB 1717, and the Board has determined that there is nothing in the proposed amendments to Regulations 2401, 2413, and 2422 that would impact revenue. Therefore, based on these facts and all of the information in the rulemaking file, the

Board has determined that the adoption of proposed amendments to Regulations 2401, 2413, and 2422 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor affect the expansion of businesses currently doing business in the State of California.

Furthermore, the proposed amendments to Regulations 2401, 2413, and 2422 will not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant adverse economic impact on business.

The adoption of proposed amendments to Regulations 2401, 2413, and 2422 may affect small businesses.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2401

2401. Definitions.

(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" or "MTS" 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).

Note: Authority cited: Sections 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, ~~and 41021~~ and 42004, Revenue and Taxation Code.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2413

2413. Exemptions from Surcharge.

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.~~

~~(78) 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.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129, Revenue and Taxation Code.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2422

2422. Returns, Reporting, and Payment.

Returns filed under the Emergency Telephone Users Surcharge Act 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~~ that calendar month, quarter or calendar year reporting period. 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 that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge that the direct seller remitted 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.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41024, 41033, 41051, ~~and~~ 41052, 41052.1, 41053 and 42010, Revenue and Taxation Code.

Regulation History

Types of Regulations: Emergency Telephone Users Surcharge

Regulations: 2401, 2413, 2422

Title: 2401, *Definitions*
2413, *Exemptions from Surcharge*,
2422, *Returns and Payment*

Preparation: Andrew Kwee

Legal Contact: Andrew Kwee

The State Board of Equalization proposes to amend Regulations 2401 and 2422 to clarify direct sellers' prepaid mobile telephony service surcharge reporting requirements, and amend Regulation 2413 to make it consistent with guidance from the U.S. Department of State, Office of Foreign Missions.

History of Proposed Regulations:

January 26-28, 2016	Public Hearing
December 11, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
December 1, 2015	Notice to OAL
September 16, 2015	Business Taxes Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

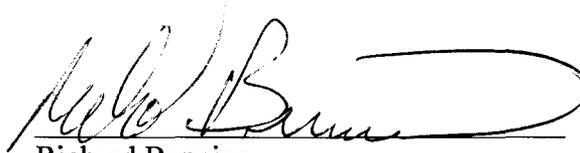
Support: NA

Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Emergency Telephone Users Surcharge Regulation 2401, *Definitions*, 2413, *Exemptions from Surcharge*, 2422, *Returns and Payment*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on December 11, 2015, 46 days prior to the public hearing.

February 1, 2016

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

JANUARY 26, 2016

ITEM F

PUBLIC HEARING

F1 PROPOSED AMENDMENTS TO EMERGENCY TELEPHONE USERS
SURCHARGE REGULATIONS 2401, DEFINITIONS, 2413,
EXEMPTIONS FROM SURCHARGE, AND 2422, RETURNS AND
PAYMENT

REPORTED BY: Carole W. Browne
CSR NO. 7351

P R E S E N T

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For the Board of
Equalization:

Jerome E. Horton
Chairman

Sen. George Runner (Ret.)
Vice Chair

Fiona Ma, CPA
Member

Diane L. Harkey
Member

Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings
Division

For the Board of
Equalization Staff:

Andrew Kwee
Tax Counsel III
Legal Department

Bradley Heller
Tax Counsel IV
Legal Department

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 JANUARY 26, 2016

4 ---o0o---

5 MR. HORTON: Ms. Richmond, what's the next
6 matter before us?

7 MS. RICHMOND: Our next matter is Item F,
8 Public Hearings. Item F1, Proposed Amendments to
9 Emergency Telephone Users Surcharge Regulations 2401,
10 Definitions, 2413, Exemptions from Surcharge, and 2422,
11 Returns and Payment.

12 MR. HORTON: Discussion, Members?

13 We have Mr. Andrew Kwee.

14 Are you okay? I thought I saw you trip
15 earlier.

16 MR. KWEE: Oh, no, I'm good. Thank you.
17 Whenever you're ready, I can proceed.

18 MR. HORTON: Good. Please.

19 MR. KWEE: Good evening, Chairman Horton and
20 Members of the Board. I am Andrew Kwee with the Board's
21 Legal Department, and with me today is Brad Heller, also
22 with the Legal Department.

23 We request that the Board vote to adopt the
24 proposed amendments to the Emergency Telephone Users
25 Surcharge Regulations 2401, Definitions, 2413,
26 Exemptions from Surcharge, and 2422, Returns and
27 Payments.

28 The amendments to Regulations 2401 and 2402

1 clarify a direct seller's prepaid mobile telephony
2 services surcharge reporting requirements, and the
3 amendments to Regulation 2413 make the regulation
4 consistent provided by the United States Department of
5 State, Office of Foreign Missions.

6 Thank you.

7 MS. HARKEY: Move to adopt.

8 MR. HORTON: Moved by Member Harkey to adopt,
9 second by Member Ma.

10 MS. HARKEY: Such will be the order?

11 MR. HORTON: Yeah.

12 Members, in that this matter is before us
13 publicly, I sort of feel compelled to express a concern
14 relative to our previous action; that is, that the
15 presumption of a submission, sending of a letter,
16 consummates a contractual agreement between the Board
17 and the agencies, is concerning, given the opposition to
18 this particular tax throughout the state of California
19 from various individuals who are expressing their
20 concerns. I think it is wise to look at, to make sure
21 that that is cured.

22 And what I'm speaking of is the first quarter
23 in which we were having challenges and -- and issuing --
24 notifying the impacted parties, having them
25 consummate -- consummating an agreement between the
26 impacted parties, and having the establishment or
27 passing of a resolution, establishment of a contractual
28 relationship, and bringing that forward in a timely

1 manner.

2 I understand all the challenges that existed at
3 the time and want to express my concern about whether or
4 not those are valid contracts.

5 No further discussion is necessary unless
6 Members would like to have that. I'm not asking you to
7 respond; I'm just expressing my concern.

8 There's a motion and a second. Without
9 objection, such will be the order.

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2016 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, January 26, 2016

[C] SALES AND USE TAX APPEALS HEARINGS

C1 New NGC, Inc., 485164, 547426 (OH)

04/01/05 to 03/31/08, \$227,599.00 Claim for Refund

10/07/07 to 12/31/08, \$114,451.00 Claim for Refund

For Claimant:

Donna Kiser, Taxpayer

Gopalakrishnan Sethuraman, Taxpayer

Linda Falcone, Representative

Joseph A. Vinatieri, Attorney

For Sales and Use Tax Department:

Monica Silva, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether there is any overpayment of tax with respect to claimant's purchases of five specific materials, which it alleges were physically incorporated into its manufactured product.

Action: Upon motion of Mr. Runner, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board ordered that the petition be submitted for decision.

PUBLIC HEARINGS

F1 Proposed Amendments to Emergency Telephone Users Surcharge Regulations 2401, Definitions, 2413, Exemptions from Surcharge, and 2422, Returns and Payment

Andrew Kwee, Tax Counsel, Legal Department, made introductory remarks regarding amendments to Regulations 2401 and 2422 clarifying direct sellers' prepaid mobile telephony service surcharge reporting requirements, and amendments making Regulation 2413 consistent with guidance from the U.S. Department of State, Office of Foreign Missions (Exhibit 1.3).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the amendments to Regulations 2401 *Definitions*, 2413 *Exemptions from Surcharge*, and 2422 *Returns and Payment* as published.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

December 11, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 41128, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 2401, *Definitions*, Regulation 2413, *Exemptions from Surcharge*, and Regulation 2422, *Returns and Payment*. The proposed amendments to Regulations 2401 and 2422 implement, interpret, and make specific the statutes regarding the prepaid mobile telephony service surcharge reporting requirements for a direct seller of prepaid mobile telephony service. The proposed amendments to Regulation 2413 make the regulation consistent with guidance provided by the U.S. Department of State, Office of Foreign Missions, specifying that foreign governments and career consular officers are not exempt from the emergency telephone users surcharge under federal law.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on January 26-28, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on January 26, 27, or 28, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 2401, 2413, and 2422.

AUTHORITY

Regulations 2401, 2413, and 2422: RTC section 41128

REFERENCE

Regulation 2401: RTC sections 41007, 41011, 41015, 41016, 41021, and 42004.

Regulation 2413: RTC sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129.

Regulation 2422: RTC sections 41024, 41033, 41051, 41052, 41052.1, 41053 and 42010.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with RTC section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and Regulation 2422. As relevant here, RTC sections 41051 and 41052 generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the

Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “mobile telephony service’ or ‘MTS’” means “commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], 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.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs 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 law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “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 supplier as defined in [RTC] 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, a telephone corporation, as defined in section 234 of the Public Utilities Code, a person that provides interconnected VoIP service, as defined in section 285 of the Public Utilities Code, 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 under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For seller’s, other than direct seller’s, the prepaid MTS surcharge is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and

payable to the Board under the same reporting and payment periods as their 911 surcharge is due and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media, pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act's definition of prepaid MTS into the Emergency Telephone Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge.

AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that “[f]or each fiscal year, beginning with the 2016–17 fiscal year” each “direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year.”

Also, as relevant here, the Board has adopted Regulation 2401 to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be “construed as imposing a [911] surcharge upon amounts paid by any person 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” The Board previously adopted Regulation 2413 to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply 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.” However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- “Although 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).”;
- “OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax”;
- OFM’s “view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services”; and

- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached to initial statement of reasons.)

Effects, Objectives, and Benefits of the Proposed Amendments to Regulations 2401, 2413, and 2422

Business Taxes Committee Process

There is currently an issue because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and “direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and
- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to 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” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff's draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase "right to utilize and/or access," rather than "right to access," MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15-009, which recommended that the Board adopt staff's revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms "mobile telephony services," "prepaid mobile telephony services," and "direct seller" in accordance with RTC sections 42004, and added a reference to RTC section 42004 to the regulation's reference note.

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to "Article XIII, Section 28" in subdivision (b)(4) and the reference to "Section 4253" in subdivision (e) to "article XIII, section 28" and "section 4253," respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include "Reporting" for purposes of clarification;
- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board's website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.
- Clarified that, at the time of filing each return, direct sellers are required to

- report service users, included prepaid consumers, who have refused to pay the surcharge, as required by RTC section 41052; and
- Added references to RTC sections 41033, 41053, and 42010 to the regulation's reference note.

Furthermore, Formal Issue Paper 15-009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15-009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancia, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff's recommendation to propose to adopt staff's revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary to have the effect and accomplish the objective of addressing the first issue referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary to have the effect and accomplish the objective of the second issue referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary to have the effect and accomplish the objective of addressing the third issue referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.

- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

The Board has performed an evaluation of whether the proposed amendments to Regulations 2401, 2413, and 2422 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments to Regulations 2401, 2413, and 2422, are not inconsistent or incompatible with existing state regulations. This is because Regulations 2401 and 2422 are the only state regulations that specifically implement, interpret, and makes specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. This is also because Regulation 2413 is the only regulation that specifically implements, interprets, and makes specific RTC section 41027 (discussed above). **In addition,** the Board has determined that there are no comparable federal regulations or statutes to Regulations 2401, 2413, and 2422.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will result in no direct or indirect cost to any local agency or school district that is required to be

reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed adoption of the amendments to Regulations 2401, 2413, and 2422 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of Regulations 2401, 2413, and 2422 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected

private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Andrew Kwee, by telephone at (916) 323-3096, by e-mail at Andrew.Kwee@boe.ca.gov, or by mail at State Board of Equalization, Attn: Andrew Kwee, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Kwee.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on January 26, 2016, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 2401, 2413, and 2422 during the January 26-28, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 2401, 2413, and 2422. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored and strikethrough versions of the text of Regulations 2401, 2413, and 2422 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 2401, 2413, and 2422, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

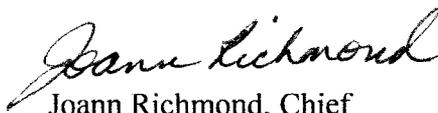
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 2401, 2413, and 2422 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 2401, 2413, and 2422, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations, Title 18,
Section 2401, *Definitions*,
Section 2413, *Exemptions from Surcharge*, and
Section 2422, *Returns and Payment***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

The emergency telephone users surcharge, also known as the “911” surcharge, is imposed under the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code (RTC) section 41001). RTC section 41020 provides, in pertinent part, that, the 911 surcharge generally applies to amounts paid by every person in this state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service. A service supplier is required to collect the 911 surcharge from each service user at the time it collects its billing from the service user. (RTC section 41021.) A service provider includes any person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs or supplying VoIP service to a service user in the state. (RTC section 41007.) A service user remains liable for the 911 surcharge until it has been paid to this state, except that payment to a registered service supplier is sufficient to relieve the service user from further liability for the 911 surcharge. (RTC section 41024.)

As relevant here, a “service supplier,” as defined in RTC section 41007, is required to report and pay the 911 surcharge to the State Board of Equalization (Board) under RTC sections 41051, 41052, and 41053, and California Code of Regulations, title 18, section (Regulation) 2422, *Returns and Payment*. As relevant here, RTC sections 41051 and 41052 generally require the 911 surcharge to be reported and paid to the Board on or before the last day of the second month following each month in which the surcharges were collected. As an exception, RTC section 41052.1 provides that the Board may “require returns and payment of the amount of [911] surcharges for a calendar quarter or calendar year period” if necessary to ensure payment or facilitate collection.

Assembly Bill No. 1717 (AB 1717) (Stats. 2014, ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act (Prepaid MTS Act) (commencing with RTC sections 42001). The bill also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge Act.

Prepaid Mobile Telephony Services Surcharge Collection Act

The term “‘mobile telephony service’ or ‘MTS’” means “commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).” The term “mobile telephony services” does not include “mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.” “Prepaid MTS” means “the right to utilize a mobile device for mobile telecommunications services or information services [(as defined in 47 U.S.C. § 1530)], 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.” (Pub. Util. Code section 224.4; RTC section 42004.)

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each “prepaid consumer” purchasing prepaid MTS. A “seller” is required to collect the surcharge. The surcharge is imposed as a percentage of the sales price from each retail transaction involving the purchase of prepaid MTS that occurs 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 law in effect through December 31, 2015, and collected and paid to the California Public Utilities Commission (PUC), the Board, and local agencies or jurisdictions by providers and suppliers of telephone communication services. (RTC section 42010.)

Pursuant to RTC section 42004, “prepaid consumer” means “a person who purchases prepaid [MTS] in a retail transaction,” and “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 supplier as defined in [RTC] 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, a telephone corporation,¹ a person that provides interconnected VoIP service,² 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 under the Corporation Tax Law (commencing with RTC section 23001).

The rate of the prepaid MTS surcharge includes the 911 surcharge rate (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC). For seller’s, other than direct seller’s, the prepaid MTS surcharge is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter, pursuant to RTC section 42021. For direct sellers, the portion of the prepaid MTS surcharge that consists of the 911 surcharge is due and payable to the Board under the same reporting and payment periods as their 911 surcharge is due and payable under the Emergency Telephone Users Surcharge Act, on a return filed using electronic media,

¹ As defined in section 234 of the Public Utilities Code.

² As defined in section 285 of the Public Utilities Code.

pursuant to RTC section 42010. A direct seller is also required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC. (RTC section 42010.)

Emergency Telephone Users Surcharge Act

As relevant here, AB 1717 amended RTC section 41020 to incorporate the Prepaid MTS Surcharge Collection Act's definition of prepaid MTS into the Emergency Telephone Users Surcharge Act and further clarify that, beginning January 1, 2016, the prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the 911 surcharge. AB 1717 also added RTC section 41033 to the Emergency Telephone Users Surcharge Act to require that "[f]or each fiscal year, beginning with the 2016–17 fiscal year" each "direct seller shall, on or before September 1 of each year, report to the [B]oard the amount of that portion of the prepaid MTS surcharge that is for the [911] surcharge, remitted by the provider or seller . . . for the prior fiscal year."

Also, as relevant here, the Board has adopted Regulation 2401, *Definitions*, to define terms used in the regulations it has adopted under RTC section 41128 to implement, interpret, and make specific the Emergency Telephone Users Surcharge Act.

Furthermore, RTC section 41027 currently provides that the Emergency Telephone Users Surcharge Act shall not be "construed as imposing a [911] surcharge upon amounts paid by any person 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" The Board previously adopted Regulation 2413, *Exemptions from Surcharge*, to implement, interpret, and make specific RTC section 41027. Subdivision (b)(7) of Regulation 2413, which was included in the text of the original regulation adopted in 1977 and has never been amended, currently provides that the 911 surcharge does not apply 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." However, the United States Department of State, Office of Foreign Missions (OFM), notified the BOE, via a letter dated July 7, 2014, that:

- "Although 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).";
- "OFM considers the Emergency Telephone Users Surcharge as a charge for specific services rendered, not a tax";
- OFM's "view is that imposition of this surcharge on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties which exempt foreign missions and their members from tax . . . consistent with previous guidance issued by OFM regarding similar fees supporting 911 services"; and

- “Accordingly, the Department suggests that the [Board] repeal [subdivision] (b)(7)” of Regulation 2413. (July 7, 2014, OFM letter attached.)

Proposed Amendments

Business Taxes Committee Process

There is currently an issue (or “problem” within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) because no regulations specifically implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements for a direct seller of prepaid MTS. Therefore, Board staff determined that, to specifically address this issue, it is necessary to:

- Amend Regulation 2401 to define the statutory terms “mobile telephony service,” “prepaid mobile telephony service,” and “direct seller,” and add a reference to RTC section 42004, which defines these terms, to Regulation 2401’s reference note; and
- Amend Regulation 2422 to have the effect and accomplish the objectives of fully implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS.

Also, there is an issue (or problem) because Regulation 2422 has not been amended since 1986, and it indicates that all returns required to be filed under the Emergency Telephone Users Surcharge Act are required to be filed on a quarterly basis and shall be accompanied by payment for the surcharge due. However, Assembly Bill No. 3204 (Stats. 1996, ch. 432) amended RTC sections 41051 and 41052, effective January 1, 1997, to generally require the 911 surcharge to be reported and paid to the Board on a monthly basis. As an exception, RTC section 41052.1 (as amended by Sen. Bill No. 2231 (Stats. 1998, ch. 350)) provides discretion to the Board to require such returns to be filed on a calendar quarter or calendar year basis. Therefore, Board staff determined that, to address the issue, it is necessary to amend Regulation 2422 to specify that such returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board.

Furthermore, there is an issue (or problem) with Regulation 2413 because subdivision (b)(7) provides that the 911 surcharge does not apply to 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” based upon the Board’s previous determination that the state was prohibited from imposing the surcharge on charges for such services under federal law. However, OFM has informed the Board that this is not currently the case. Therefore, Board staff determined that, to address the issue, it is necessary to delete subdivision (b)(7) from Regulation 2413 as requested in the July 7, 2014, OFM letter.

As a result, Board staff prepared a draft of the amendments to the regulations and an Initial Discussion Paper, which Board staff distributed on December 22, 2014, prior to

holding its first meeting to discuss the draft regulations with interested parties on January 6, 2015.

Board staff did not receive comments from any interested parties prior the January 6, 2015, interested parties meeting. During the meeting, interested parties appeared in agreement with staff's draft amendments. Subsequent to the meeting, staff received comments from interested parties expressing support for the draft amendments and suggesting that staff clarify the definition of prepaid MTS being added to Regulation 2401 by using the phrase "right to utilize and/or access," rather than "right to access," MTS or information services. Staff incorporated the suggestion into the draft amendments.

At the second interested parties meeting held on March 4, 2015, staff responded to written comments received prior to the meeting, as well as other suggestions to clarify the draft amendments to the regulations. After the second interested parties meeting, staff received written comments expressing support and offering no further recommendations on the draft amendments to the regulations.

Therefore, Board staff subsequently prepared Formal Issue Paper 15-009, which recommended that the Board adopt staff's revised draft amendments to Regulations 2401, 2413, and 2422 to address the issues described above.

Specifically, the draft amendments to Regulation 2401 defined the terms "mobile telephony services," "prepaid mobile telephony services," and "direct seller" in accordance with RTC sections 42004, and added a reference to RTC section 42004 to the regulation's reference note.³

The draft amendments to Regulation 2413 deleted subdivision (b)(7) to ensure consistency with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law, and changed the reference to "Article XIII, Section 28" in subdivision (b)(4) and the reference to "Section 4253" in subdivision (e) to "article XIII, section 28" and "section 4253," respectively, to make the references consistent with the citation format prescribed by the California Style Manual.

The draft amendments to Regulation 2422:

- Revised the title of the regulation to include "Reporting" for purposes of clarification;

³ The Board add "or 'MTS'" to the text of Regulation 2401, subdivision (f), shown in exhibit 5 to Formal Issue Paper 15-009 to be consistent with RTC section 42004, subdivision (h).

- Clarified that returns must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board in accordance with RTC sections 41052 and 41052.1;⁴
- Specified that a direct seller is required to file returns on the monthly, quarterly, or calendar year basis assigned by the Board;
- Specified that a direct seller will be required to file returns electronically with the Board through the Board's website in accordance with RTC section 42010;
- Specified that a direct seller must report to the Board annually by September 1 the amount of the prepaid MTS surcharge collected for the prior fiscal year.⁵
- Clarified that, at the time of filing each return, direct sellers are required to report service users, included prepaid consumers, who have refused to pay the surcharge, as required by RTC section 41052; and
- Added references to RTC sections 41033, 41053, and 42010 to the regulation's reference note.⁶

Furthermore, Formal Issue Paper 15-009 informed the Board that Board staff and the interested parties had agreed to the provisions of the revised draft amendments to Regulations 2401, 2413, and 2422.

Business Taxes Committee Meeting

The Board considered Formal Issue Paper 15-009 during its Business Taxes Committee meeting on September 16, 2015. During the meeting, the Board heard public comments from Mr. Fran Mancia, Director of Government Relations for MUNI Services, who strongly supported, and urged the Board to vote to adopt, the recommended amendments to Regulations 2401, 2413, and 2422. The Board also discussed the recommended amendments to the regulations.

During the Business Taxes Committee meeting, the Board agreed with staff's recommendation to propose to adopt staff's revised drafts of the amendments to Regulations 2401, 2413, and 2422. Therefore, the Board Members unanimously voted to propose the adoption of the amendments.

The Board determined that the adoption of the proposed amendments to Regulations 2401 and 2422 is reasonably necessary for the specific purposes of addressing the first issue (or problem) referred to above by implementing, interpreting, and making specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct

⁴ The Board made minor, non-substantive changes to the text of the amendments to Regulation 2422, subdivision (a), shown in exhibit 6 to Formal Issue Paper 15-009 to clarify the requirements for a service supplier assigned a monthly reporting period.

⁵ The Board revised the text of new subdivision (c) shown in exhibit 6 to Formal Issue Paper 15-009 to make it consistent with RTC section 41033, subdivision (d), which only requires the reporting of "that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge, remitted by the provider or seller"

⁶ The Board added a reference to RTC section 41052.1 to the text of Regulation 2422's reference note shown in exhibit 6 to Formal Issue Paper 15-009 because the proposed amendments implement section 41052.1.

seller, and to provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board also determined that the adoption of the proposed amendments to Regulation 2422 is reasonably necessary for the specific purpose of addressing the second issue (or problem) referred to above by clarifying that returns must be filed on the monthly, calendar quarter, or calendar year basis, assigned by the Board, in accordance with RTC sections 41052 and 41052.1.

The Board further determined that the proposed amendments to Regulation 2413 are reasonably necessary for the specific purposes addressing the third issue (or problem) referred to above by making the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

Furthermore, the proposed amendments to Regulation 2401 duplicate provisions from statutory definitions in RTC sections 42004. However, the Board has determined that the duplication is necessary to ensure that the proposed amendments to Regulation 2401 satisfy the clarity and consistency requirements of Government Code section 11349.1, subdivision (a).

The adoption of proposed amendments to Regulations 2401, 2413, and 2422 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 2401, 2413, and 2422 or the proposed amendments to Regulation 2401, 2413, and 2422.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-009, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its September 16, 2015, Business Taxes Committee meeting in deciding to propose the adoption of the amendments to Regulations 2401, 2413, and 2422, described above.

ALTERNATIVES CONSIDERED

The Board considered whether to propose adoption of amendments to Regulations 2401, 2413, and 2422 as recommended by staff in Formal Issue Paper 15-009 during its September 16, 2015, Business Taxes Committee meeting, or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the amendments are reasonably necessary for the reasons set forth above.

During the Board's September 16, 2015, Business Taxes Committee meeting, the Board decided to propose to adopt the amendments to Regulations 2401, 2413, and 2422 as recommended by staff because the Board determined that the adoption of the proposed amendments is reasonably necessary for all the reasons provided above. The Board did not reject any reasonable alternative to the proposed amendments to Regulations 2401, 2413, and 2422 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)(1)

The Board is proposing to adopt amendments to Regulations 2401 and 2422 to implement, interpret, and make specific the statutes regarding the prepaid MTS surcharge reporting requirements of a direct seller of prepaid MTS, and provide guidance to direct sellers of prepaid MTS with respect to their reporting and filing requirements. The Board is proposing to adopt amendments to delete subdivision (b)(7) from Regulation 2413 to make the regulation consistent with the guidance provided in the July 7, 2014, OFM letter specifying that foreign governments and career consular officers are not exempt from the 911 surcharge under federal law.

The Board anticipates that the adoption of the proposed amendments will benefit the Board, Board staff, service suppliers, and direct sellers of prepaid MTS by:

- Providing regulatory guidance to direct sellers of prepaid MTS regarding their prepaid MTS surcharge reporting requirements.
- Defining the terms “mobile telephony services,” “prepaid mobile telephony services,” “prepaid MTS,” and “direct seller.”
- Clarifying that returns, including direct sellers’ returns, must be filed on the monthly, calendar quarter, or calendar year basis assigned by the Board.
- Specifying that a direct seller is required to file online with the Board through the Board’s website.
- Revising the title of Regulation 2422 to include “Reporting” for purposes of clarification.
- Specifying that a direct seller must report to the Board annually by September 1 the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge remitted by the direct seller for the prior fiscal year.
- Clarifying that, at the time of filing each return, direct sellers are required to report service users, including prepaid consumers, who have refused to pay the surcharge.
- Specifying that foreign governments and career consular officers are not exempt from the 911 surcharge.

All of the provisions in the proposed amendments to Regulations 2401, 2413, and 2422 are fully consistent with current law, including the provisions of AB 1717 enacting the Prepaid Mobile Telephony Surcharge Collection Act, and adding statutes to and amending statutes in the Emergency Telephone Users Surcharge Act, and there is nothing in the proposed amendments to Regulations 2401, 2413, and 2422 that would significantly change how individuals and businesses would generally behave in response to current state and federal law, including the provisions of AB 1717, in the absence of the proposed regulatory action. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business that is in addition to whatever economic impact the provisions of AB 1717 will have on individuals and businesses. And, the Board has determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422, is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, the Board has determined that adoption of proposed amendments to Regulations 2401, 2413, and 2422 does not impose any costs on any persons, including businesses, which are not already imposed by state and federal law, including the provisions of AB 1717, and the Board has determined that there is nothing in the proposed amendments to Regulations 2401, 2413, and 2422 that would impact revenue. Therefore, based on these facts and all of the information in the rulemaking file, the

Board has determined that the adoption of proposed amendments to Regulations 2401, 2413, and 2422 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand businesses currently doing business in the State of California.

Furthermore, the proposed amendments to Regulations 2401, 2413, and 2422 will not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 2401, 2413, and 2422 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of proposed amendments to Regulations 2401, 2413, and 2422 will not have a significant adverse economic impact on business.

The adoption of proposed amendments to Regulations 2401, 2413, and 2422 may affect small businesses.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2401

2401. Definitions.

(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" or "MTS" 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).

Note: Authority cited: Sections 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, ~~and 41021~~ and 42004, Revenue and Taxation Code.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2413

2413. Exemptions from Surcharge.

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.~~

~~(78) 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.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129, Revenue and Taxation Code.

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 2422

2422. Returns, Reporting, and Payment.

Returns filed under the Emergency Telephone Users Surcharge Act 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 ~~B~~board for ~~the preceding~~ that calendar month, quarter or calendar year reporting period. 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 that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge that the direct seller remitted 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 ~~B~~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.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41024, 41033, 41051, and 41052, 41052.1, 41053 and 42010, Revenue and Taxation Code.

Regulation History

Types of Regulations: Emergency Telephone Users Surcharge

Regulations: 2401, 2413, 2422

Title: 2401, *Definitions*
2413, *Exemptions from Surcharge*,
2422, *Returns and Payment*

Preparation: Andrew Kwee

Legal Contact: Andrew Kwee

The State Board of Equalization proposes to amend Regulations 2401 and 2422 to clarify direct sellers' prepaid mobile telephony service surcharge reporting requirements, and amend Regulation 2413 to make it consistent with guidance from the U.S. Department of State, Office of Foreign Missions.

History of Proposed Regulations:

January 26-28, 2016	Public Hearing
December 11, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
December 1, 2015	Notice to OAL
September 16, 2015	Business Taxes Committee, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA