

**Interested Parties Meeting Agenda**  
**Emergency Telephone Users Surcharge Regulations and**  
**Prepaid Mobile Telephony Services Regulations**  
**June 24, 2020**

**Welcome and Introductions**

**Item A – Overview**

- Background
- SB 96

**Item B – Current ETUS Regulations – see Exhibit 1**

- Add “Act Operative Prior to January 1, 2020” to chapter title.
- Add “and Application of Chapter” to Article 1.
- New subdivision (i) clarifies chapter 5.5 only applies to the ETUS Act prior to January 1, 2020.

**Item C – New ETUS Regulations – see Exhibit 2**

- New Chapter 5.6 “Emergency Telephone Users Surcharge Act Operative on and after January 1, 2020.”
- Proposed regulatory language based on current ETUS and Prepaid MTS regulations.

**Item D – Regulation 2435, *Definition and Application of Chapter* – see Exhibit 2, pages 1-4**

- Define key terms.
- SB 96 defined many terms and updated definitions for others, such as “prepaid mobile telephony services” and “service supplier.”

**Item E – Regulation 2436, *Imposition of and Liability for the Surcharge* – see Exhibit 2, pages 4-6**

- Surcharge imposed on each access line a service user subscribes with a service supplier.
- The surcharge is required to be remitted by the service supplier.
- Billing agents and billing aggregators must file a separate return for each service supplier.
- Surcharge is imposed on the retail purchase of prepaid MTS.
- Every prepaid consumer is liable for the surcharge until it has been paid to the Department.
- Sellers of prepaid MTS are required to collect and remit the surcharge.

**Item F- Regulation 2437, Exemptions for Service Suppliers** – see Exhibit 2, pages 6-7

- Provide information for service suppliers regarding when the surcharge does not apply.

**Item G – Regulation – 2438, Exemption, Deductions, Credits, and Specific Applications of Tax for Sellers** – see Exhibit 2, pages 7-18

- Provide information for sellers regarding when the surcharge does not apply or when a deduction or credit may apply.
  - Sales for resale.
  - Bad debts.
  - Lifeline transactions.
  - Transactions in which a surcharge was paid to another state.
- Prescribe the form of a resale certificate.

**Item H – Regulation 2439, Returns, Reporting, and Payment** – see Exhibit 2, page 19

- Clarify the reporting requirements for service suppliers and sellers of prepaid MTS.

**Item I – Regulation 2440, Receipts** – see Exhibit 2, pages 19-20

- A seller must provide a prepaid consumer with a receipt or other similar document at the time of the retail transaction.
- The receipt must contain a separate statement of the 911 surcharge.

**Item J – Regulation 2441, Payment by Electronic Funds Transfer** – see Exhibit 2, page 20

- Reference the authority for electronic funds transfer requirements.

**Item K – Regulation 2442, Records** – see Exhibit 2, page 20-21

- Reference the authority for record keeping requirements.
- Clarify specific record keeping requirements for service suppliers.

**Item L – Regulation 2443, Relief from Liability** – see Exhibit 2, page 21

- Reference the authority for relief from liability.

**Item M – Regulation 2444, Refunds of Excess Charges Collected** – see Exhibit 2, pages 21-22

- Clarify excess surcharge collected may be refunded even if it has been paid to the Department.
- Clarify any person required to pay the 911 surcharge may file a claim for refund within the statute of limitation periods.

**Item N – Local Prepaid MTS Regulations – see Exhibit 3**

- Add “Local” in subdivision (a) to clarify these are the Local Prepaid MTS regulations.
- Change “prepaid MTS surcharge” to “911 surcharge” and “Prepaid MTS Surcharge Act” to “Emergency Telephone Users Surcharge Act.”
- Delete definitions for “Prepaid MTS Surcharge,” “Public Utilities Commission,” and “Public Utilities Commission Surcharges.”
- Clarify how and when the local charges will be collected.
- Remove the reference to posting a combined rate and the prepaid MTS surcharge.
- Add subdivision (g) to Regulation 2461 regarding the General Resale Certificate provided in Appendix A.
- Other non-substantive changes.

**Item – Question/Answer Period and Conclusion**

Please submit any comments or suggestions for regulatory language by **July 8, 2020.**

**Send responses to:**

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For a description of the rulemaking process, please go to the following hyperlink:  
<https://www.cdtfa.ca.gov/taxes-and-fees/Protocol-2018.pdf>

## DISCUSSION PAPER

### Emergency Telephone User Surcharge and Prepaid Mobile Telephony Services Rulemaking

#### Issue

Proposed amendments by the California Department of Tax and Fee Administration (CDTFA) to the Emergency Telephone Users Surcharge (ETUS) regulations to conform with provisions of the Revenue and Taxation Code as amended by Senate Bill 96 (Stats. 2019, ch.54) (SB 96). Additionally, proposed amendments to the Prepaid Mobile Telephony Services (MTS) regulations to address the administration of the Local Prepaid MTS Surcharge Collection Act only, as the Prepaid MTS Surcharge Collection Act was deemed unconstitutional and thus unenforceable.

#### Background

##### *Emergency Telephone Users Surcharge Act*

Under the Emergency Telephone Users Surcharge Act prior to SB 96, the surcharge was imposed on amounts paid by every person in this state for intrastate telephone communication service in this state and VoIP service that provides access to the 911 emergency system. The surcharge was imposed as a percentage rate not less than 0.5% or more than 0.75% of those charges that the Office of Emergency Services (OES) annually estimated, pursuant to a specified formula, would produce sufficient revenue to fund the current fiscal year's 911 costs. Service suppliers collected the surcharge amount from service users, generally on the monthly service billings, and paid it to the CDTFA.

##### *Prepaid MTS Surcharge Collection Act*

From January 1, 2016, until December 14, 2018, the Prepaid MTS Surcharge Collection Act imposed a prepaid MTS surcharge on each prepaid consumer as a percentage of the sales price for each retail transaction of prepaid MTS. Prepaid MTS includes, but is not limited to, prepaid wireless minutes or plans, prepaid wireless cards or refill/top-off cards, and/or any product or service, including a cell phone, when sold with prepaid services for a single non-itemized price, unless only a minimal amount of prepaid MTS is transferred. A minimal amount of prepaid MTS is up to \$5 or 10 minutes. Sellers of prepaid MTS collected the surcharge from each prepaid consumer at the time of each retail transaction and paid it to the CDTFA.

The prepaid MTS surcharge rate was annually calculated by adding:

- The prepaid 911 surcharge rate as determined by the OES,
- The California Public Utilities Commission (CPUC) reimbursement fee and the telecommunications universal service surcharges, and
- Local charges, if any, which apply for the jurisdiction in which the sale occurred.

The Prepaid MTS Surcharge Collection Act defined a “seller” to mean “a person that sells prepaid mobile telephony service to a person in a retail transaction.” The term seller included a direct seller, which included a prepaid MTS provider or service supplier that made a sale of prepaid MTS directly to a prepaid consumer for any purposes other than resale in the regular course of business. The prepaid MTS surcharge was in lieu of charges imposed pursuant to the Emergency Telephone Users Surcharge Act for prepaid MTS.

## DISCUSSION PAPER

### **Emergency Telephone User Surcharge and Prepaid Mobile Telephony Services Rulemaking**

The provisions provided by the Prepaid MTS Surcharge Collection Act were scheduled to sunset on January 1, 2020.

#### *Local Prepaid MTS Collection Act*

Beginning January 1, 2016, under the Local Prepaid MTS Collection Act, cities and/or counties (local jurisdictions) that have an ordinance that applies its local charges to prepaid MTS must contract with the CDTFA to receive their local revenue charges on the sales of prepaid MTS. These local revenue charges include utility user taxes, local 911 charges, and any other local charges for access to communication services that apply to prepaid MTS. Sellers of prepaid MTS are to collect the surcharge from each prepaid consumer at the time of each retail transaction and pay it to the CDTFA. The provisions provided by the Local Prepaid MTS Surcharge Collection Act were set to sunset on January 1, 2020; however, the passage of Senate Bill 344 (Stats. 2010, ch.642) (SB 344) extended the Local Prepaid MTS Surcharge Collection Act until January 1, 2021.

#### *Prepaid MTS Surcharge Act: Unconstitutional*

On November 15, 2018, the United States District Court, Northern District of California (MetroPCS California, LLC v. Michael Picker et al, case number 17-cv-05959-SI) enjoined state agencies from enforcing the Prepaid MTS Surcharge Collection Act because it conflicts with federal law. A notice of appeal of the district court's decision was filed on December 14, 2018, but a judicial stay of the injunction was not requested, thereby ending CDTFA's enforcement of the prepaid MTS surcharge program. In December 2018, CDTFA advised prepaid MTS sellers to collect only the local charges, if applicable, on their sales of prepaid MTS. Effective January 1, 2019, prepaid service suppliers began reporting and paying charges on prepaid and postpaid intrastate telecommunication services in the same manner as they did prior to January 1, 2016.

#### *SB 96*

Beginning January 1, 2020, SB 96 amends the ETUS Act to impose a flat monthly surcharge amount on each wireline, postpaid wireless, and Voice over Internet Protocol (VoIP) access line that has access to the 911 emergency system for each month or part thereof for which a service user subscribes with a service supplier. The rate is to be set at an amount no greater than \$0.80 and is based on Office of Emergency Services' (OES) estimate of the number of access lines to which the surcharge will be applied per month for a calendar year period, that it estimates, pursuant to a specified formula, will produce sufficient revenue to fund the current fiscal year's 911 costs. Service suppliers must collect the surcharge amount from service users, generally on the monthly service billings, and pay it to the CDTFA.

Additionally, SB 96 imposes a surcharge on the purchase of prepaid mobile telephony services (MTS) at the time of each retail transaction in this state at a rate equal to the monthly surcharge amount per access line. Sellers of prepaid MTS must collect the surcharge amount from each prepaid consumer at the time of each retail transaction and pay it to the CDTFA.

## DISCUSSION PAPER

### Emergency Telephone User Surcharge and Prepaid Mobile Telephony Services Rulemaking

The 911 surcharge funds collected help make emergency telephone service available to persons in this state by supporting the costs of installing, administering, and supplying communication services for the 911 emergency telephone number system.

#### **Discussion**

We propose amending the ETUS Regulations to reflect that the surcharge is now a flat rate per access line and per retail transaction of prepaid MTS. Additionally, now that sales of prepaid MTS are addressed in the ETUS Act, the ETUS regulations need to be amended to provide information for sellers of prepaid MTS. Finally, we propose amending the Prepaid MTS Regulations to only address the local charges on sales of prepaid MTS and not the prepaid MTS surcharge which was deemed unconstitutional.

#### **Proposed Amendments**

##### ***Current ETUS Regulations***

To clearly separate the application of tax before and after January 1, 2020, we recommend amending the name of chapter 5.5 from “Emergency Telephone Users Surcharge Law” to “Emergency Telephone Users Surcharge Act Operative Prior to January 1, 2020” and amending the name of Article 1 in chapter 5.5 to be “Imposition of the Surcharge and Application of Chapter” as provided in Exhibit 1. We recommend adding subdivision (i) to Regulation 2401 which provides that, “this chapter applies to the Emergency Telephone Users Surcharge Act (Rev. & Tax. Code, 41101 et seq.), operative prior to January 1, 2020. Chapter 5.6 (commencing with Reg. 2435) applies to the Emergency Telephone Users Surcharge Act, operative on and after January 1, 2020, unless otherwise provided.” This limits the scope of the current ETUS regulations 2401-2433, so they only apply to periods prior to January 1, 2020.

##### ***New ETUS Regulations***

We recommend adding chapter 5.6 named “Emergency Telephone Users Surcharge Act Operative on and after January 1, 2020.” This new chapter of regulations will commence with Regulation 2435. Regulatory language from ETUS regulations 2401-2433 that is still applicable on or after January 1, 2020, will be included in this new series of regulations. Additionally, regulatory language for the Prepaid MTS regulations 2460-2462 that is still applicable to sellers of prepaid MTS will be included in this new series of regulations.

##### ***Definitions and Application of Chapter***

Regulation 2435, *Definitions and Application of Chapter*, as provided in Exhibit 2, will:

- Define key terms used in the proposed ETUS regulations.
- Clarify that chapter 5.6 applies to the ETUS Act operative on and after January 1, 2020, and that chapter 5.5 applies to the ETUS Act operative prior to January 1, 2020.

##### ***Imposition of and Liability for the Surcharge***

Regulation 2436, *Imposition of and Liability for the Surcharge*, as provided in Exhibit 2, will:

- Clarify the imposition of the surcharge.
- Clarify who is liable for the surcharge on access lines and sales of prepaid MTS.

## DISCUSSION PAPER

### Emergency Telephone User Surcharge and Prepaid Mobile Telephony Services Rulemaking

- Provide guidance to billing aggregators and billing agents filing returns on behalf of one or more service suppliers.

#### *Exemptions for Service Suppliers*

Regulation 2437, *Exemptions for Service Suppliers*, as provided in Exhibit 2, provides information for service suppliers regarding when the surcharge does not apply.

#### *Exemptions, Deductions, Credits, and Specific Applications of Tax for Sellers*

Regulation 2438, *Exemptions, Deductions, Credits, and Specific Applications for Tax for Sellers*, as provided in Exhibit 2, will:

- Prescribe the form of a resale certificate and establish an alternate process to document that a sale was not at retail in the event a resale certificate is not taken timely.
- Clarify when a seller may take a “bad debt” deduction, and that such deductions should be adjusted for any seller reimbursement of local charges retained by the seller. We also propose the regulation specify the types of records a seller needs to maintain to support the bad debt deduction.
- Specify the other types of transactions in which an exemption, deduction, or credit may apply including certain transactions for the Lifeline services and certain transactions where state or local 911 taxes were previously paid to another state.

#### *Returns, Reporting, and Payment*

Regulation 2439, *Returns, Reporting, and Payment*, as provided in Exhibit 2, will:

- Clarify the reporting requirements for service suppliers.
- Clarify the reporting requirements for sellers of prepaid MTS, other than service suppliers, including the requirement to file electronically.

#### *Receipts*

Regulation 2440, *Receipts*, as provided in Exhibit 2, facilitates compliance by specifying that a seller is obligated to provide a “receipt” to its customers and the receipt must contain certain elements.

#### *Payment by Electronic Funds Transfer*

Regulation 2441, *Payment by Electronic Funds Transfer*, as provided in Exhibit 2, references the authority for the electronic funds transfer requirements of service suppliers and sellers.

#### *Records*

Regulation 2442, *Records*, as provided in Exhibit 2, specifies that service suppliers and sellers are required to maintain records in accordance with Regulation 4901, *Records*, and provides specific record keeping requirements for service suppliers.

#### *Relief from Liability*

Regulation 2443, *Relief from Liability*, as provided in Exhibit 2, provides that relief of liability may be granted pursuant to Regulations 4901, *Relief from Liability*, and Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*.

## DISCUSSION PAPER

### Emergency Telephone User Surcharge and Prepaid Mobile Telephony Services Rulemaking

#### *Refunds of Excess Charges Collected*

Regulation 2444, *Refunds of Excess Charges Collected*, as provided in Exhibit 2, will:

- Clarify that service suppliers and sellers that have collected an amount of the 911 surcharge in excess of the amount due may refund that amount even if it has already been paid to the Department.
- Clarify that any person required to pay the 911 surcharge may file a claim for refund, within the statute of limitation periods established by the RTC.

#### *Local Prepaid MTS Regulations*

We recommend amending the name of chapter 5.7 from “Prepaid Mobile Telephony Services” to “Local Prepaid Mobile Telephony Services.” Amending the existing chapter 5.7 Regulations 2460-2462 is also recommended to provide guidance on the administration of only the local charges on sales of prepaid MTS as the prepaid MTS surcharge is no longer applicable and a surcharge is now imposed on the purchase of prepaid MTS under the ETUS Act.

#### *Administration*

We propose to amend Regulation 2460, *Administration*, as provided in Exhibit 3, to:

- Change “prepaid MTS surcharge” to “911 surcharge” and “Prepaid MTS Surcharge Act” to “Emergency Telephone Users Surcharge Act.”
- Delete the definitions for “Prepaid MTS Surcharge,” “Public Utilities Commission,” and “Public Utilities Commission Surcharges.”
- Clarify that the local charges will be collected at the same time and in the same manner as the prepaid MTS surcharge was collected under the Prepaid MTS Surcharge Collection Act, as that law read on January 1, 2017, except as Section 42018 has been amended.
- Remove the reference to the posting of a combined rate for the prepaid MTS surcharge.
- Other non-substantive changes such as, renumbering the subdivisions, removing references to the Prepaid MTS surcharge and related RTC sections, changing the term “surcharge” to “local charges,” and grammatical changes.

#### *Exemptions, Deductions, Credits, and Specific Applications of Tax*

We propose to amend Regulation 2461, as provided in Exhibit 3, to:

- Remove the reference to the prepaid MTS surcharge.
- Add subdivision (g) regarding the General Resale Certificate provided in Appendix A

#### *Refunds of Excess Charges Collected*

We propose to amend Regulation 2462, *Refunds of Excess Charges Collected*, as provided in Exhibit 3, to remove the reference to the prepaid MTS surcharge.

#### **Summary**

Amendments to the Emergency Telephone User Surcharge regulations proposed, as provided in Exhibit 1 and 2, conform with provisions of the Revenue and Taxation Code as amended by SB 96. We also propose amendments to the Prepaid Mobile Telephony Services regulations as provided in Exhibit 3 to reflect corresponding changes from SB 96 and the December 2018 court decision.



## **DISCUSSION PAPER**

### **Emergency Telephone User Surcharge and Prepaid Mobile Telephony Services Rulemaking**

We welcome any comments, suggestions, and input from interested parties on this issue. We also invite interested parties to participate in the June 24, 2020 interested parties meeting. The deadline for interested parties to provide their written submissions regarding this discussion paper will be July 8, 2020.

Prepared by the Tax Policy Bureau, Business Tax and Fee Division.

Current as of 6/5/20.

**Chapter 5.5. Emergency Telephone Users Surcharge ~~Law~~ Act Operative Prior to January 1, 2020**

Article 1. Imposition of Surcharge and Application of Chapter

**Regulation 2401. Definitions and Application of Chapter.**

*Reference:* Sections 41007, 41011, 41015, 41016, 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” 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).

[\(i\) This chapter applies to the Emergency Telephone Users Surcharge Act \(Rev. & Tax. Code, 41001 et seq.\), operative prior to January 1, 2020. Chapter 5.6 \(commencing with Reg. 2435\) applies to the Emergency Telephone Users Surcharge Act, operative on and after January 1, 2020, unless otherwise provided.](#)

*(New Chapter and regulations to be added to the California Code of Regulations. Since these are proposed regulations, when they are submitted to the Office of Administrative Law, all language will be underlined.)*

**Chapter 5.6. Emergency Telephone Users Surcharge Act Operative on and after January 1, 2020**

Article 1. Imposition of Surcharge and Application of Chapter

**Regulation 2435. Definitions and Application of Chapter.**

*Reference:* Sections 41003-41007.5, 41009, 41016.5, 41020, 41021, and 41028, Revenue and Taxation Code.

**(a) DEFINITIONS.** For purposes of this chapter (Emergency Telephone Users Surcharge Regulations, commencing with Regulation 2435), the following terms shall have the following meanings:

**(1) ACCESS LINE.** An “access line” shall mean any of the following:

(A) A wireline communication service line.

(B) A wireless communication service line.

(C) A VoIP service line, as defined by section 41016.5 of the Revenue and Taxation Code.

**(2) ACCESS LINE IN THIS STATE.** “Access line in this state” means a telephone line, as defined in the Public Utilities Code, associated with a billing address located in California.

**(3) 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 access lines provided by or billed on behalf of that person.

**(4) BILLING AGGREGATOR.** “Billing Aggregator” shall mean any person engaged in the business of facilitating the billing and collection of charges for access lines by aggregating the information about these access lines 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:

(A) receive access line information detail from one or more service suppliers and submit that access line information detail to one or more local exchange carriers acting as billing agents;

(B) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(C) prepare and file returns and remit the surcharge to the Department 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 Department requests.

**(5) DEPARTMENT.** “Department” means the California Department of Tax and Fee Administration.

**(6) EMERGENCY TELEPHONE USERS SURCHARGE OR 911 SURCHARGE.** “Emergency Telephone Users Surcharge” or “911 Surcharge” means surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001).

**(7) IN THIS STATE.** “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.

**(8) PERSON.** “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, cooperative organization, fraternal organization, nonprofit organization, corporation, estate, trust, business or common law trust, receiver, assignee for benefit of creditors, trustee or trustee in bankruptcy. “Person” does not include a nonprofit hospital, nonprofit educational organization, or a public agency.

**(9) PREPAID CONSUMER.** “Prepaid consumer” means a person who purchases prepaid MTS in a retail transaction.

**(10) PREPAID MOBILE TELEPHONY SERVICES.** “Prepaid mobile telephony services” or “prepaid MTS” means the right to utilize a mobile device for 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. 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.

**(11) PREPAID MTS ACCOUNT.** “Prepaid MTS account” means an account issued and maintained by the Department to uniquely identify a seller, other than a service supplier, of prepaid MTS who is registered with the Department pursuant to the Emergency Telephone Users Surcharge Act to collect the 911 surcharge and local charges from prepaid consumers and remit them to the Department.

**(12) PUBLIC AGENCY.** “Public agency” means this state, and any city, county, city and county, municipal corporation, public district, or public authority located in whole or in part within this state which provides or have authority to provide firefighting, police, ambulance, medical, or other emergency services.

**(13) RETAIL TRANSACTION.** “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. Multiple items of prepaid MTS may be purchased at one time and be considered one retail transaction.

**(14) SELLER.** “Seller” means a person that sells MTS to a person in a retail transaction. A service supplier, as defined in Revenue and Taxation Code section 41007, could also be a seller when it makes retail sales of prepaid MTS to a prepaid consumer for any purpose other than for resale in this state.

**(15) SERVICE SUPPLIER.** “Service Supplier” means a person supplying an access line to a service user in this state.

**(16) SERVICE USER.** “Service user” means any person that subscribes for the right to utilize an access line in this state who is required to pay a surcharge under the Emergency Telephone Users Surcharge Act.

**(17) WIRELESS COMMUNICATION SERVICE LINE.** A “wireless communications service line” is a telecommunications service provided to an end user with a place of primary use within California that allows the end user to make an outbound communication to the 911 emergency communications system. A wireless communications service line shall not include prepaid mobile telephony service. For the purposes of the surcharge imposed by Chapter 2 (commencing with Section 41020), not more than one surcharge may be imposed per wireless communications service line number assigned to an end user of mobile telecommunications service.

**(18) WIRELINE COMMUNICATION SERVICE.** A “wireline communication service” is a local exchange service provided at a physical location within California that allows the user to make an outbound communication to the 911 emergency communications system. For the purposes of the surcharge imposed by Chapter 2 (commencing with Section 41020), a wireline communication service access line does not include a direct inward dialing number, extension, or other similar feature that routes an inbound call and cannot provide access to the 911 emergency communications system. The number of surcharges imposed shall not exceed the total number of concurrent outbound calls that can be placed to the emergency communications system at a single point of time.

**(b)** This chapter applies to the Emergency Telephone Users Surcharge Act (Rev. & Tax Code, 41001 et seq.), operative on and after January 1, 2020. Chapter 5.5 applies to the Emergency Telephone Users Surcharge Act, operative prior to January 1, 2020, unless otherwise provided.

**Regulation 2436. Imposition of and Liability for the Surcharge.**

*Reference:* Sections 41020, 41021, 41023, 41024, 41028, 41040, Revenue and Taxation Code.



**(a)** The surcharge is imposed on each access line for each month or part thereof for which a service user subscribes with a service supplier.

(1) The surcharge is required to be remitted by the service supplier which provided the access lines to service users in this state.

(2) Where a return is filed and surcharge remitted by a billing aggregator on behalf of one or more service suppliers, the service supplier will be deemed to have remitted the surcharge if all the following conditions have been met:

(a) The service supplier has registered with the Department in accordance with Revenue and Taxation Code section 41040.

(b) Where the service supplier authorizes the billing aggregator to act on its behalf concerning only a portion of the telephone communication services it provides, the service supplier must report and remit directly to the Department the surcharge due on the remainder of the telephone communication services it provides.

(c) The billing aggregator files a separate return for each service supplier on whose behalf the return is filed which includes the name, address, account number and amount of surcharge remitted.

(3) A service supplier acting as a billing agent for another service supplier, reseller or billing aggregator is not liable for remitting the surcharge on access lines provided by or billed on behalf of the other service supplier, reseller or billing aggregator even though those charges may be included, as a separate part of a billing, with charges for access lines it did provide to the service user. A billing agent providing only billing services is not a service supplier and is not required to remit the surcharge collected on behalf of a service supplier that provided the access line.

**(b)** The surcharge is imposed on the purchase of prepaid MTS in this state.

(1) Every consumer of prepaid MTS in this state is liable for the 911 surcharge until that amount is paid to the Department, unless a receipt, as provided by Regulation 2441, is obtained from a registered seller.

(2) The surcharge is required to be collected by the seller from the prepaid consumer at the time of each retail transaction in this state.

**Article 2. Exemptions, Deductions, Credits, and Specific Applications of Tax**

**Regulation 2437. Exemptions for Service Suppliers**

*Reference:* Sections 41003-41019.5, 41020-41049, 41052-41053, 41073-41099, and 41129 Revenue and Taxation Code.

The surcharge does not apply to:

- (a) Access lines suppling lifeline service.
- (b) Access lines connected to public telephones as defined by section 41012 of the Revenue and Taxation Code.
- (c) Access lines which no charges are billed by a service supplier to a service user.
- (d) Access lines 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 access lines 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.

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

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

(e) Toll lines used in the collection and dissemination of news for public press.

(f) Access lines used in wide-area telephone service by common carriers in the conduct of their business.

(g) Access lines supplied to groups that are excluded under the definition of a person as provided by Revenue and Taxation Code section 41003, including nonprofit hospitals, nonprofit education organizations, and public agencies, such as cities, counties, and public districts or authorities that provide police, fire, ambulance, medical and other emergency services.

**Regulation 2438. EXEMPTION, DEDUCTIONS, CREDITS, AND SPECIFIC APPLICATIONS OF TAX FOR SELLERS.**

*Reference:* Sections 41003-41019.5, 41020-41049, 41052-41053, 41073-41099, and 41129 Revenue and Taxation Code.

**(a) IN GENERAL.** This regulation explains the specific applications the 911 surcharge on sales of prepaid MTS to, and applicable exemptions, deductions, and credits for the following types of transactions:

(1) Sales for resale.

(2) Bad debts.

(3) Lifeline transactions.

(4) Transactions in which a surcharge 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, the certificate relieves the seller from the responsibility of collecting the 911 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 911 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 911 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 911 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 911 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 911 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 911 surcharge or local charges from the seller's billing, provides a Prepaid MTS Account number 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 911 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 they know at the time of purchase is not to be resold by them or the corporation in the regular course of business is liable for the amount of 911 surcharge or local charges that would be due if they had not given such resale certificate.

(4) **OTHER EVIDENCE TO REBUT PRESUMPTION OF IMPOSITION OF THE 911 SURCHARGE OR LOCAL CHARGES.** A sale for resale is not subject to the 911 surcharge or local charges. A person who purchases prepaid MTS for resale and who subsequently uses the prepaid MTS owes the 911 surcharge or local charges 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 911 surcharge or local charges. 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 911 surcharge or local charges only where the seller shows that the prepaid MTS:

- (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 911 surcharge or local charges were reported directly to the Department by the purchaser on the purchaser's return, or
- (D) Were consumed by the purchaser and the 911 surcharge or local charges were paid to the Department 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 911 surcharge or local charges under subdivision (b)(4). One method that the Department authorizes to assist a seller in satisfying its burden that the sale was for resale or that the 911 surcharge was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Department 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 Department'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 the 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 911 surcharge or local charges were paid directly to the Department on the purchaser's return, and if so, in what amount;
  - b. The 911 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 911 surcharge or local charges were paid directly to the Department 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 911 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 Department is not required to relieve a seller from liability for the collection of the 911 surcharge based on a response to an XYZ letter. The Department 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 911 surcharge was paid by the purchaser. When the Department accepts the purchaser's response to an XYZ letter as a valid response, the Department shall relieve the seller of liability for collection of the 911 surcharge or local charges.

**(D)** When there is no response to an XYZ letter, the Department should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of the 911 surcharge or local charges under subdivision (b)(4) with respect to the questioned or unsupported transaction(s).

**(6) PURCHASER'S LIABILITY FOR THE 911 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 Department 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 911 surcharge or local charges on the purchase price of the prepaid MTS. The 911 surcharge or local charges are 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 911 surcharge and local charges insofar as the measure of the surcharge and local charges are 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 911 surcharge and local charges were 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 Department within the limitation periods specified in sections 6902, 6902.3, and 6902.4 of the Revenue and Taxation Code.

**(1) AMOUNT SUBJECT TO DEDUCTION.**

**(A) Receipts Subject to the 911 Surcharge.** If the amount of an account found to be worthless and charged off is comprised in part of receipts not subject to the 911 surcharge or local charges such as sales for resale or sales subject to a Lifeline exemption and in part of receipts subject to the 911 surcharge or local charges, a bad debt deduction may be claimed only with respect to the unpaid amount upon which the 911 surcharge or local charges has been paid. The allowable amount of deduction shall be adjusted for amounts claimed as retailer reimbursement for the local charges as provided by Revenue and Taxation Code section 42101.5. It shall be presumed that retailer reimbursement was claimed on all previously reported amounts subject to the local charges. 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 911 surcharge or local charges (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 911 surcharge or local charges 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 911 surcharge or local charges. The percentage subject to the 911 surcharge or local charges 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 911 surcharge or local charges 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 911 surcharge or local charges.

(E) The jurisdiction(s) where the local charges, 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 911 surcharge or local charges were 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 911 surcharge or local charges of the amount charged off as a bad debt properly allocable to the amount on which the seller reported and paid the 911 surcharge or local charges.

**(d) 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. A service supplier, as defined in Revenue and Taxation Code section 41007, could also be a seller when it makes retail sales of prepaid MTS to a prepaid consumer for any purpose other than for resale in this state. 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 911 surcharge and local charges 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 911 surcharge and local charges.

**(e) TRANSACTIONS IN WHICH A SURCHARGE OR LOCAL CHARGE WAS PAID TO ANOTHER STATE.** A credit shall be allowed against, but shall not exceed, the 911 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.

**(f) CALIFORNIA RESALE CERTIFICATE – PREPAID MOBILE TELPHONY SERVICES.** The General Resale Certificate provided in Appendix A of this regulation should

be used to prove that a sale of prepaid MTS is not a retail transaction if timely taken in good faith from the purchaser that purchases the prepaid MTS for resale. If the seller accepts the resale certificate from a person who is engaged in the business of selling prepaid MTS and who holds a Prepaid MTS Account, then the seller is relieved from the duty of collecting the 911 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.

APPENDIX A  
GENERAL RESALE CERTIFICATE  
For Prepaid Mobile Telephony Services

**I HEREBY CERTIFY:**

1. I hold a valid California Prepaid MTS Account number \_\_\_\_\_.
2. This certificate is for the purchase from [Vendor's name] the property described below.
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 911 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 purchased:

\_\_\_\_\_  
\_\_\_\_\_

Name of Purchaser

\_\_\_\_\_  
Signature of Purchaser, Purchaser's Employee or Authorized Representative

\_\_\_\_\_  
Printed Name of Person Signing

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address of Purchaser

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

### **Article 3. Returns and Reports**

#### **Regulation 2439. Returns, Reporting, and Payment.**

*Reference:* Sections 41024, 41028, 41051, 41052.1, and 41053, Revenue and Taxation Code.

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

**(a)** On or before the last day of the second month following each reporting period, as assigned by the Department, every service supplier shall file an emergency telephone users surcharge return on a form prescribed by the Department for that 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 California Department of Tax and Fee Administration.

**(b)** At the time of filing each surcharge return the service supplier shall provide the Department 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.

**(c)** Sellers of prepaid MTS, other than service suppliers, must file a return online with the Department through the Department's website quarterly, on or before the last day of the next month following each calendar quarter.

**(d)** Notwithstanding subdivision (c), the Department may require returns and payment of the 911 surcharge on sales of prepaid MTS to be reported to the Department for quarterly periods other than calendar quarters, or for reporting periods other than quarterly periods.

#### **Regulation 2440. Receipts**

*Reference:* Section 41028, Revenue and Taxation Code.

**(a) GENERAL.** Each seller required to collect the 911 surcharge 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 911 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 regulation, 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 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) The amount of the 911 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 911 surcharge and local charges.

**Regulation 2441. Payment by Electronic Funds Transfer.**

*Reference:* Sections 41028, 41060, and 41062, Revenue and Taxation Code.

**(a) SERVICE SUPPLIERS.** Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.

**(b) SELLERS, EXCLUDING SERVICE SUPPLIERS.** Payments for electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 1707.

**Article 4. Records**

**Regulation 2442. Records.**

*References:* Sections 41056, 41073, 41129, and 41130, Revenue and Taxation Code.



**(a) GENERAL.** Service suppliers and sellers shall maintain and make available for examination on request by the Department or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

**(b) SPECIFIC APPLICATIONS.** In addition to the record keeping requirements set forth in subdivision (a), service suppliers shall comply with the following requirements.

Every service supplier liable for payment of the emergency telephone users surcharge which it collects from service users shall keep complete and accurate records showing:

- (1) Total number of access lines in this state billed to service users.
- (2) Total number of retail transactions.
- (3) All exemptions allowed by law.
- (4) Amounts of Emergency Telephone Users Surcharge collected.

**Regulation 2443. RELIEF FROM LIABILITY.**

*Reference:* Sections 41098 and 41099 Revenue and Taxation Code.

**(a)** A person may be relieved from the liability for the payment of the Emergency Telephone Users Surcharge, including any penalties and interest added to the surcharge, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Department to be due to reasonable reliance on written advice given by the Department as described in California Code of Regulations, Title 18, Section 4902.

**(b)** A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

**Regulation 2444. REFUNDS OF EXCESS CHARGES COLLECTED.**

*Reference:* Sections 6902, 6902.3, 6902.4, 41023, 41028, 41101.1, 41101.2, and 41101.3, Revenue and Taxation Code.

**(a) EXCESS CHARGES COLLECTED.** A service supplier or seller that has collected any amount of 911 surcharge in excess of the amount of the 911 surcharge actually due from a person may refund that amount, even though the surcharge amount has already been paid over to the Department and no corresponding credit or refund has yet been secured. Any excess charges collected and not refunded to person from whom it was collected constitute a debt owed to the State.

**(b) CLAIM FOR REFUND.** Every person required to pay the 911 surcharge, including the service supplier or seller, may file a claim for refund with the Department for any amount that has been erroneously or illegally collected or computed and paid to the Department. In order to be timely, the claim for refund must be filed with the Department within the limitation periods specified in sections 41101.1, 41101.2, and 41101.3 of the Revenue and Taxation Code for service suppliers and 6902, 6902.3, and 6902.4 of the Revenue and Taxation Code for sellers.

**Regulation 2460. ADMINISTRATION.**

*Reference:* Sections 42101, 42101.5, 42101.7, 42102, 42102.5, and 42103, Revenue and Taxation Code.

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

(1) "DEPARTMENT" means the Department of Tax and Fee Administration.

(2) "BUSINESS INFORMATION" means information the Department deems necessary to determine that a person is required to register with the Department to collect the ~~prepaid MTS surcharge~~ 911 surcharge and local charges, determine if the person is required to remit the ~~prepaid MTS~~ 911 surcharge and local charges it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person's books and records. Such information includes, but is not limited to, the name of the person's business, the addresses of the person's business locations, the date the person's business started or will start, the business's business activities, the business's projected revenue, the name and branch location of the bank or other financial institution where the business maintains its accounts, and the name and contact information of at least one individual the Department may contact to obtain access to the business's books and records.

(3) "CONTACT INFORMATION" means information the Department deems necessary to contact and communicate with a person registering for a Prepaid MTS Account and with that person's authorized representative(s), if any. Such information includes, but is not limited to, a current mailing address and telephone number.

(4) "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).

(5) "EMERGENCY TELEPHONE USERS SURCHARGE" OR "911 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.

(6) "IDENTIFYING INFORMATION" means information the Department deems necessary to specifically identify a person registering for a Prepaid MTS Account. Such information includes, but is not limited to, the person's name, the person's type (e.g., individual, partnership, limited liability company, corporation, etc.), the person's federal Taxpayer Identification Number, and may also include, but is not limited to, the person's driver's license number or other government-issued identification card number or entity number issued by the California Secretary of State.

(7) "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.

(8) "LOCAL CHARGE" or "LOCAL CHARGES" means the utility user taxes as described in Revenue and Taxation Code section 42102, and charges for access to communication services or to local "911" emergency telephone systems, as described in Revenue and Taxation Code section 42102.5, the collection of which are subject to the provisions of the Local Prepaid Mobile Telephony Services Collection Act (commencing with Revenue and Taxation Code section 42100).

(9) "LOCAL JURISDICTION" or "LOCAL AGENCY" means a city, county, or city and county, which includes a charter city, county, or city and county.

(10) "MOBILE DATA SERVICE" has the same meaning as defined in section 224.4 of the Public Utilities Code.

(11) "MOBILE TELEPHONY SERVICE" or "MTS" has the same meaning as defined in section 224.4 of the Public Utilities Code.

(12) "ORDINANCE" refers to an ordinance of a local jurisdiction or local agency imposing a local charge, including any local enactment relating to the filing of a claim for refund or other claim arising under the ordinance.

(13) "OWNERSHIP INFORMATION" means information the Department deems necessary to identify the owners of an entity or business. Such information may include, but is not limited to, the owners' names and contact information.

(14) "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.

(15) "PREPAID CONSUMER" means a person who purchases prepaid MTS in a retail transaction.

(16) "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.

(17) "PREPAID MTS ACCOUNT" means an account issued and maintained by the Department to uniquely identify a seller, other than a direct seller, of prepaid MTS who is registered with the Department pursuant to the ~~Prepaid MTS Surcharge Act~~[Emergency](#)

[Telephone Users Surcharge Act](#) to collect the ~~Prepaid MTS-911~~ surcharge and local charges from prepaid consumers and remit them to the Department.

(18) "PREPAID MTS PROVIDER" means a telephone corporation, as defined in section 234 of the Public Utilities Code that provides prepaid MTS.

~~(19) "PREPAID MTS SURCHARGE" means the surcharge imposed under the Prepaid Mobile Telephony Services Surcharge Collection Act (commencing with Revenue and Taxation Code section 42001) that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Revenue and Taxation Code section 42010, that is required to be collected by a seller from a prepaid consumer.~~

~~(20) "PUBLIC UTILITIES COMMISSION" or "COMMISSION" means the Public Utilities Commission created by section 1 of article XII of the California Constitution.~~

~~(21) "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 Department 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.~~

(1922) "REPRESENTATIVE INFORMATION" means information the Department deems necessary to verify that the individual submitting an application for registration is the person registering with the Department or that the individual or individuals submitting an application for registration on behalf of another person is or are authorized to register such person. Such information includes, but is not limited to, each individual's name, title, and contact information.

(203) "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.

(214) "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.

(225) "SELLER" means a person that sells prepaid MTS to a person in a retail transaction.

**(b) REGISTRATION.**

(1) Except as provided in subdivision (b)(2), a seller, other than a direct seller, shall register for a Prepaid MTS Account by completing an application for registration with the Department. Every application for registration for a Prepaid MTS Account shall provide the applicant's identifying information, contact information, business information, ownership information, and representative information.

(2) Commencing January 1, 2017, a seller, other than a direct seller, that is not required to collect the ~~Prepaid MTS surcharge pursuant to Revenue and Taxation Code section 42010.7 and~~ local charges pursuant to Revenue and Taxation Code section 42101.7 is not required to register for a Prepaid MTS Account under subdivision (b)(1). Nothing prevents a seller, other than a direct seller, from registering for a Prepaid MTS Account under subdivision (b)(1) on a voluntary basis to collect and remit the ~~surcharge~~ local charges, even if the seller meets the de minimis sales threshold provided by Revenue and Taxation Code sections ~~42010.7 and~~ 42101.7.

(3) Direct sellers are required to be registered with the Department under the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001). Direct sellers are not required to register for a Prepaid MTS Account.

**(c) PAYMENT OF ~~PREPAID MTS-911~~ SURCHARGE AND LOCAL CHARGES BY PURCHASERS.** Every consumer of prepaid MTS in this state is liable for the ~~prepaid MTS-911~~ surcharge and any local charges until those amounts are paid to the Department, 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~~ 911 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~~ The amount of the ~~prepaid MTS 911~~ 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 911~~ 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 Department 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 Department through the Department'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 Department may require returns and payment of the ~~prepaid MTS surcharge and~~ local charges required to be reported to the Department pursuant to the Local Prepaid Mobile Telephony Services Surcharge Collection Act, for quarterly periods other than calendar quarters, or for reporting periods other than quarterly periods.

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

~~(A) The emergency telephone users surcharge.~~

~~(B) The Public Utilities Commission surcharges.~~

~~(C) The local charges.~~

Such reimbursement is to be taken on the return for the corresponding reporting period in which the sale of the prepaid MTS occurs. If a seller claims only some or none of the reimbursement amount during the corresponding reporting period in which the sale occurred,

the seller is not allowed to claim a credit for the remaining unclaimed reimbursement on a subsequent return. Rather, the seller must file a claim for refund.

(5) ELECTRONIC FUNDS TRANSFER. Notwithstanding Revenue and Taxation Code section 55050, any person required, or that elects, to remit its sales and use tax liabilities due by electronic funds transfer (pursuant to Revenue and Taxation Code section 6479.3), other than a direct seller, must also remit the ~~prepaid MTS surcharge and~~ local charges by electronic funds transfer.

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

(6) DIRECT SELLERS. A direct seller shall remit the ~~prepaid MTS~~ emergency telephone users surcharge (911 surcharge) and local charges on retail transactions of prepaid MTS 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 Department, for those retail transactions with a prepaid consumer in the state, along with any reports required by the Public Utilities Commission.~~

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

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

For direct sellers, the ~~portion of the prepaid MTS surcharge that consists of the~~ emergency telephone users surcharge is due and payable to the Department, 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 Department or its authorized representatives, records in the manner set forth in California Code of Regulations, title 18, section 4901, Records.

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

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

**(A)** A seller relies in good faith on the information provided by the Department to match the location of the point-of-sale transaction to the applicable ~~prepaid MTS surcharge and~~ local charges, and

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

(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 Department.

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

**(h) INNOCENT SPOUSE RELIEF.** A spouse or registered domestic partner requesting relief from liability for any ~~prepaid MTS surcharge or~~ local charge, interest, and penalties shall be

relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903, Innocent Spouse or Registered Domestic Partner Relief from Liability, are met.

**(i) LOCAL CHARGES.**

(1) ORDINANCES IN EFFECT AS OF SEPTEMBER 1, 2015. On and after January 1, 2016, a local charge imposed by a local agency on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller. The local charges shall be collected at the same time and in the same manner as the prepaid MTS surcharge was collected under the Prepaid Mobile Telephony Services Surcharge Collection Act (commencing with Revenue and Taxation Code section 42001), as that law read on January 1, 2017, except as Section 42018 has been amended, ~~provided that, if~~, on or before September 1, 2015, the local agency entered into a contract with the Department pursuant to Revenue and Taxation Code section 42101.5.

In the event a local agency or local jurisdiction ~~did~~ not enter into a contract with the Department by September 1, 2015, the local agency ~~may~~ might enter into a contract with the Department, 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 Department, 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 Department 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 Department 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 DEPARTMENT'S WEBSITE. When a local agency or local jurisdiction notifies the Department in writing that the rate posted on the Department'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 Department receives the local agency's or local jurisdiction's written notification that the posted rate is inaccurate. The local agency or local jurisdiction shall promptly notify the Department 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 Department 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 Department's website by December 1, 2015. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning January 1, 2016, unless there is a later change in the combined rate.~~

~~(3) NEW LOCAL CHARGES AND INCREASES TO EXISTING LOCAL CHARGES. After September 1, 2015, the Department shall post on its website, for each local jurisdiction, the combined total of the rates of the prepaid MTS surcharge and the rate(s) of local charges, as calculated pursuant to Revenue and Taxation Code sections 42102 and 42102.5, that each local jurisdiction has adopted and provided written notice to the Department of, on or before December 1 of each year, as provided in subdivision (i). The Department 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(s) 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 42018 and 42103, Revenue and Taxation Code.

**(a) IN GENERAL.** This regulation explains the specific applications of ~~the prepaid MTS surcharge and~~ local charges to, and applicable exemptions, deductions, and credits for 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-911~~ 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-911~~ 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-911~~ 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-911~~ 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-911~~ 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~~ 911 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~~ 911 surcharge or local charges from the seller's billing, provides a Prepaid MTS Account number 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~~ 911 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~~ they knows at the time of purchase is not to be resold by them ~~him or her~~ or the corporation in the regular course of business is liable for the amount of ~~prepaid MTS~~ 911 surcharge or local charges that would be due if ~~he or she~~ they had not given such resale certificate.

(4) OTHER EVIDENCE TO REBUT PRESUMPTION OF IMPOSITION OF THE ~~PREPAID MTS~~ 911 SURCHARGE OR LOCAL CHARGES. A sale for resale is not subject

to the ~~prepaid MTS-911~~ surcharge or local charges. A person who purchases prepaid MTS for resale and who subsequently uses the prepaid MTS owes the ~~prepaid MTS-911~~ surcharge or local charges 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-911~~ surcharge or local charges. 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-911~~ surcharge or local charges only where the seller shows that the prepaid MTS:

(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-911~~ surcharge or local charges were reported directly to the Department by the purchaser on the purchaser's return, or

(D) Were consumed by the purchaser and the ~~prepaid MTS-911~~ surcharge or local charges were paid to the Department 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 ~~prepaid MTS-911~~ surcharge or local charges under subdivision (b)(4). One method that the Department authorizes to assist a seller in satisfying its burden that the sale was for resale or that the ~~prepaid MTS-911~~ surcharge was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Department 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 Department'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-911~~ surcharge or local charges were paid directly to the Department on the purchaser's return, and if so, in what amount;
  - b. The ~~prepaid MTS-911~~ 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-911~~ surcharge or local charges were paid directly to the Department 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-911~~ 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 Department is not required to relieve a seller from liability for the collection of the ~~prepaid MTS-911~~ surcharge or local charges based on a response to an XYZ letter. The Department 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-911~~ surcharge or local charges were paid by the purchaser. When the Department accepts the purchaser's response to an XYZ letter as a valid response, the Department shall relieve the seller of liability for collection of the ~~prepaid MTS-911~~ surcharge or local charges.

(D) When there is no response to an XYZ letter, the Department staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of the ~~prepaid MTS-911~~ surcharge or local charges under subdivision (b)(4) with respect to the questioned or unsupported transaction(s).

(6) ~~purchaser's~~ **PURCHASER'S** LIABILITY FOR THE ~~PREPAID MTS-911~~ 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 Department 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-911~~ surcharge or local charges on the purchase price of the prepaid MTS. The ~~prepaid MTS-911~~ surcharge or local charges are 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 911~~ surcharge and local charges 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 911~~ surcharge and local charges ~~was~~ere 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 Department within the limitation periods specified in sections 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 911~~ surcharge or local charges such as sales for resale or sales subject to a Lifeline exemption and in part of receipts subject to the ~~prepaid MTS 911~~ surcharge or local charges, a bad debt deduction may be claimed only with respect to the unpaid amount upon which the ~~prepaid MTS 911~~ surcharge or local charges has been paid. The allowable amount of deduction shall be adjusted for amounts claimed as retailer reimbursement for the local charges as provided by Revenue and Taxation Code section 42101.5. It shall be presumed that retailer reimbursement was claimed on all previously reported amounts subject to the ~~prepaid MTS surcharge~~ local charges. 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 911~~ surcharge or local charges (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-911~~ surcharge or local charges 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-911~~ surcharge. The percentage subject to the ~~prepaid MTS-911~~ surcharge or local charges 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-911~~ surcharge or local charges 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-911~~ surcharge or local charges.
- (E) The jurisdiction(s) where the local charges, 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 911~~ surcharge or local charges ~~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-911~~ surcharge or local charges of the amount charged off as a bad debt properly allocable to the amount on which the seller reported and paid the ~~prepaid MTS-911~~ surcharge or local charges.

**(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-911~~ surcharge and local charges 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-911~~ surcharge and local charges.

**(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-911~~ 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.

**(g) CALIFORNIA RESALE CERTIFICATE – PREPAID MOBILE TELPHONY SERVICES.** The General Resale Certificate provided in Appendix A of this regulation should be used to prove that a sale of prepaid MTS is not a retail transaction if timely taken in good faith from the purchaser that purchases the prepaid MTS for resale. If the seller accepts the resale certificate from a person who is engaged in the business of selling prepaid MTS and who holds a Prepaid MTS Account as required by Regulation 2441, *Registration*, then the seller is relieved from the duty of collecting the 911 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.

APPENDIX A  
GENERAL RESALE CERTIFICATE  
For Prepaid Mobile Telephony Services

**I HEREBY CERTIFY:**

1. I hold a valid California Prepaid MTS Account number \_\_\_\_\_.
2. This certificate is for the purchase from [Vendor's name] the property described below.
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-911~~ 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 purchased:

\_\_\_\_\_

\_\_\_\_\_

Name of Purchaser

\_\_\_\_\_

Signature of Purchaser, Purchaser's Employee or Authorized Representative

\_\_\_\_\_

Printed Name of Person Signing

\_\_\_\_\_

Title

\_\_\_\_\_

Address of Purchaser

\_\_\_\_\_

Telephone Number

\_\_\_\_\_

Date

**Regulation 2462. REFUNDS OF EXCESS CHARGES COLLECTED.**

*Reference:* Sections 42103 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 Department. Any excess charges collected and not refunded to the customer constitute a debt owed to the State, or jointly to the local jurisdiction imposing the local charges and to the State, for purposes of collection on behalf of, and payment to, the local jurisdiction.

**(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 file a claim for refund with the Department for any amount that has been erroneously or illegally collected or computed and paid to the Department. In order to be timely, the claim for refund must be filed with the Department within the limitation periods 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 imposing the local charges, and not the Department, 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*.