



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

TAX POLICY BUREAU

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GovernorYOLANDA RICHARDSON
Secretary, Government Operations AgencyNICOLAS MADUROS
Director

November 9, 2023

Dear Interested Party:

Enclosed is the Discussion Paper on the proposed amendments to the Emergency Telephone Users Surcharge and Prepaid Mobile Telephony Services Regulations. We would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

November 30, 2023
10:00 a.m.
(Microsoft Teams)

You may join us on your computer or mobile app through [Microsoft Teams](#) or by calling 1-916-535-0987 and then entering the phone conference identification number 222 093 302#. You are also welcome to submit your written comments, including any proposed regulatory language, to me at the address or fax number in this letterhead or via email at BTFD-BTC.InformationRequests@cdtfa.ca.gov by December 14, 2023. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics, refer to the CDTFA webpage at (<http://www.cdtfa.ca.gov/taxes-and-fees/business-taxes-committee.htm>) for copies of discussion papers and calendars of current and prior issues.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Business Taxes Committee team member Sarah Smith at 1-916-309-5292, who will be leading the meeting.

Sincerely,

A handwritten signature in cursive script that reads "Aimee Olhiser".

Aimee Olhiser, Chief
Tax Policy Bureau
Business Tax and Fee Division

OH:sps

Enclosures

cc: (all with enclosures)

Mr. Nicolas Maduros (MIC 104)
Mr. Christopher Schutz (MIC 83)
Ms. Trista Gonzalez (MIC 104)
Ms. Christine Castillo (MIC 104)
Ms. Susanne Buehler (MIC 43)
Ms. Michele Linton (MIC 105)
Mr. Jason Mallet (MIC 25)
Mr. Mike Skikos (MIC 47)
Mr. Harry Lucho (MIC 47)
Ms. Claudette Yang (MIC 70)
Mr. James Dahlen (MIC 57)
Mr. Jason Parker (MIC 49)
Mr. Steven Mercer (MIC 25)
Ms. Ester Cabrera (MIC 23)
Mr. Jeff Vest (MIC 85)
Mr. Mike Loretta (MIC 42)
Ms. Pamela Bergin (MIC 82)
Mr. Bradley Heller (MIC 82)
Ms. Dana Brown (MIC 85)
Ms. Casey Tichy (MIC 85)
Mr. Brian Kimsey (MIC 62)
Mr. Chris Miller (MIC 48)
Mr. LaDaughn Coilton (MIC 33)
Ms. Sandy Barrow (MIC 31)
Ms. Tracie West (MIC 31)
Ms. Lynn Whitaker (MIC 50)
Mr. Greg Buehrer (MIC 44)
Mr. Gentian Droboniku (MIC 67)
Mr. Tom Trach (MIC 67)
Mr. Marc Alviso (MIC 104)
Ms. Karina Magana (MIC 47)
Ms. Karina Torrez (MIC 92)
Ms. Rachel Zou (MIC 31)
Ms. Angela Di Meola-Leach (MIC 31)
Mr. Michael Patno (MIC 50)
Ms. Sarah Smith (MIC 50)

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Issue

The California Department of Tax and Fee Administration (Department) is proposing new Emergency Telephone Users Surcharge (ETUS) regulations to implement the ETUS Act (Rev. & Tax. Code (RTC), § 41001 et seq.) as amended by Senate Bill No. (SB) 96 (Stats. 2019, ch.54) and Assembly Bill No. (AB) 988 (Stats. 2022, ch.747). The Department is proposing amendments to clarify that the old ETUS regulations in California Code of Regulations (CCR), division 2, chapter 5.5 (chapter 5.5) apply to the ETUS Act, as it read prior to the amendments made by SB 96. Additionally, the Department is proposing amendments to the Prepaid Mobile Telephony Services (MTS) regulations in CCR, division 2, chapter 5.7 (chapter 5.7) to clarify how the Local Prepaid MTS Collection Act (RTC, § 42100 et seq.) applies after the Prepaid MTS Surcharge Collection Act (RTC, § 42001 et seq.) was repealed on January 1, 2020, and after the Local Prepaid MTS Collection Act was amended by SB 1441 (Stats. 2020, ch.179).

Background

Emergency Telephone Users Surcharge Act Prior to SB 96

The ETUS Act was enacted in 1976. (Stats. 1976, ch. 443.) The State Board of Equalization (Board) was originally responsible for the administration and enforcement of the ETUS Act. (RTC, § 41128 as enacted by Stats. 1976, ch. 443.) The Board also adopted chapter 5.5, Emergency Telephone Users Surcharge Law (old ETUS regulations), commencing with section (Regulation) 2401, in 1977 to implement, interpret, and make specific the emergency telephone users (911) surcharge imposed by the ETUS Act.

Prior to January 1, 2016, the ETUS Act imposed the 911 surcharge on amounts paid by every person in this state for intrastate telephone communication service in this state and Voice over Internet Protocol (VoIP) service that provides access to the 911 emergency system, including charges for mobile telecommunications service provided to customers in this state. (RTC, § 41020, as amended by Stats, 2008, ch. 17.) The 911 surcharge rate was a percentage of 0.5% to 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. (RTC, § 41030, as amended by Stats, 2015, ch. 25.) Also, service suppliers were required to collect the 911 surcharge from service users, generally on the monthly service billings, and pay it to the state. (RTC, §§ 41021 (as amended by Stats, 2008, ch. 179) and 41051 (as amended by Stats. 1996, ch. 432).)

AB 1717

AB 1717 (Stats. 2014, ch. 885) enacted the Prepaid MTS Surcharge Collection Act and the Local Prepaid MTS Collection Act and amended the ETUS Act. From January 1, 2016, until January 1, 2020, the Prepaid MTS Surcharge Collection Act defined "prepaid MTS" to mean "the right to utilize a mobile device for mobile telecommunications services or information services, including

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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.” (RTC, § 42004.) It defined “prepaid consumer” to mean “a person who purchases prepaid MTS in a retail transaction.” (*Ibid.*) It imposed a prepaid MTS surcharge on each prepaid consumer on and after January 1, 2016, in lieu of the 911 surcharge imposed by the ETUS Act. (RTC, §§ 41020 and 42010.) The prepaid MTS surcharge was a percentage of the sales price for each retail transaction that occurred in this state. (RTC, § 42010.) The Prepaid MTS Collection Act also required sellers of prepaid MTS to collect the surcharge from each prepaid consumer at the time of each retail transaction and pay it to the state. (*Ibid.*)

The prepaid MTS surcharge rate was annually calculated by adding:

- The surcharge rate as determined by the OES, and
- The California Public Utilities Commission (CPUC) reimbursement fee; and
- The telecommunications universal service surcharges. (RTC, § 42010.)

The Prepaid MTS Surcharge Collection Act defined a “seller” to mean “a person that sells prepaid [MTS] to a person in a retail transaction.” (RTC, § 42004.) It defined “direct seller” to mean a prepaid MTS provider or service supplier (as defined in the ETUS Act) that makes a sale of prepaid MTS directly to a prepaid consumer for any purpose other than resale in the regular course of business. (*Ibid.*) It required sellers, other than direct sellers, to remit the prepaid MTS surcharges and local charges (discussed below) to the Board. (RTC, § 42010.) It also required direct sellers to remit portions of the prepaid MTS surcharges they collected to the CPUC and the Board, and required direct sellers to remit the local charges they collected directly to the local jurisdictions that imposed the local charges.

Local Prepaid MTS Collection Act

The Local Prepaid MTS Collection Act established the exclusive method for the collection of local charges imposed by a local jurisdiction or local agency, as defined in RTC section 42004, on prepaid MTS beginning January 1, 2016. Local charges include local utility user taxes on the consumption of prepaid MTS, local 911 charges, and any other local charges for the consumption of communication services that apply to prepaid MTS. (RTC, §§ 42101, 42102, and 42102.5.)

Prior to July 1, 2017, Local Prepaid MTS Collection Act required a local jurisdiction or local agency imposing a local charge on prepaid MTS to contract with the Board to collect and administer the local charge. (RTC, §§ 42101.5, 42103.) It required sellers to collect a local jurisdiction’s or local agency’s local charge from prepaid consumers at the same time and in the same manner as the prepaid MTS surcharge after the local jurisdiction or local agency entered into the required contract with the Board, and it required the Board to collect the local jurisdiction’s or local agency’s local charge from sellers in accordance with the Prepaid MTS Surcharge Collection Act (described above). (RTC, §§ 42101.5, 42103.) Also, the Prepaid MTS Surcharge Collection Act required the Board to calculate the combined total of the rates of the prepaid MTS surcharge

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and the rate or rates of the local charges imposed by each local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5, and post the combined rates on its website. (RTC, § 42010.)

Prepaid MTS Regulations

The Board adopted the Prepaid MTS regulations in chapter 5.7 to implement, interpret, and make specific the provisions of the Prepaid MTS Surcharge Collection Act and Local Prepaid MTS Collection Act. Chapter 5.7 became operative on January 11, 2017.

California Department of Tax and Fee Administration

AB 102 (Stats. 2017, ch. 16) established the Department and transferred the Board's duties, powers, and responsibilities to administer and enforce numerous tax and fee laws to the Department effective July 1, 2017, including the ETUS Act, Prepaid MTS Surcharge Collection Act, Local Prepaid MTS Collection Act, Fee Collection Procedures Law (FCPL) (RTC, § 55001 et seq.), and Sales and Use Tax Law (RTC, § 6001 et seq.). (Gov. Code (GC), §§ 15570, 15570.22.) AB 102 also deemed the references to the Board in the ETUS Act, Prepaid MTS Surcharge Collection Act, Local Prepaid MTS Collection Act, FCPL, Sales and Use Tax Law, ETUS regulations in chapter 5.5, and Prepaid MTS regulations in chapter 5.7 to refer to the Department on and after July 1, 2017. (GC, § 15570.24.)

As a result, the Local Prepaid MTS Collection Act requires cities and/or counties (local jurisdictions) that have an ordinance that applies its local charges to prepaid MTS to contract with the Department, instead of the Board, on and after July 1, 2017. The Department also updated the Prepaid MTS regulations in 2018 to refer to the Department, instead of the Board.

Prepaid MTS Surcharge Collection Act Litigation

On November 15, 2018, the United States District Court for the Northern District of California enjoined state agencies from enforcing the Prepaid MTS Surcharge Collection Act because it conflicts with and is preempted by federal law. (*MetroPCS Cal., LLC v. Picker, et al.* (N.D. Cal. 2018) 348 F.Supp.3d 948.) 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. In December 2018, the Department advised prepaid MTS sellers that they are only required to collect applicable local charges on their sales of prepaid MTS, but not the enjoined prepaid MTS surcharge. The Department also advised service suppliers that, effective January 1, 2019, they were required to collect and remit the 911 surcharge on charges for prepaid MTS in the same manner as they did prior to January 1, 2016.

An August 14, 2020, the Ninth Circuit Court of Appeals reversed the district court and concluded that the Prepaid MTS Collection Act was not preempted by federal law. (*Metro PCS Cal., LLC v. Picker, et al.*, (9th Cir. 2020) 970 F.3d 1106.) The case was remanded for further proceedings. However, the Prepaid MTS Surcharge Collection Act was automatically repealed by its own terms on January 1, 2020. (RTC, § 42024.)

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SB 96

SB 96 added RTC sections 41007.1, 41007.2, 41007.3, and 41016.5 to the ETUS Act to define “access line” to mean a wireline communications service line, a wireless communications service line, and a VoIP service line that has access to the 911 emergency system. SB 96 repealed and reenacted RTC sections 41020 and 41030 in the ETUS Act to repeal the percentage based 911 surcharge and instead impose a flat monthly 911 surcharge amount on each access line in this state for each month or part thereof for which a service user subscribes with a service supplier, beginning January 1, 2020. The rate is to be set at an amount no greater than \$0.80 and is based on OES’ estimate, pursuant to a specified formula, of the rate that will produce sufficient revenue to fund the current fiscal year’s 911 costs when applied to the number of access lines to which the 911 surcharge will be applied per month for the calendar year. (RTC, § 41030.) Service suppliers continued to be required to collect the 911 surcharge amount from service users, generally on the monthly service billings (RTC, § 41021), but SB 96 also amended RTC section 41051 to require service suppliers to pay the entire surcharge to the Department.

Additionally, SB 96 amended RTC section 41020 and added RTC section 41028 to the ETUS Act to impose the 911 surcharge on the purchase of prepaid MTS in this state beginning on January 1, 2020. RTC section 41028 requires sellers to collect the 911 surcharge from each prepaid consumer at the time of each retail transaction in this state at a rate equal to the monthly surcharge amount per access line and pay it to the Department. It clarifies when a retail transaction occurs in this state for purposes of the 911 surcharge. It also requires sellers, other than service suppliers, to remit the 911 surcharges they collect to the Department, along with a return filed using electronic media, and requires the Department to administer such remittances and returns as prescribed pursuant to the Sales and Use Tax Law. However, service suppliers are still required to remit all the 911 surcharges they collect, including the 911 surcharges imposed on the purchase of prepaid MTS, to the Department pursuant to the ETUS Act. (RTC, § 41051.)

Furthermore, SB 96 amended RTC section 41040 to require every service supplier and seller in this state to register with the Department. The 911 surcharge funds collected under the ETUS Act 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.

SB 334 and SB 1441

RTC section 42111 would have repealed the Local Prepaid MTS Collection Act on January 1, 2020. However, SB 344 (Stats. 2019, ch.642) and SB 1441 amended RTC section 42111 to change January 1, 2020, to January 1, 2021, and then January 1, 2026, respectively. SB 344 and 1441 also amended the Local Prepaid MTS Collection Act to replace obsolete references to the Board with references to the Department.

In addition, SB 1441 added RTC section 42101.6 to the Local Prepaid MTS Collection Act to require the Department to post the combined total of the rates of the local charges imposed by each

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local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5, on its website. SB 1441 amended RTC section 42103 to require the Department to collect and administer local charges pursuant to the FCPL, instead of the repealed Prepaid MTS Surcharge Collection Act. SB 1441 also amended RTC section 42103.2 to require every seller, except a seller that is not required to collect local charges pursuant to RTC section 42101.7, to register with the Department regardless of whether they are in this state.

Also, a seller, other than a direct seller, with de minimis sales of prepaid MTS during the previous calendar year is not required to collect local charges under RTC section 42101.7. The de minimis sales threshold was originally sales of prepaid MTS of less than \$15,000 and the Department of Finance is required to adjust the threshold annually as necessary to minimize program administration costs and maintain revenues to support program administration and enforcement activities. However, nothing prevents a seller that meets the de minimis sales threshold from voluntarily collecting and remitting local charges on a voluntary basis.

AB 988

AB 988 amended several provisions in the ETUS Act, including RTC sections 41020, 41028, and 41030, to impose a separate and additional 988 surcharge amount on each access line for each month or part thereof for which a service user subscribes with a service supplier and on the purchase of prepaid MTS in this state, beginning January 1, 2023. The rate of the 988 surcharge is set at eight cents (\$0.08) per access line per month and at a flat rate of eight cents (\$0.08) on each retail transaction involving a sale of prepaid MTS for calendar years 2023 and 2024. (RTC, § 41030.) The rates for subsequent calendar years are to be determined by OES, pursuant to a specified formula, and may not exceed thirty cents (\$0.30) per access line or retail transaction. (*Ibid.*) Service suppliers and sellers must collect the 988 surcharge and pay it to the Department in the same manner as the 911 surcharge. (RTC, §§ 41021, 41022, 41028, 41050.)

The 988 surcharge funds the national 988 system in California so that all people experiencing a mental health crisis are able to receive life-saving care.

Discussion

The Department previously determined that it was necessary to keep the old ETUS regulations in chapter 5.5 in place because they continue to apply to existing appeals of 911 surcharges imposed prior to January 1, 2020. It was necessary to adopt new ETUS regulations to implement, interpret and make specific the ETUS Act as amended by SB 96. It was also necessary to amend the Prepaid MTS regulations in chapter 5.7 to make them consistent with the repeal of the Prepaid MTS Surcharge Collection Act.

On June 10, 2020, the Department distributed a discussion paper with the proposed amendments to the old ETUS regulations and Prepaid MTS regulations, and the new regulations to implement, interpret and make specific the ETUS Act as amended by SB 96. An interested parties meeting was subsequently held on June 24, 2020, to obtain public input. During the interested parties

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meeting, the Department explained the rationale for the proposed amendments and new regulations. The Department also explained that the proposed amendments and new regulations may change if SB 1441, which was pending at the time, was signed into law. Following the interested parties meeting, Lisa Volpe McCabe submitted comments and suggested changes on behalf of CTIA, the trade association for the wireless communications industry. Based on comments received during the meeting and in the submission, industry was generally supportive of the proposed amendments and new regulations.

After reviewing and considering CTIA's comments and suggested changes, the amendments to the Local Prepaid MTS Collection Act made by SB 1441, and the amendments made to the ETUS Act by AB 988, we revised the proposed amendments and new regulations as discussed below.

Revised Amendments and New Regulations

Old ETUS Regulations

To help readers distinguish between the old ETUS regulations and the Department's new ETUS regulations, the Department proposes to:

- Change the name of chapter 5.5 from "Emergency Telephone Users Surcharge Law" to "Emergency Telephone Users Surcharge Act Operative Prior to January 1, 2020";
- Change the name of article 1 in chapter 5.5 from "Imposition of Surcharge" to "Imposition of Surcharge and Application of Chapter"; and
- Adopt new Regulation 2400, *Application of Chapter*, as provided in Exhibit 1, which provides that, chapter 5.5 "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," as provided in Exhibit 1.

Additionally, to help readers understand that the references to the Board in chapter 5.5 mean the Department, Regulation 2400 further clarifies that the administration of the ETUS Act was transferred from the Board to the Department, operative July 1, 2017, and any references to the "Board" in chapter 5.5 refer to the Department on and after July 1, 2017, as provided in Exhibit 1.

New ETUS Regulations

To implement the ETUS Act as amended by SB 96 and AB 988, we propose adding new chapter 5.6 (commencing with Regulation 2435) to division 2 of title 18 of the CCR. To help readers distinguish between the old ETUS regulations in chapter 5.5 and the Department's new ETUS regulations, chapter 5.6 is named "Emergency Telephone Users Surcharge Act Operative on and after January 1, 2020." Chapter 5.6 includes proposed Regulations 2435 through 2446 (discussed below), and it incorporates the provisions of chapter 5.5 that are still applicable on or after January 1, 2020.

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Also, to help readers distinguish between the old ETUS regulations in chapter 5.5 and the Department's new ETUS regulations in chapter 5.6, new Regulation 2435, *Application of Chapter*, as provided in Exhibit 2, clarifies 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.

Regulation 2436, *Definitions*, as provided in Exhibit 2 defines important terms used throughout chapter 5.6. It incorporates the ETUS Act's current definitions for the terms "access line," "access line in this state," "in this state," "person," "prepaid consumer," "prepaid MTS," "public agency," "retail transaction," "seller," "service supplier," "service user," "wireless communications service line," and "wireline communication service." It incorporates the provisions in RTC section 41028 specifying when a retail transaction occurs in this state. It defines the terms "911 surcharge," "988 surcharge," and "surcharges" based on the ETUS Act's current definition of "surcharges." It incorporates and clarifies the industry terms "billing agent" and "billing aggregator" used in the old ETUS regulations. It also incorporates Prepaid MTS Regulation 2460's current definitions for the terms "business information," "contact information," "identifying information," "ownership information," and "representative information," because those terms are also used in chapter 5.6's registration provisions.

In addition, Regulation 2436 defines "account" to mean an account issued and maintained by the Department to uniquely identify a service supplier that is registered with the Department pursuant to Regulation 2437 (discussed below) or a seller that is registered with the Department pursuant to Regulation 2437 or Prepaid MTS Regulation 2460 (discussed below). It clarifies that an "emergency telephone account" shall be issued and maintained for a registered service supplier. It clarifies that a "prepaid MTS account" shall be issued and maintained for a seller, other than a service supplier, that is registered with the Department pursuant to Regulation 2437 or 2460, except as provided in Regulation 2460. It also defines the terms "Department" and "regulation" to clarify the references to the Department and simplify the references to the Department's regulations throughout the chapter.

Regulation 2437, *Imposition of and Liability for the 911 and 988 Surcharges*, as provided in Exhibit 2:

- Clarifies the imposition of the 911 and 988 surcharges on each access line for each month or part thereof for which a service user subscribes with a service supplier.
- Clarifies that service suppliers are required to register with Department and prescribes the requirements for a service supplier to register with the Department.
- Clarifies that service users are liable for the surcharges until they are paid to this state or a registered service supplier, that a service supplier is liable for the surcharges it is required to collect, and that billing aggregators and billing agents are not liable for the surcharges they collect on behalf of service suppliers.
- Clarifies that service suppliers are required to report and pay the surcharges they are required to collect to the Department as provided in Regulation 2440 (discussed below) and prescribes the requirements for a billing aggregator to report and remit surcharges on behalf of a service supplier.

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Regulation 2437 also:

- Clarifies the imposition of the 911 and 988 surcharges on the purchase of prepaid MTS in a retail transaction that occurs in this state.
- Clarifies that sellers in this state are required to register with Department under the ETUS Act and prescribes the requirements for a seller in this state to register with the Department.
- Clarifies that sellers, other than a service supplier, that are not in this state are required to register with the Department as provided in Regulation 2460 (discussed below).
- Clarifies that consumers of prepaid MTS are liable for the surcharges until they are paid to the Department, unless they obtain a receipt, as provided in Regulation 2441, showing the surcharges were paid to a seller that has an emergency telephone account or a prepaid MTS account.
- Clarifies that a seller is liable for the surcharges it is required to collect.
- Clarifies that sellers are required to report and pay the surcharges they are required to collect to the Department as provided in Regulation 2440 (discussed below).

Regulation 2438, *Exemptions for Access Lines*, as provided in Exhibit 2, incorporates and clarifies the statutory exemptions from the 911 and 988 surcharges for access lines, including the exemptions for:

- Access lines supplying lifeline services;
- Access lines connected to public telephones;
- Access lines provided for no charge;
- Accesses lines where imposition of the surcharges would violate federal or state laws;
- Access lines used in collection and dissemination of news for the public press;
- Access lines supplying wide-area telephone service used by common carriers; and
- Access lines supplied to a nonprofit hospital or educational organization or specified public agency.

In addition, subdivision (c) of Regulation 2438 was revised, as suggested by CTIA, to include the word “for” in the phrase “access lines for which no charges are billed.” Also, prior subdivision (d)(5) was deleted from Regulation 2438 and the other subdivisions were renumbered accordingly because the exemption for banks referred to in subdivision (b)(5) of old ETUS Regulation 2413 was repealed.

Regulation 2439, *Exemptions for Sales of Prepaid MTS for Resale and to Prepaid Consumers Eligible for a Lifeline Program, Seller’s Deductions and Credits for Bad Debts from Sales of Prepaid MTS, and Prepaid Consumers’ Credits for Surcharges Paid to Another State on Purchases of Prepaid MTS*, as provided in Exhibit 2:

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- Clarifies that the seller has the burden to establish that a sale of prepaid MTS is not a retail transaction subject to the 911 and 988 surcharges and local charges, establishes a rebuttable presumption that a sale is for resale if the seller timely takes a resale certificate from the purchaser in the form prescribed by the regulation in good faith, and clarifies that other evidence, including XYZ letters, may be used to prove that a sale was not in fact a retail transaction or that the purchaser reported or paid the surcharges and local charges due on the transaction to the Department.
- Clarifies the circumstances under which a seller may claim a deduction for a debt found worthless and charged off for income tax purposes; clarifies that the amount of such a deduction is the amount of 911 and 988 surcharges paid that is equal to the percentage of the base upon which the 911 and 988 surcharges were imposed that is represented by the debt found worthless and charged off for income tax purposes by the seller because the surcharge is imposed at a flat rate; and clarifies the types of records a seller must maintain to support such a deduction, when such a deduction must be claimed on a return, and that the failure to take such a deduction on the proper return will not prohibit the seller from filing a timely claim for refund for the amount that could have been timely deducted.
- Incorporates the lifeline exemption from the surcharges imposed on purchases of prepaid MTS, clarifies that the exemption does not apply if the seller is not an authorized provider of lifeline service, and clarifies the meaning of the state lifeline program as used in the exemption.
- Implements the credit allowed by RTC section 41028 to the extent that a prepaid consumer has paid surcharges on the purchase of prepaid MTS to any other state.

CTIA submitted written comments concerning the lifeline exemption provisions in Regulation 2461, subdivision (e), that are most relevant to Regulation 2439, subdivision (c); therefore, CTIA's comments were treated as though they were made to comparable provisions in Regulation 2439. CTIA commented that the part of those provisions defining "lifeline transaction" limited the exemption and should be revised to clarify that the exemption applies to subsidized lifeline services. The Department determined that it is not necessary to define "lifeline transaction" in Regulation 2439 and that the proposed language in Regulation 2439 will not limit the exemption like the provisions that concerned CTIA.

CTIA also suggested removing provisions from Regulation 2461, subdivision (e)(3), that incorporated repealed limitations on the lifeline exemption and provided that the lifeline exemption is applied only to the amount paid for the portion of the prepaid MTS that the lifeline program specifies is exempt from the surcharges and fees. Similar provisions were included in the prior draft of the proposed regulation; however, the regulation was revised to delete those provisions as were implementing RTC section 41028, subdivision (h)(3), which was repealed.

Regulation 2440, *Returns, Reporting, and Payment*, as provided in Exhibit 2, clarifies the 911 and 988 surcharge reporting and payment requirements for service suppliers under the ETUS Act. It separately clarifies the 911 and 988 surcharge reporting and payment requirements for sellers of prepaid MTS, other than service suppliers, under the Sales and Use Tax Law, as incorporated into

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RTC section 41028. It also clarifies that returns are required to be filed electronically through the Department's website and separately report the amounts of 911 and 988 surcharges collected.

Regulation 2441, *Receipts*, as provided in Exhibit 2, clarifies that RTC section 41028 requires sellers of prepaid MTS to provide an invoice, receipt, or other similar document to prepaid consumers separately stating the 911 and 988 surcharges or the combined 911 and 988 surcharges collected, unless otherwise disclosed electronically to the prepaid consumer at the time of the retail transaction. It also clarifies when prepaid MTS is sold on a tax-included basis.

CTIA suggested adding a new subdivision to Regulation 2441 to separately address when prepaid MTS is sold on a tax-included basis and the 911 surcharge is not separately disclosed. CTIA suggested the following language:

(4) If the prepaid MTS is sold on a tax-included basis and the 911 surcharge is not separately disclosed to the purchaser, it is presumed that the price includes the 911 surcharge unless an exemption applies and the seller can prove the exemption through documentation.

The Department did not incorporate CTIA's suggested language because subdivision (a)(2) of RTC section 41028 requires the 911 surcharge and 988 surcharge to be separately stated or stated as a combined 911/988 surcharge on the invoice, receipt, or similar document provided to a prepaid consumer or disclosed to the prepaid consumer electronically at the time of the retail transaction, and CTIA's suggested language is inconsistent with RTC section 41028.

Regulation 2442, *Payment by Electronic Funds Transfer*, as provided in Exhibit 2, clarifies that service suppliers must remit the 911 and 988 surcharges to the Department by electronic funds transfer, as required by Regulation 4905, which implements the ETUS Act's requirements for service suppliers to remit the surcharges by electronic funds transfer. It also clarifies that sellers, other than service suppliers, must remit the 911 and 988 surcharges to the Department by electronic funds transfer, as required by Regulation 1707, which implements the Sales and Use Tax Law's requirements to remit sales and use tax by electronic funds transfer.

Regulation 2443, *Records*, as provided in Exhibit 2, clarifies that service suppliers and sellers are required to maintain and make available records in accordance with Regulation 4901, *Records*. It also specifically requires service suppliers to 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) Amount of 911 and 988 surcharges collected.

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Regulation 2444, *Reasonable Reliance on Written Advice*, as provided in Exhibit 2, clarifies that a person may be relieved from the liability for the payment of the 911 and 988 surcharges, including any penalties and interest added to the surcharges, under RTC section 41098, when that liability resulted from the failure to make a timely return or a payment and such failure is found by the Department to be due to reasonable reliance on written advice given by the Department under the conditions set forth in Regulation 4902, *Relief from Liability*, which implements RTC section 41098.

Regulation 2445, *Innocent Spouse Relief*, as provided in Exhibit 2, clarifies that a spouse or registered domestic partner claiming relief from liability for the 911 and 988 surcharges, interest, penalties, and other amounts under RTC section 41099 shall be relieved from such liability where all the requirements set forth in Regulation 35055 are met because Regulation 35055 implements RTC section 41099.

Regulation 2446, *Refunds of Excess Charges Collected*, as provided in Exhibit 2, clarifies that:

- Service suppliers and sellers that have collected any amount of 911 and 988 surcharges in excess of the amount actually due may refund that amount even if it has already been paid to the Department and any excess charges that are not refunded constitute a debt to the state.
- A service supplier or seller can claim credit for the overpayment of excess charges that were refunded.
- Any person that believes it has overpaid 911 and 988 surcharges, including a service supplier or seller, may file a timely claim for refund, within the statute of limitations.

Local Prepaid MTS Regulations

The Department proposes to change the name of chapter 5.7 from “Prepaid Mobile Telephony Services” to “Local Charges on Prepaid Mobile Telephony Services” to clarify that chapter 5.7 only applies to local charges imposed on prepaid MTS. The Department also proposes to amend existing Regulations 2460-2462 in chapter 5.7 to clarify how the Local Prepaid MTS Collection Act applies to the collection and remittance of local charges after the Prepaid MTS Surcharge Collection Act was repealed on January 1, 2020, and after the Local Prepaid MTS Collection Act was amended by SB 1441.

The Department proposes to add definitions to subdivision (a) of Regulation 2460, *Administration*, as provided in Exhibit 3, to:

- Define “account” to mean an account issued and maintained by the Department to uniquely identify a seller that is registered with the Department pursuant to Regulation 2437 or Regulation 2460, clarify that an “emergency telephone account” shall be issued and maintained for a registered direct seller, a “prepaid MTS account” shall be issued and maintained for a registered seller, other than a direct seller, and each account shall have its own unique account number.

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- Define “911 surcharge,” “988 surcharge,” “surcharges,” and “911 and 988 surcharges.”
- Define “regulation” to simplify the references to the Department’s regulations throughout the chapter.
- Clarify when a “retail transaction occurs in this state” under RTC section 42101.8.

The Department proposes to delete the definition of “Emergency telephone users surcharge” from subdivision (a) of Regulation 2460 because that term is being replaced by the term “911 surcharge.” The Department proposes to delete the definition of “Prepaid MTS Account” from subdivision (a) of Regulation 2460 because the new definition of “account” includes prepaid MTS accounts. The Department proposes to delete the definitions of “Prepaid MTS Surcharge,” “Public Utilities Commission,” and “Public Utilities Commission Surcharges” from subdivision (a) of Regulation 2460 because they are unnecessary after the repeal of the Prepaid MTS Surcharge Collection Act. The Department also proposes to renumber the remaining definitions in subdivision (a) of Regulation 2460 and move the definition of “Department” so that all the definitions are in alphabetical order.

The Department proposes to update Regulation 2460’s definitions of “business information,” “contact information,” “identifying information,” “ownership information,” and “representative information” to make them consistent with the revised registration requirements (discussed below) and refer to the 911 and 988 surcharges, instead of the repealed prepaid MTS surcharge. The Department proposes to clarify that contact information includes an “email address” and “identifying information” includes a federal Employer Identification Number, rather than a federal Taxpayer Identification Number. The Department proposes to amend Regulation 2460’s definitions of “local charges” and “prepaid mobile telephony services” or “prepaid MTS” to make them consistent with the statutory definitions. The Department proposes to amend Regulation 2460’s definition of “retail transaction” to make it consistent with RTC section 42101.9 and clarify that multiple items of prepaid MTS may be purchased at one time in a single retail transaction. The Department also proposes to amend Regulation 2460’s definition of “seller” to clarify that the term includes “direct sellers.”

The Department proposes to amend subdivision (b) of Regulation 2460 to clarify that every seller in this state is required to register with the Department under Regulation 2437 (discussed above) and a seller that is not in this state is required to register under Regulation 2460, except a seller with de minimis sales of prepaid MTS that is not required to collect local charges under RTC section 42101.7. However, such a seller may voluntarily register with the Department by completing an application for registration.

The Department proposes to amend subdivisions (c), (d), (e), (g), and (h) of Regulation 2460 to delete the references to the prepaid MTS surcharge. The Department also proposes to amend subdivision (c) to clarify that the subdivision is only referring to local charges subject to collection under chapter 5.7.

The Department proposes to amend subdivisions (d) of Regulation 2460 to delete the references to the “combined” prepaid MTS surcharge and local charges. The Department also proposes to

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amend subdivision (d) to clarify that the subdivision is only referring to sellers that are required to collect local charges under chapter 5.7, replace “service” with “prepaid MTS” in subdivision (d)(2), and clarify in subdivision (d)(3) that RTC section 42101.6 requires receipts to show the amount of any local charges collected, unless otherwise disclosed electronically to the prepaid consumer at the time of the transaction.

The Department proposes to amend subdivision (e) of Regulation 2460 to delete the references to the prepaid MTS surcharge and Prepaid MTS Surcharge Collection Act. The Department proposes to amend subdivision (e)(1) to clarify that it only applies to payments of local charges subject to collection under chapter 5.7. The Department proposes to amend subdivision (e)(2) to clarify that it only requires a person to file returns if they are liable for local charges under chapter 5.7. The Department proposes to amend subdivision (e)(3) to clarify that it only applies to local charges required to be reported to the Department pursuant to the Local Prepaid MTS Collection Act. The Department proposes to shorten subdivision (e)(5)’s reference to Regulation 1707. The Department also proposes to amend subdivision (e)(6) to clarify that direct sellers are required to report and remit the 911 and 988 surcharges to the Department as provided in Regulation 2440 (discussed above).

The Department proposes to move the reference to “records” and shorten the reference to Regulation 4901 in subdivision (f) of Regulation 2460 to make the subdivision read more clearly. The Department also proposes to shorten the reference to Regulation 4902 in subdivision (g) of Regulation 2460 and replace subdivision (h)’s reference to Regulation 4903 with a reference to Regulation 35055 because Regulation 35055 implements RTC section 55045.1 in the FCPL and prescribes the substantive requirements for innocent spouse relief.

The Department proposes to amend subdivision (i)(1) of Regulation 2460 so it uses the past tense to refer to contacts that were or were not entered into on or before September 1, 2015, the subdivision clarifies that local charges are required to be collected at the time prepaid MTS is sold in a retail transaction that occurs in the state, pursuant to the Local Prepaid MTS Collection Act and chapter 5.7, and the subdivision does not unnecessarily refer to subdivisions (i)(2) through (5). The Department proposes to amend subdivision (i)(3) of Regulation 2460 to clarify that it is only referring to increases in local charges required to be collected under subdivisions (i)(1) or (2). The Department proposes to amend subdivision (i)(4) of Regulation 2460 to clarify that it is only referring to local charges required to be collected under subdivision (i), clarify that the first paragraph applies when timely written notice is provided not less than 110 days prior to the date a local charge is scheduled to expire or decrease, and clarify that the second paragraph applies when written notice is provided in advance of such a change, but less than 110 days prior to the change. The Department also proposes to delete “scenarios” from subdivision (i)(5) of Regulation 2460 because the word is unnecessary.

The Department proposes to change the name of subdivision (j) of Regulation 2460 from “Posting and Calculation of Combined Rates” to “Posting Rates,” delete subdivisions (j)(1) and (2), and reformat subdivision (j)(3) as subdivision (j) because the Department is no longer required to calculate the prepaid MTS surcharge rate or total combined rates of the prepaid MTS surcharge

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and local charges. The Department also proposes to amend reformatted subdivision (j) so it only implements, interprets, and make specific the current requirements for the Department to post the combined total of the rates of the local charges imposed by each local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5, on its website.

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

- Delete subdivision (a) because it was redundant, delete subdivision (e) because the Local Prepaid MTS Collection Act does not provide an exemption from local charges for lifeline transactions, and renumber the other subdivisions accordingly.
- Amend renumbered subdivision (a) to clarify that the burden of proving that a sale of prepaid MTS is for resale in the regular course of business is on the seller, clarify that timely taking a resale certificate from the purchaser in good faith raises a rebuttable presumption that a sale of prepaid MTS is for resale for purposes of local charges and the 911 and 988 surcharges, clarify when a resale certificate is required to contain the purchaser's emergency telephone account or prepaid MTS account number, clarify the current requirements for purchasers to issue blanket and qualified resale certificates, clarify the requirements for a seller to accept a resale certificate in good faith, clarify the other evidence a seller can provide to show that they are not liable for local charges on a sale of prepaid MTS, and clarify the use of XYZ letters and alternative methods for that purpose;
- Amend renumbered subdivision (b) to clarify that RTC section 42101.6 relieves a seller from liability to collect local charges insofar as the base upon which local charges are imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes, clarify that a seller that has previously paid the local charges must take a bad debt deduction for the local charges on the proper return or file a timely claim for refund, clarify how payments and credits may be applied to an account for purposes of determining a bad debt deduction, clarify how local charges apply to amounts subsequently collected on accounts previously found to be worthless and charged off for income tax purposes under RTC section 42101.6, and clarify the records a seller must maintain to support relief of liability, deductions or claims for refund;
- Amend renumbered subdivision (c) to clarify how local charges apply when prepaid MTS is sold in combination with other services or products for a single price under RTC section 42101.9 and include language CTIA suggested before that language was added to section 42101.9.
- Amend renumbered subdivision (d) to clarify that prepaid consumers are only allowed a credit for local charges paid to another state on the purchase of prepaid MTS.
- Add new subdivision (e) to clarify that sellers, other than direct sellers, with de minimis sales are not required to, but may voluntarily collect local charges.
- Update the resale certificate in appendix A to delete the unnecessary introductory paragraph, revise paragraph 1 to require a purchaser to certify that they hold a valid emergency telephone account or prepaid MTS account with a specific account number or explain why they are not required to register with the Department under Regulations 2437

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and 2460, replace the references to “property” and “items” in paragraphs 2 , 3, and 4 with “prepaid MTS” because the certificate is specifically for purchases of prepaid MTS, and delete the unnecessary language after “business operations” in paragraph 3.

The Department proposes to amend Regulation 2462, *Refunds of Excess Charges Collected*, as provided in Exhibit 3, to:

- Delete the references to the repealed prepaid MTS surcharge;
- Clarify subdivision (a) and make it consistent with the wording in subdivision (h) of RTC section 42101.6;
- Update the reference to repealed RTC section 42014 in subdivision (c)(1) to refer to RTC section 42105; and
- Make non-substantive edits to language throughout the regulation for clarity.

Summary

We propose adopting new chapter 5.6, as provided in Exhibit 2, to implement, interpret, and make specific the ETUS Act as amended by SB 96 and AB 988. We propose adopting new Regulation 2400, as provided in Exhibit 1, to specify that chapter 5.5 applies to the ETUS Act, as it read prior to the amendments made by SB 96, and clarify that any references to the Board in chapter 5.5 refer to the Department on and after July 1, 2017. Finally, we propose amending the Prepaid MTS regulations, as provided in Exhibit 3, to clarify how the Local Prepaid MTS Collection Act applies after the Prepaid MTS Surcharge Collection Act was repealed on January 1, 2020, and after the Local Prepaid MTS Collection Act was amended by SB 1441.

We welcome any comments, suggestions, and input from interested parties on this issue. We also invite interested parties to participate in the November 30, 2023, interested parties meeting. The deadline for interested parties to provide their written submissions regarding this discussion paper will be December 14, 2023.

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

Current as of 11/9/23.

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration –

Business Taxes

Chapter 5.5. Emergency Telephone Users Surcharge Law

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

Article 1. Imposition of Surcharge and Application of Chapter

2400. Application of Chapter.

(a) Application of Chapter. This chapter applies to the Emergency Telephone Users Surcharge Act (Rev. & Tax. Code, § 41001 et seq.), operative prior to January 1, 2020, and as it read prior to the amendments made by Senate Bill No. 96 (Stats. 2019, ch. 54). Chapter 5.6 of division 2 of title 18 of the California Code of Regulations (commencing with Reg. 2435) applies to the Emergency Telephone Users Surcharge Act, operative on and after January 1, 2020.

(b) Administration. The administration of the Emergency Telephone Users Surcharge Act was transferred from the State Board of Equalization to the California Department of Tax and Fee Administration, operative July 1, 2017, and any references to the “Board” in this chapter refer to the California Department of Tax and Fee Administration on and after July 1, 2017.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference:

Proposed Text of California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration –

Business Taxes

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

(A new chapter and regulations to be added to the California Code of Regulations.)

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

Article 1. Imposition of Surcharge and Application of Chapter

2435. Application of Chapter. 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 of division 2 of title 18 of the California Code of Regulations applies to the Emergency Telephone Users Surcharge Act, operative prior to January 1, 2020, and as it read prior to the amendments made by Senate Bill No. 96 (Stats. 2019, ch. 54).

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41020 and 41028 Revenue and Taxation Code.

2436. Definitions.

(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) “Account” means an account issued and maintained by the Department to uniquely identify a service supplier that is registered with the Department pursuant to Regulation 2437 or a seller that is registered with the Department pursuant to Regulation 2437 or 2460.

(A) An “emergency telephone account” shall be issued and maintained for a service supplier that is registered with the Department pursuant to Regulation 2437.

- (B) Except as provided in Regulation 2460, a “prepaid MTS account” shall be issued and maintained for a seller, other than a service supplier, that is registered with the Department pursuant to Regulation 2437 or 2460.
- (C) Each account shall have its own unique emergency telephone account or prepaid MTS account number.
- (2) 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 Revenue and Taxation Code section 41016.5.
- (3) “Access line in this state” means a telephone line, as defined in Public Utilities Code section 233, associated with a billing address located in California.
- (4) “Billing agent” shall mean any person that submits a bill to a service user on behalf of a service supplier, reseller, or billing aggregator.
- (5) “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 access lines supplied by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. A 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 911 and 988 surcharges to the Department.

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

(6) “Business information” means information the Department deems necessary to determine if a person is required to register with the Department under Regulation 2437 or 2460, determine if the person is required to remit the 911 and 988 surcharges 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.

(7) “Contact information” means information the Department deems necessary to contact and communicate with a person registering under Regulation 2437 or 2460 and with that person’s authorized representative(s), if any. Such information includes, but is not limited to, a current mailing address, email address, and telephone number.

(8) “Department” means the California Department of Tax and Fee Administration.

(9) “Identifying information” means information the Department deems necessary to specifically identify a person registering with the Department under Regulation 2437 or 2460. 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.), and the person’s federal Employer 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.

(10) “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.

(11) “Local charge” or “local charges” means the utility user taxes on the consumption of prepaid MTS as described in Revenue and Taxation Code section 42102, and charges that apply to prepaid MTS for access to communication services or to local “911” emergency telephone systems, as described in Revenue and Taxation Code section 42102.5.

(12) “988 surcharge” means the 988 surcharge imposed under chapter 2 of the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41020).

(13) “911 surcharge” means the 911 surcharge imposed under chapter 2 of the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41020).

(14) “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.

(15) “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.

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

(17) “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.

(18) “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 has authority to provide firefighting, police, ambulance, medical, or other emergency services.

(19) “Regulation” means a section in title 18 of the California Code of Regulations.

(20) “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.

(21) “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. Multiple items of prepaid MTS may be purchased at one time in a single retail transaction.

(22) A “retail transaction occurs in the state” under any of the following circumstances:

(A) The prepaid consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction).

(B) If subdivision (a)(20)(A) is not applicable, the prepaid consumer’s address is in the state (known-address transaction). A known-address transaction occurs in the state under any of the following circumstances:

(i) The retail sale involves shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.

(ii) If the prepaid consumer’s address is known by the seller to be in the state, including if the seller’s records maintained in the ordinary course of business indicate that the prepaid consumer’s address is in the state and the records are not made or kept in bad faith.

(iii) The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.

(C) If an address is not available to the seller to determine whether any of the circumstances in subdivision (a)(20)(B) exist, the transaction will be deemed to be a known-address transaction occurring in this state if the mobile telephone number is associated with a location in this state.

(23) “Seller” means a person, including a service supplier, that sells prepaid MTS to a person in a retail transaction.

(24) “Service supplier” means a person supplying an access line to a service user in this state.

(25) “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.

(26) “Surcharges” or “911 and 988 surcharges” means the 911 surcharge related to 911 service for periods prior to January 1, 2023, and means two separate charges, the 911 surcharge related to 911 service and the 988 surcharge related to 988 service, for periods on and after January 1, 2023.

(27) “Wireless communications service line” shall mean a telecommunications service provided to an end user with a place of primary use in this state that allows the end user to make an outbound communication to the 911 emergency communications system. Commencing January 1, 2023, a “wireless communications service line” shall include a telecommunications service provided to an end user with a place of primary use in this state that allows the user to make an outbound communication to the 988 Suicide and Crisis Lifeline, as defined in the Miles Hall Lifeline and Suicide Prevention Act (commencing with section 53123.1 of the Government Code). A wireless communications service line shall not include prepaid MTS.

(28) A “Wireline communication service” shall mean a local exchange service provided at a physical location in this state that allows the user to make an outbound communication to the 911 emergency communications system and commencing January 1, 2023, to the 988 Suicide and Crisis Lifeline, as defined in the Miles Hall Lifeline and Suicide Prevention Act (commencing with section 53123.1 of the Government Code). For the purposes of the surcharges, 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.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41003, 41004, 41005, 41006, 41007, 41007.1, 41007.2, 41007.3, 41007.5, 41009, 41013, 41020, 41028, 41040, 42101 and 42103.2 Revenue and Taxation Code.

2437. Imposition of and Liability for the 911 and 988 Surcharges.

(a) A 911 surcharge is imposed on each access line for each month or part thereof for which a service user subscribes with a service supplier. Beginning January 1, 2023, a separate 988 surcharge is imposed on each access line for each month or part thereof for which a service user subscribes with a service supplier. A service user that subscribes for wireline communications service at a physical location subscribes with a service supplier for the same number of access lines as the total number of concurrent outbound calls that can be placed to the 911 emergency communications system from that location at a single point of time using the service. A service user that subscribes for wireless communication service subscribes with a service supplier for the same number of access lines as the number of wireless communications service line numbers that allow the end user to make an outbound communication to the 911 emergency communications system assigned to the service user as part of the service. A service user that subscribes for VoIP service subscribes with a service supplier for the same number of access lines as the total number of concurrent outbound calls that can be placed to the 911 emergency communications system at a single point of time using the service.

(1) Every service supplier shall register with the Department under this regulation by completing an application for registration with the Department. Every application for registration shall provide the service supplier's identifying information, contact information, business information, ownership information, and representative information.

(2) A service supplier that supplies an access line to a service user in this state shall collect the 911 and 988 surcharges imposed on that access line from the service user at the time it collects its billing from the service user. However, if the stations or lines of more than one service supplier are utilized in furnishing telephone communication services to a service user, the service supplier that bills the customer shall collect the surcharges from the customer.

(A) Except as provided in subdivision (a)(2)(B), the surcharges required to be collected by the service supplier shall each be added to and stated separately in its billings to the service user.

(B) A service supplier may elect to combine the 911 and 988 surcharges into a single-line item on the service user billing. If the service supplier elects to combine the surcharges, the combined surcharge shall be labeled as the “911/988 Surcharge” on the service user’s bill.

(3) A service user in this state is liable for the 911 and 988 surcharges until they have been paid to this state or a service supplier registered with the Department to collect the 911 and 988 surcharges. The 911 and 988 surcharges a service supplier is required to collect from a service user under subdivision (b)(2) constitute debts owed by the service supplier to this state. A billing agent or billing aggregator, including another service supplier, that collects the 911 and 988 surcharges on behalf of the service supplier is not liable for the 911 and 988 surcharges.

(4) A service supplier is required to report the 911 and 988 surcharges it is required to collect from service users to the Department and remit the surcharges to the Department in accordance with Regulation 2440. A billing agent or billing aggregator, including another service supplier, that collects the surcharges on behalf of the service supplier is not required to report or remit the surcharges.

(5) Each registered service supplier may authorize one billing aggregator, in writing, to prepare and file returns and remit 911 and 988 surcharges on its behalf.

(A) An authorized billing aggregator may file returns and remit surcharges on behalf of one or more registered service suppliers while the service suppliers’ authorizations are in effect. However, the billing aggregator must file a separate return for each service supplier with the Department, which includes the service supplier’s name, address, and account number and the amounts of the 911 and 988 surcharges remitted.

(B) If a service supplier only authorizes a billing aggregator to report and remit a portion of the 911 and 988 surcharges it is required to report and remit, the service supplier must report and remit the remainder of the surcharges directly to the Department.

(b) A 911 surcharge is imposed on the purchase of prepaid MTS in a retail transaction that occurs in the state. Beginning January 1, 2023, a separate 988 surcharge is also imposed on the purchase of prepaid MTS in a retail transaction that occurs in the state. The surcharges are required to be collected by the seller from the prepaid consumer at the time of each retail transaction in this state.

(1) Every seller in this state shall register with the Department under this regulation by completing an application for registration with the Department. A seller is in this state if the seller has a physical presence within the exterior limits of the State of California or a territory within those limits owned by or ceded to the United States of America, including, but not limited to owning or leasing real or tangible personal property in this state, maintaining, occupying, or using a place of business in this state, or having representatives or agents operating in this state on the seller's behalf.

(A) Every application for registration shall provide the seller's identifying information, contact information, business information, ownership information, and representative information.

(B) A seller, other than a service supplier, that is not in this state shall register with the Department as provided in Regulation 2460.

(2) Every consumer of prepaid MTS in this state is liable for the 911 and 988 surcharges until they have been paid to the Department, unless a receipt, as provided by Regulation 2441, is obtained showing that the surcharges were paid to a seller that has an emergency telephone account or a prepaid MTS account.

(3) The 911 and 988 surcharges a seller is required to collect from a prepaid consumer under this subdivision constitute debts owed by the seller to this state.

(4) A seller, including a service supplier, is required to report and remit the 911 and 988 surcharges it is required to collect from prepaid consumers to the Department in accordance with Regulation 2440.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41007.2, 41007.3, 41016.5, 41020, 41021, 41022, 41023, 41024, 41028, 41040 and 41052, Revenue and Taxation Code.

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

2438. Exemptions for Access Lines

The 911 and 988 surcharges do not apply to:

- (a) Access lines supplying lifeline service.
- (b) Access lines connected to public telephones as defined by Revenue and Taxation Code section 41012.
- (c) Access lines for 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 supplied 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 article XIII, section 28 of the California Constitution.

- (5) Enrolled Indians who are service users subscribing for service from within the limits of an Indian reservation. For purposes of this subdivision, "Indian reservation" means Indian country as defined in section 1151 of title 18 of the United States Code. The term includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.

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

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

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

(g) Access lines supplied to a nonprofit hospital, nonprofit educational organization, or a public agency excluded from the definition of a person in Regulation 2436. For purposes of this subdivision, “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 has authority to provide firefighting, police, ambulance, medical, or other emergency services.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41003, 41006, 41009, 41027 and 41046, Revenue and Taxation Code.

2439. Exemptions for Sales of Prepaid MTS for Resale and to Prepaid Consumers Eligible for a Lifeline Program, Seller’s Deductions and Credits for Bad Debts from Sales of Prepaid MTS, and Prepaid Consumers’ Credits for Surcharges Paid to Another State on Purchases of Prepaid MTS.

(a) Sales for Resale. The burden of proving that prepaid MTS was purchased for the purpose of resale in the regular of business is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the prepaid MTS is purchased for resale. It is rebuttably presumed that a purchase of prepaid MTS is for the purpose of resale in the regular of business, if such a certificate is timely taken in proper form as set forth in subdivision (a)(1)(A) and in good faith from a person who is engaged in the business of selling prepaid MTS and has an emergency telephone account or a prepaid MTS account if the purchase is required to register with the Department pursuant to Regulation 2437 or 2460. 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:

(i) The signature of the purchaser, purchaser’s employee or authorized representative of the purchaser.

(ii) The name and address of the purchaser.

- (iii) The number of the purchaser's emergency telephone account or prepaid MTS account if the purchaser is required to register or has voluntarily registered with the Department pursuant to Regulation 2437 or 2460. If the purchaser does not have an emergency telephone account or a prepaid MTS account and is not required to register with the Department under Regulations 2437 and 2460 because the purchaser is not a seller in this state and they are not required to collect local charges pursuant to subdivision (e) of Regulation 2460, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to register with the Department under Regulations 2437 and 2460 in lieu of an emergency telephone account or a prepaid MTS account number.
- (iv) 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 terms or phrases such as "nontaxable," "not subject to surcharge," "exempt," or similar terms and phrases is not acceptable.
- (v) 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 (a)(1)(A) is the minimum form which will be regarded as a resale certificate. However, 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. A resale certificate containing the essential elements described in subdivision (a)(1)(A), including a certificate substantially in the form shown in Appendix A of this regulation, may be used to establish that prepaid MTS was purchased for resale in the regular course of business for purposes of the 911 and 988 surcharges and local charges.
- (C) Blanket Resale Certificate. If a purchaser issues a general (blanket) resale certificate that applies to all of its purchases of prepaid MTS, and subsequently issues a purchase order for prepaid MTS that indicates that the transaction covered by the purchase order is a retail transaction subject to the 911 and 988 surcharges, the blanket resale certificate does not apply with respect to the prepaid MTS purchased in that transaction. Also, the seller will bear the burden to establish that the prepaid MTS covered by the purchase order was purchased for resale in the regular course of business, or that the 911 and 988 surcharges due on the purchase of the prepaid MTS covered by the purchase order were

paid to the Department. A seller may avoid this situation if its purchasers use the procedures described in subdivision (a)(1)(D) below.

(D) Qualified Resale Certificate. If a purchaser wishes to designate on each purchase order whether the prepaid MTS being purchased is for resale, the seller should obtain a qualified resale certificate from the purchaser that expressly directs the seller to the purchase orders, 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 phrases on a purchase order, indicating that the 911 and 988 surcharges should not be added to the sales invoice will be regarded as designating that the prepaid MTS described in the purchase order is purchased for resale provided that the combination of the purchase order and the qualified resale certificate contains all the essential elements described in subdivision (a)(1)(A). However, a purchase order where the applicable amount of 911 and 988 surcharges is shown as \$0 or is left blank will not be accepted as designating that the prepaid MTS described in the purchase order is purchased for resale, unless the purchase order also includes the phrase “for resale” or one of the other phrases described above to specify that the prepaid MTS is purchased for resale. If a purchase order does not so specify or is not issued timely within the meaning of subdivision (a), it will be rebuttably presumed that the prepaid MTS covered by that purchase order was not purchased for resale and that the purchase of the prepaid MTS covered by the purchase order was subject to the 911 and 988 surcharges. If a purchase order includes both prepaid MTS to be resold and prepaid MTS to be used, the purchase order must specify which prepaid MTS is purchased for resale and which prepaid MTS is purchased for use.

The seller shall retain copies of a purchaser’s purchase orders along with the purchaser’s qualified resale certificate in order to support the sales for resale to that purchaser.

(E) If the seller does not timely obtain a resale certificate for a sale of prepaid MTS, the fact that the purchaser deletes the 911 and 988 surcharges from the seller’s billing for the sale, provides an emergency telephone account or 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 burden of proving the sale of the prepaid MTS was for resale.

(2) Good Faith. In the 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 described in subdivision (a)(1)(A) and otherwise appears to be valid on its face.

(3) Improper Use of Certificate. Any person who gives a resale certificate for the purchase of prepaid MTS that they know at the time of purchase is not to be resold by them in the regular course of business is liable for the amount of 911 and 988 surcharges due on the purchase of the prepaid MTS.

(4) Other Evidence. A resale certificate which is not timely taken is not retroactive and will not raise the rebuttable presumption that a purchase of prepaid MTS is for resale in the regular course of business. Consequently, if a seller does not timely obtain a resale certificate containing the essential elements described in subdivision (a)(1)(A), the seller will be liable for the 911 and 988 surcharges due on a sale of prepaid MTS, unless the seller shows or the Department otherwise determines that:

(A) The prepaid MTS was in fact resold by the purchaser in the regular course of business;

(B) The prepaid MTS is in fact being held by the purchaser for resale in the regular course of business;

(C) The purchaser reported the 911 and 988 surcharges due on the sale of prepaid MTS directly to the Department on the purchaser's return; or

(D) The purchaser paid the 911 and 988 surcharges due on the sale of prepaid MTS to the Department 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 to establish that a sale of prepaid MTS was for resale. One method that the Department authorizes to assist a seller in satisfying its burden to establish that a sale of prepaid MTS was for resale or that the 911 and 988 surcharges were paid on a sale of prepaid MTS 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, as set forth below. An

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 will request that a purchaser, the purchaser's employee, or the purchaser's authorized representative respond to the questions below regarding the purchaser's purchase or purchases of prepaid MTS from the seller, provide the purchaser's name, purchaser's emergency telephone account or prepaid MTS account number, and describe the nature of the purchaser's business. An XYZ letter will also request that the purchaser's response be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name, title, and telephone number of the person signing the response, and the date signed.

An XYZ letter may include the following information: seller's name and emergency telephone account or prepaid MTS account number, dates of invoices, invoice numbers, purchase order numbers, amounts of purchases, descriptions of the prepaid MTS purchased, and other information identifying purchases of prepaid MTS from the seller. Copies of actual invoices may be attached to an XYZ letter.

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

- (i) Purchased for resale and resold in the regular course of business;
- (ii) Purchased for resale and presently in resale inventory being held for resale in the regular course of business; or
- (iii) Purchased for a purpose other than resales.

(C) When the purchaser answers the third question affirmatively by checking the corresponding box, the XYZ letter will inquire further whether:

- (i) The 911 and 988 surcharges due on the purchase(s) of prepaid MTS were paid directly to the Department on the purchaser's return, and if so, in what amount;

- (ii) The 911 and 988 surcharges due on the purchase(s) of prepaid MTS were added to the billing of the seller and remitted to the seller, and if so, in what amount;
 - (iii) The 911 and 988 surcharges due on the purchase(s) of prepaid MTS 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.
 - (iv) The purchaser confirms that the purchase(s) were subject to the 911 and 988 surcharges.
- (D) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. The Department may, at its discretion, verify the information provided in the response to an XYZ letter, including making additional contact with the purchaser or other persons to determine whether a purchase was for resale or whether the 911 and 988 surcharges were paid by the purchaser. When the Department accepts a purchaser's response to an XYZ letter as establishing that a sale of prepaid MTS was for resale or that the purchaser paid the 911 and 988 surcharges due on a sale of Prepaid MTS, the seller shall not be liable for collection of the 911 and 988 surcharges on that sale.
- (E) When a purchaser does not respond to an XYZ letter, the Department will consider whether it is appropriate to try to contact the purchaser again, for example, by calling the purchaser or sending the purchaser a second XYZ letter.
- (6) Alternative Methods. A seller may use other methods to establish that a sale of prepaid MTS was for resale in the regular course of business, in addition to or instead of using XYZ letters. The Department should also consider whether it is appropriate for the Department to use an alternative method, including, but not limited to, calling a purchaser, to determine whether a seller is liable for the 911 and 988 surcharges on a sale of prepaid MTS under subdivision (a)(4).
- (7) Purchaser's Liability for the 911 and 988 Surcharges. A purchaser that purchases prepaid MTS which they know at the time of purchase is not to be resold by them in the regular course of business is liable for the amount of the 911 and 988 surcharges due on the purchase of the prepaid MTS at the time of purchase.
- (b) Bad Debts. A seller of prepaid MTS is relieved from liability to collect the 911 and 988 surcharges imposed on prepaid MTS purchased from the seller in a retail transaction insofar as

the base upon which the surcharges are imposed is represented by an account or accounts found worthless and charged off for income tax purposes by the seller, which includes circumstances where the seller's income is reported on a related person's income tax return and the account 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 by the seller in accordance with generally accepted accounting principles. A seller that previously paid the 911 and 988 surcharges may claim a bad debt deduction for the percentage of the 911 and 988 surcharges paid that is equal to the percentage of the base upon which the 911 and 988 surcharges were imposed that is represented by an account or accounts found worthless and charged off for income tax purposes by the seller.

This deduction must be taken on the return filed for the period in which the account or accounts were 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 of the 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 Revenue and Taxation Code sections 41101, 41101.1, and 41101.2.

Example 1. If a purchaser purchased prepaid MTS for \$100 in December 2022 on credit provided by the seller, a \$0.30 911 surcharge would be due on the purchase. If the seller's account receivable is charged off by the seller in December 2023 while the purchaser still owes \$50 of the \$100 purchase price for the prepaid MTS, which was the base upon which the surcharge was imposed, then the seller is relieved of liability to collect 50 percent (\$50/\$100) or \$0.15 of the \$0.30 911 surcharge imposed on the purchase of the prepaid MTS. If the seller already paid the \$0.30 911 surcharge, then the seller may claim a \$0.15 deduction on its return for December 2023 and if it does not, the seller may file a timely claim for refund for the \$0.15.

(1) Amount of Deduction or Refund.

(A) Base Upon which the Surcharges were Imposed. In determining the amount of a bad debt deduction or refund, all payments and credits to an account may be applied: (1) ratably against the various elements comprising the amount the purchaser contracted to pay (pro rata method) or (2) as provided in a contract between the seller and purchaser (contract 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.

(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. A seller is liable for a percentage of the 911 and 988 surcharges if the seller was relieved of liability for any percentage of the surcharges or claimed a deduction or refund for any percentage the surcharges under this subdivision and the seller subsequently collects any of the account upon which the relief, deduction, or refund was based from anyone, including a third party that purchased the account from the seller. The percentage of the 911 and 988 surcharges for which the seller is liable is equal to the percentage determined by dividing the amount collected by the base upon which the surcharges were originally imposed. The percentage of the 911 and 988 surcharges for which the seller is liable shall be included in the first return filed after such collection and shall be paid with the return. A seller is no longer liable for a percentage of the 911 and 988 surcharges on amounts subsequently collected on an account, after the seller has repaid the amount for which it was relieved of liability or claimed a deduction or refund.

Example 2. If the seller in Example 1 (above) sold the charged-off account receivable to a third party in January 2024 for \$25 while the purchaser still owed \$50 of the \$100 purchase price upon which 911 surcharge was imposed, then the seller would be liable for 25 percent ($\$25/\100) of the original \$0.30 911 surcharge imposed on the purchase of prepaid MTS or \$0.08 (rounded up), which must be reported and paid with the seller's return for January 2024.

(3) Records. A seller must maintain adequate and complete records to support relief of liability or a deduction or refund for any percentage of the 911 and 988 surcharges showing:

(A) The date of the original sale of prepaid MTS.

(B) Name and address of purchaser.

(C) Amount purchaser contracted to pay for all the items purchased in the sale, including the prepaid MTS.

(D) Base upon which the 911 and 988 surcharges were imposed.

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

(F) Evidence that all or a portion of the base on which the 911 and 988 surcharges were imposed has been found worthless and legally charged off as required by subdivision (b).

(c) Lifeline Transactions. 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 prepaid consumer is exempt from the 911 and 988 surcharges if all of the following apply:

(1) The prepaid consumer is certified as eligible for the state or federal lifeline programs.

(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.

The state lifeline program means the program furnishing lifeline voice communication service pursuant to the Moore Universal Telephone Service Act (Pub. Util. Code, § 871 et seq.).

(d) Credit for Surcharges Paid to Another State. A credit shall be allowed against, but shall not exceed, the 911 and 988 surcharges imposed on any prepaid consumer of prepaid MTS to the extent that the prepaid consumer has paid surcharges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

APPENDIX A

California Resale Certificate – Prepaid Mobile Telephony Services

I HEREBY CERTIFY:

1. I hold valid California emergency telephone account or prepaid MTS account number: _____ or I am not required to register under Regulations 2437 and 2460 for the following reason(s):

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

3. I will resell the prepaid MTS described in paragraph 4, which I am purchasing for resale in the regular course of my business operations.

4. Description of prepaid MTS to be 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

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Section 41028, Revenue and Taxation Code.

Article 3. Returns and Reports

2440. Returns, Reporting, and Payment.

(a) On or before the last day of the second month following each month in which 911 and 988 surcharges are collected, every service supplier shall file a return with the Department through the Department's website for that month. The return shall separately report the amounts of 911 and 988 surcharges collected.

(b) At the time of filing each return, a service supplier shall provide the Department with a list containing the names and addresses of any service users who have refused to pay surcharges totaling three dollars (\$3) or more, the cumulative amount of surcharges uncollected from each service user, and the reasons, if any, given by the users for refusing to make such payment.

(c) On or before the last day of the month following each quarterly period of three months in which 911 and 988 surcharges are required to be collected, sellers of prepaid MTS, other than service suppliers, shall file a return with the Department through the Department's website for the preceding quarterly period. The return shall separately report the amounts of 911 and 988 surcharges required to be collected.

(d) The Department may require a service supplier to file returns and pay the 911 and 988 surcharges for calendar quarters or calendar years. The Department may require a seller, other than a service supplier, to file returns and pay the 911 and 988 surcharges on sales of prepaid MTS for quarterly periods other than calendar quarters, or for designated periods other than quarterly periods.

(e) Each return shall be accompanied by a payment for the 911 and 988 surcharges due. All remittances shall be payable to the California Department of Tax and Fee Administration.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 6452, 6455, 41022, 41024, 41028, 41051, 41052, 41052.1, 41053, 41053.1 and 41055, Revenue and Taxation Code.

2441. Receipts

(a) Each seller required to collect the 911 and 988 surcharges from a prepaid consumer must give a receipt, invoice, or similar document to the prepaid consumer at the time of the retail transaction. Except as provided in subdivision (b), the receipt must separately state the 911 and 988 surcharges collected, even if the prepaid MTS is sold for a price that includes all applicable taxes and fees. For purposes of this regulation, prepaid MTS is 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.

(b) A seller may elect to combine the 911 and 988 surcharges into a single-line item on a receipt. If the seller elects to combine the surcharges, the combined surcharges shall be labeled as the “911/988 Surcharge” on the invoice, receipt, or other similar document that is provided to the prepaid consumer at the time of the retail transaction.

(c) A receipt, invoice, or other document need not be in any particular form, but it must be provided to the prepaid consumer, and show the following:

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

(2) The date on which the prepaid MTS was sold.

(3) The amount of the 911 and 988 surcharges collected from the prepaid consumer unless otherwise disclosed electronically to the prepaid consumer at the time of the transaction.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Section 41028, Revenue and Taxation Code.

2442. Payment by Electronic Funds Transfer.

(a) Service Suppliers. Service suppliers shall make payments by electronic funds transfer, as required by Regulation 4905.

(b) Sellers, Other Than Service Suppliers. Sellers, other than service suppliers, shall make payments by electronic funds transfer, as required by Regulation 1707.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 6479.3, 6479.5, 41028, 41060 and 41062, Revenue and Taxation Code.

Article 4. Records

2443. Records.

(a) General. Service suppliers and sellers shall maintain and make available records for examination on request by the Department or its authorized representatives, as required by Regulation 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), every service supplier liable for payment of the 911 and 988 surcharges that it collects 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) Amount of 911 and 988 surcharges collected.

Note: Authority cited: Section 41128, Revenue and Taxation Code. References: Sections 41056, 41073, 41129 and 41130, Revenue and Taxation Code.

2444. Reasonable Reliance on Written Advice.

A person may be relieved from liability for the payment of the 911 and 988 surcharges, including any penalties and interest added to the surcharges, when that liability resulted from the failure to make a timely return or a payment and such failure is found by the Department to be due to reasonable reliance on written advice given by the Department under the conditions set forth in Regulation 4902.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Section 41098 Revenue and Taxation Code.

2445. Innocent Spouse Relief.

A spouse or registered domestic partner claiming relief from liability for the 911 and 988 surcharges, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in Regulation 35055 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Section 41099 Revenue and Taxation Code.

2446. Refunds of Excess Charges Collected.

(a) Excess Charges Collected. A service supplier or seller that has collected any amount of 911 and 988 surcharges in excess of the amount of 911 and 988 surcharges actually due from a person may refund that amount, even though the surcharge amount has already been paid over to the Department and a corresponding credit or refund has not yet been secured. Any excess charges collected and not refunded to the person from whom the charges were collected constitute a debt owed to the State.

(b) Credits. A service supplier or seller may claim credit for the overpayment of excess charges refunded under subdivision (a) against the amount of 911 and 988 surcharges due upon any return dated no later than three years from the date of overpayment.

(c) Claim for Refund. Every person who believes that it has overpaid 911 and 988 surcharges, including a service supplier or seller, may file a claim for refund with the Department. In order to be timely, the claim for refund must be filed with the Department within the limitation periods specified in Revenue and Taxation Code sections 41101, 41101.1, 41101.2, and 41101.3.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41023, 41028, 41101, 41101.1, 41101.2 and 41101.3, Revenue and Taxation Code.

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration –

Business Taxes

Chapter 5.7. Prepaid Mobile Telephony Services

Chapter 5.7. Local Charges on Prepaid Mobile Telephony Services

2460. Administration.

(a) Definitions. For purposes of this chapter (Local Charges on 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.~~

(1) “Account” means an account issued and maintained by the Department to uniquely identify a seller that is registered with the Department pursuant to Regulation 2437 or this regulation.

(A) An “emergency telephone account” shall be issued and maintained for a direct seller that is registered with the Department pursuant to Regulation 2437 or this regulation.

(B) A “prepaid MTS account” shall be issued and maintained for a seller, other than a direct seller, that is registered with the Department pursuant to Regulation 2437 or this regulation.

(C) Each account shall have its own unique emergency telephone account or prepaid MTS account number.

(2) “Business information” means information the Department deems necessary to determine ~~that a person is required to register with the Department~~ if a person is required to register with the Department under Regulation 2437 or this regulation ~~to collect the prepaid MTS surcharge and local charges~~, determine if the person is required to remit the ~~prepaid MTS surcharge~~ 911 and 988 surcharges 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 [under Regulation 2437 or this regulation](#)~~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, [email address](#), and telephone number.

[\(4\) "Department" means the California Department of Tax and Fee Administration.](#)

~~(4)~~ (5) "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" 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 [with the Department under Regulation 2437 or this regulation](#)~~for an 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.), [and](#) the person’s federal ~~Taxpayer~~ [Employer](#) 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 [on the consumption of prepaid MTS](#), as described in Revenue and Taxation Code section 42102, and charges [that apply to prepaid MTS](#) 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.

[\(12\) “988 surcharge” means the 988 surcharge imposed under chapter 2 of the Emergency Telephone Users Surcharge Act \(commencing with Revenue and Taxation Code section 41020\).](#)

[\(13\) “911 surcharge” means the 911 surcharge imposed under chapter 2 of the Emergency Telephone Users Surcharge Act \(commencing with Revenue and Taxation Code section 41020\).](#)

(~~12~~14) “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~~15) “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~~16) “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~~17) “Prepaid consumer” means a person who purchases prepaid MTS in a retail transaction.

(~~16~~18) “Prepaid mobile telephony services” or “prepaid MTS” means the right to utilize ~~and/or access mobile~~ 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 ~~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 to collect the Prepaid MTS surcharge and local charges from prepaid consumers and remit them to the Department.~~

(~~18~~19) “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.~~

(20) “Regulation” means a section in title 18 of the California Code of Regulations.

~~(22)~~²¹ “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.

~~(23)~~²² “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~~ transfer of more than a minimal amount of prepaid MTS, as defined in Revenue and Taxation Code section 42101.9, a mobile telephone service communication device (commonly termed a cell phone) when purchased with prepaid MTS for a single, nonitemized price, sold for a single, nonitemized price, with a mobile telephony service communications device and for other than a minimal amount of prepaid MTS. Multiple items of prepaid MTS may be purchased at one time in a single retail transaction.

(23) A “retail transaction occurs in the state” under any of the following circumstances:

(A) The prepaid consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction).

(B) If subdivision (a)(23)(A) is not applicable, the prepaid consumer’s address is in the state (known-address transaction). A known-address transaction occurs in the state under any of the following circumstances:

(i) The retail sale involves shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.

(ii) If the prepaid consumer’s address is known by the seller to be in the state, including if the seller’s records maintained in the ordinary course of business indicate that the prepaid consumer’s address is in the state and the records are not made or kept in bad faith.

(iii) The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.

(C) If an address is not available to the seller to determine whether any of the circumstances in subdivision (a)(23)(B) exist, the transaction will be deemed to be a known-address transaction occurring in this state if the mobile telephone number is associated with a location in this state.

(24) “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.

(25) “Seller” means a person, including a direct seller, that sells prepaid MTS to a person in a retail transaction.

(26) “Surcharges” or “911 and 988 surcharges” means the 911 surcharge related to 911 service for periods prior to January 1, 2023, and means two separate charges, the 911 surcharge related to 911 service and the 988 surcharge related to 988 service, for periods on and after January 1, 2023.

(b) Registration.

(1) Every seller in this state shall register with the Department under Regulation 2437.

~~(2) 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.~~ Except as provided in subdivision (b)(3), a seller, that is not in this state, shall register with the Department under this regulation by completing an application for registration with the Department. Every application for registration ~~for a Prepaid MTS Account~~ shall provide the ~~seller’s 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 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.~~(3) A seller, other than a direct seller, that is not in this state and is not required to collect local charges pursuant to subdivision (e) of Regulation 2461 is not required to register with the Department. However, such a seller may voluntarily register with the Department by completing an application for registration with the Department.

(c) Payment of ~~Prepaid MTS Surcharge and~~ Local Charges by Purchasers. Every consumer of prepaid MTS in this state is liable for ~~the prepaid MTS surcharge and~~ any local charges subject to collection under this chapter 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 under this chapter 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~~ any 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 ~~is~~ 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 prepaid MTS ~~service~~ was sold.

(3) ~~A combined amount of the prepaid MTS surcharge and local charges collected from the prepaid consumer. If the prepaid MTS were not sold to the prepaid consumer on a tax included basis, the receipt must also separately state the sales price subject to the prepaid MTS surcharge and local charges.~~ The amount of any local charges collected from the prepaid consumer, unless otherwise disclosed electronically to the prepaid consumer at the time of the transaction.

(e) Payment and Returns.

(1) Payment. Except as otherwise provided in subdivision (e)(4) and (e)(6), the ~~prepaid MTS surcharge and local charges~~ local charges subject to collection under this chapter 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~~ local charges under this chapter must file a return 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~~ payments of local charges required to be reported to the Department pursuant to the ~~Prepaid Mobile Telephony Services Surcharge Collection~~ Local Prepaid MTS 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 local charges, ~~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 [Regulation 1707](#), ~~California Code of Regulations, title 18, section 1707, *Electronic Funds Transfer*.~~

(6) Direct Sellers. A direct seller shall remit the ~~prepaid MTS surcharge and local charges as follows:~~ [911 and 988 surcharges 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.~~

~~(BA) 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.~~ [The 911 and 988 surcharges shall be remitted to the Department with a return as provided by Regulation 2440.](#)

~~(CB)~~ 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 [records](#) for examination on request by the Department or its authorized representatives, ~~records~~ in the manner set forth in [Regulation California Code of Regulations, title 18, section 4901, Records](#).

(g) Relief from Liability. In addition to the provisions set forth in [Regulation 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)~~ [subdivisions \(g\)\(1\) and \(2\)](#):

(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) ~~The~~^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) ~~The~~^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) ~~The~~^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) ~~The~~^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 [Regulation 35055 are met](#). ~~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 ~~at~~ the prepaid consumer by a seller at the [time prepaid MTS is sold in a retail transaction that occurs in the state, pursuant to the Local Prepaid MTS Collection Act \(commencing with Revenue and Taxation code section 42100\) and this chapter, if same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid Mobile Telephony Services Surcharge Collection Act \(commencing with Revenue and Taxation Code section 42001\), provided that](#), on or before September 1, 2015, the local agency ~~entered~~ enters into a contract with the Department pursuant to Revenue and Taxation Code section 42101.5.

In the event a local agency ~~or local jurisdiction does~~ [did](#) not enter into a contract with the Department by September 1, 2015, the local agency may enter into a contract with the Department, pursuant to Revenue and Taxation Code section 42101.5, on or before December 1, with collection of ~~its~~ 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 [required to be collected under subdivision \(i\)\(1\) or \(2\)](#), 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 increase in the local charge to commence April 1 of the next calendar year.

(4) Advance Written Notification. When a local charge required to be collected under this subdivision 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. If timely written notice is provided, the~~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, but less than 110 days prior to that date, 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~~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)~~ rates of local charges on its website by March 1, of each year. ~~The posted combined total of the rates of the prepaid MTS surcharge and rate(s) of local charges shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting, unless there is a later change in the combined rate~~The posted rates of local charges shall be the rates that apply to all retail transactions during the calendar year beginning April 1 following the posting, unless there is a later change in a rate.

Note: Authority cited: Section 42103, Revenue and Taxation Code. Reference: Sections 41007, 41040, 42101, 42101.5, 42101.6, 42101.8, 42101.9, ~~and~~ 42103 and 42103.2, Revenue and Taxation Code.

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

~~(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.~~

~~(a)~~ Sales for Resale. The burden of proving that ~~a sale of prepaid MTS~~ prepaid MTS was purchased for resale in the regular course of business ~~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 ~~is~~ are purchased for resale. It is rebuttably presumed that a purchase of prepaid MTS is for the purpose of resale in the regular course of business, if such a certificate is ~~If~~ timely taken in proper form as set forth in subdivision ~~(a)~~ (b)(1)(A) and in good faith from a person who is engaged in the business of selling prepaid MTS and has an emergency telephone account or a prepaid MTS account if the purchaser is required to register or has voluntarily registered with the Department pursuant to Regulation 2437 or 2460. ~~who holds a Prepaid MTS Account as required by Regulation 2460, Administration, the certificate relieves the seller from the duty of collecting the prepaid MTS surcharge and local charges.~~ A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the prepaid MTS, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the prepaid MTS to the purchaser. A resale certificate remains in effect until revoked in writing.

(1) Form of Certificate.

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

~~1.~~ (i) The signature of the purchaser, purchaser's employee or authorized representative of the purchaser.

~~2.~~ (ii) The name and address of the purchaser.

~~3.(iii) 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.~~ The number of the purchaser's emergency telephone account or prepaid MTS account if the purchaser is required to register or has voluntarily registered with the Department pursuant to Regulation 2437 or 2460. If the purchaser does not have an emergency telephone account or a prepaid MTS account because the purchaser is not a seller in this state and they are not required to collect local charges pursuant to subdivision (e) of Regulation 2460, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to register with the Department under Regulation 2437 and 2460 in lieu of an emergency telephone account or a prepaid MTS account number.

~~4.(iv) 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 terms or phrases such as "nontaxable," "not subject to local charges ~~surecharge~~," "exempt," or similar terms and phrases ~~terminology~~ is not acceptable.~~

~~5.(v) 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 ~~(ab)~~(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. A resale certificate containing the essential elements described in subdivision (a)(1)(A), including a certificate substantially in the form shown in Appendix A of this regulation, may be used to establish that prepaid MTS was purchased for resale in the regular course of business for purposes of local charges and the 911 and 988 surcharges.

(C) Blanket Resale Certificate. If a purchaser issues a general (blanket) resale certificate ~~which provides a general description of the items to be purchased~~ that applies to all of its purchases of prepaid MTS, and subsequently issues a purchase order for prepaid MTS that indicates that the transaction covered by the purchase order is a retail transaction subject to local charges, the blanket resale certificate does not apply with respect to that

transaction. Also, the seller will bear the burden to establish that the prepaid MTS covered by the purchase order was purchased for resale in the regular course of business, or that the local charges were paid to the Department. A seller may avoid this situation if its purchasers use the use the procedures described in subdivision (a)(1)(D) below.~~which indicates that the transaction covered by the purchase order is subject to the prepaid MTS surcharge or local charges, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the prepaid MTS to the purchaser (whichever is the later), or that the prepaid MTS surcharge or local charges were paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(1)(D) below.~~

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

covered by that purchase order was not purchased for resale and that the sale or purchase of the prepaid MTS was subject to local charges. If a purchase order includes both prepaid MTS to be resold and prepaid MTS to be used, the purchase order must specify which prepaid MTS is purchased for resale and which prepaid MTS is purchased for use.

The seller shall retain copies of a purchaser's~~the~~ purchase orders along with the purchaser's qualified resale certificates in order to support the sales for resale to that purchaser.

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

(2) Good Faith. In the 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 (a)~~(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 the purchase of prepaid MTS that they know ~~which he or she 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 surcharge or~~ local charges due on the purchase of the prepaid MTS~~that would be due if he or she had not given such resale certificate.~~

(4) Other Evidence. ~~to Rebut Presumption of Imposition of the Prepaid MTS Surcharge or Local Charges. A sale for resale is not subject to the prepaid MTS surcharge or local charges. A person who purchases prepaid MTS for resale and who subsequently uses the prepaid MTS owes the prepaid MTS surcharge 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 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 surcharge or local charges only where the seller shows that the prepaid MTS:~~ A resale certificate which is not timely taken is not retroactive and will not raise the rebuttable presumption that a sale of prepaid MTS is for the purpose of resale in the regular course of business. Consequently, if a seller does not timely obtain a resale certificate containing the essential elements described in subdivision (a)(1)(A), the seller will be liable for the local charges due on a sale of prepaid MTS, unless the seller shows, or the Department otherwise determines that:

(A) The prepaid MTS was in fact resold by the purchaser in the regular course of business; ~~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) The prepaid MTS is in fact being held by the purchaser for resale in the regular course of business; ~~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) The purchaser reported the applicable local charges due on the sale of prepaid MTS directly to the Department on the purchaser's return; or ~~Were consumed by the purchaser and the prepaid MTS surcharge or local charges were reported directly to the Department by the purchaser on the purchaser's return, or~~

(D) The purchaser paid the applicable local charges due on the sale of prepaid MTS to the Department pursuant to an assessment against or audit of the purchaser developed either on an actual basis or text basis. ~~Were consumed by the purchaser and the prepaid MTS 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 to establish that a sale of prepaid MTS was for resale ~~of establishing that it should be relieved of liability for the prepaid MTS 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 surcharge was paid, is the use~~

~~of “XYZ letters.”~~ One method that the Department authorizes to assist a seller in satisfying its burden to establish that a sale of prepaid MTS was for resale or that the local charges were paid on a sale of prepaid MTS, 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, ~~as~~ set forth below. ~~An~~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 will request that a purchaser, the purchaser’s employee, or the purchaser’s authorized representative respond to the questions below regarding the purchaser’s purchase or purchases of prepaid MTS from the seller, provide the purchaser’s name, purchaser’s emergency telephone account or prepaid MTS account number, and describe the nature of the purchaser’s business. An XYZ letter will also request that the purchaser’s response be signed by the purchaser, purchaser’s employee or authorized representative, and include the printed name, title, and telephone number of the person signing the response, and the date signed.

~~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.~~ An XYZ letter may include the following information: seller’s name and emergency telephone account or prepaid MTS account number, dates of invoices, invoice numbers, purchase order numbers, amounts of purchases, descriptions of the prepaid MTS purchased, and other information identifying purchases of prepaid MTS from the seller. Copies of actual invoices may be attached to an XYZ letter.

(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~~was:

1. ~~(i)~~ 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. ~~(ii)~~ 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. ~~(iii)~~ Purchased for a purpose other than resale.
5. ~~When the purchaser answers either (3) or (4) affirmatively box checked), the XYZ letter will inquire further whether:~~ (C) When the purchaser answers the third question affirmatively by checking the corresponding box, the XYZ letter will inquire further whether:
- a. ~~(i)~~ The ~~prepaid MTS surcharge or~~ local charges due on the purchase(s) of prepaid MTS were paid directly to the Department on the purchaser's return, and if so, in what amount;
 - b. ~~(ii)~~ The ~~prepaid MTS surcharge or~~ local charges due on the purchase(s) of prepaid MTS were added to the billing of the seller and remitted to the seller, and if so, in what amount;
 - c. ~~(iii)~~ The ~~prepaid MTS surcharge or~~ local charges due on the purchase(s) of prepaid MTS 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. ~~(iv)~~ The purchaser confirms that the purchase(s) were subject to ~~the prepaid MTS surcharge or~~ local charges.
- ~~(DE)~~ 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 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 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 surcharge or local charges.~~ The Department may, in its discretion, verify the information provided in the response to an XYZ letter, including making additional contact with the purchaser or other persons to determine whether a purchase was for resale or whether the local charges were paid by the purchaser. When the Department accepts a purchaser's response to an XYZ letter as establishing that a sale of prepaid MTS was for resale or that the purchaser paid the local charges due on a sale of prepaid MTS, the seller shall not be liable for collection of the local charges on that sale.

~~(ED) When there is no response to an XYZ letter,~~ When a purchaser does not respond to an XYZ letter, the Department will consider whether it is appropriate to try to contact the purchaser again, for example, by calling the purchaser or sending the purchaser a second XYZ letter.

(6) Alternative Methods. A seller may use other methods to establish that a sale of prepaid MTS was for resale in the regular course of business, in addition to or instead of using XYZ letters. The Department should also consider whether it is appropriate for the Department to use an alternative method, including, but not limited to, calling a purchaser, to ascertain whether the seller is liable for the local charges on a sale of prepaid MTS under subdivision (a)(4).

~~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 surcharge or local charges under subdivision (b)(4) with respect to the questioned or unsupported transaction(s).~~

~~(7) Purchaser's Liability for the Prepaid MTS Surcharge or Local Charges. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1)(A) and that otherwise appears valid on its face, or who otherwise purchases prepaid MTS that is accepted by the 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 surcharge or local charges on the purchase price of the prepaid MTS. The prepaid MTS 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.~~ Purchaser's Liability for Local Charges. A purchaser that purchases prepaid MTS which they know at the time of purchase is not to be resold by them in the regular course of business is liable for the local charges on the purchase price of the prepaid MTS at the time of purchase.

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

This deduction ~~must~~^{should} be taken on the return filed for the period in which the account or accounts were~~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 ~~the~~^{an} amount for which ~~the~~^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 surcharge such as sales for resale or sales subject to a Lifeline exemption and in part of receipts subject to the prepaid MTS surcharge, a bad debt deduction may be claimed only with respect to the unpaid amount upon which the prepaid MTS surcharge has been paid. The allowable amount of deduction shall be adjusted for amounts claimed as retailer reimbursement. It shall be presumed that retailer reimbursement was claimed on all previously reported amounts subject to the prepaid MTS surcharge.~~Amounts Subject to Local Charges. If an account found to be worthless and charged off is comprised, in part, of amounts not subject to local charges, such as charges for sales for resale, and, in part, of amounts subject to local charges, a bad debt deduction may be claimed only with respect to the unpaid amount upon which the local charges have been paid. The allowable amount of deduction shall be adjusted for amounts claimed as retailer reimbursement as provided by Regulation 2460. It shall be presumed that retailer reimbursement was claimed on all previously reported amounts subject to local charges.

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

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

(2) Worthless Account Subsequently Collected. If any account found worthless and charged off by the seller is thereafter collected, in whole or in part, from anyone, including a third party that purchased the account from the seller, the amount collected is subject to local charges until the total amount subsequently collected exceeds the base subject to local charges on which relief was provided or a deduction or refund was claimed. Amounts so

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

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

(A) The date of the original sale of prepaid MTS. ~~Date of original sale.~~

(B) Name and address of purchaser.

(C) Amount purchaser contracted to pay for all the items purchased in the sale, including the prepaid MTS.

(D) Base upon which the seller paid the local charges. ~~Amount on which seller paid the prepaid MTS surcharge.~~

(E) The local jurisdiction(s) where the local charges were allocated. ~~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 the base on which the local charges were paid actually has been found worthless and legally charged off as required by subdivision (b). ~~Evidence that the uncollectible portion of gross receipts on which the prepaid MTS surcharge was paid actually has been legally charged off as a bad debt for income tax~~

~~purposes (whether or not the income tax return has yet been filed) or, if the seller is not required to file income tax returns and the seller's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles.~~

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

(c) Bundled Transactions.

(1) ~~The prepaid MTS surcharge and local~~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, unless the seller can identify the mobile data services and other services or products from its books and records kept in the ordinary course of business.

(2) ~~The prepaid MTS surcharge and local~~Local charges apply to the entire selling price when there is a sale of prepaid MTS ~~in combination~~ with a mobile telephone service communication device for a single nonitemized price, unless the~~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~~ purchase price for the mobile telephone service communication device in the bundled charge is disclosed to the prepaid consumer on a receipt, invoice, or other written or electronic documentation provided to the prepaid consumer. In such an instance, the local charges shall only apply to the remaining charge after excluding the separately stated price of the mobile telephone service communication device.

~~(3B) 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.~~Local charges shall not apply to a transaction in

which a minimal amount of prepaid MTS is sold for a single nonitemized price with a mobile telephone service communication device. For the purposes of this subdivision, a service allotment denominated as 10 minutes or less or five dollars (\$) or less is a minimal amount.

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

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

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

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

~~(f) Credit for Local Charges Paid to Another State. Transactions in Which a Surcharge or Local Charge was Paid to Another State. A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer with regard to the purchase 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.~~

(e) De Minimis Sellers. Commencing January 1, 2017, a seller, other than a direct seller, with de minimis sales of prepaid MTS during the previous calendar year that were less than the de minimis sales threshold provided by Revenue and Taxation Code section 42101.7 is not required to collect local charges under the Local Prepaid MTS Collection Act (commencing with Revenue and Taxation Code section 42100) and this chapter. Nothing prevents a seller, other than a direct

seller, from voluntarily collecting and remitting local charges even if the seller had de minimis sales during the previous calendar year.

APPENDIX A

California Resale Certificate – Prepaid Mobile Telephony Services

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

I HEREBY CERTIFY:

1. I hold a ~~valid~~ California emergency telephone account or Pprepaid MTS Aaccount number: _____ or I am not required to register under Regulations 24367 and 2460 for the following reason(s):

_____.

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

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

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

4. Description of prepaid MTS~~property~~ to be 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

Note: Authority cited: Section 42103, Revenue and Taxation Code. Reference: Sections 41028, ~~42018~~ 42101, 42101.6, 42101.7, 42101.9 and 42103, Revenue and Taxation Code.

2462. Refunds of Excess Charges Collected.

(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 amount of prepaid MTS surcharge or local charges imposed and actually due from the prepaid consumer, ~~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 paid the excess charges to the Department and 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 or local agency imposing the local charges and to the State, for purposes of collection on behalf of, and payment to, the local jurisdiction or local agency.

(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 ~~the~~ prepaid consumer chooses to rebut the presumed location of a retail transaction, as provided in subdivision (b) of section ~~42014~~42105 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) ~~When the~~ prepaid consumer ~~that~~ is exempt from the local charges under the local enactment, the prepaid consumer 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) ~~When the prepaid consumer's~~ ~~In connection with any~~ actions or claims relate to or arise ~~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) ~~or and (g)(2)~~ of Regulation 2460, *Administration*.

Note: Authority cited: Section 42103, Revenue and Taxation Code. Reference: Sections 42101.6, 42101.8, 42103 and 42105, Revenue and Taxation Code.