

Text of Proposed Repeal of 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~~

~~Article 1. Imposition of Surcharge~~

~~2401. Definitions.~~

~~(a) Service Supplier.~~

~~(1) “Service Supplier” means both of the following:~~

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

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

~~(2) Notwithstanding paragraph (1):~~

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

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

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

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

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

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

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

~~(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;~~

~~(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and~~

~~(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.~~

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

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

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

~~(g) Prepaid Mobile Telephony Services. "Prepaid mobile telephony services" or "prepaid MTS" means the right to utilize and/or access mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and~~

ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars and are utilized by means of a mobile device. For these purposes, “telecommunications service” and “information service” have the same meanings as defined in section 153 of title 47 of the United States Code.

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

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

- (1) A telephone corporation, as defined by section 234 of the Public Utilities Code.
- (2) A person that provides “interconnected Voice over Internet Protocol (VoIP) service,” as that term is defined in section 285 of the Public Utilities Code.
- (3) A “retailer engaged in business in this state,” as defined by Revenue and Taxation Code section 6203, that is a member of the same commonly controlled group, as defined in Revenue and Taxation Code section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of section 25106.5 of title 18 of the California Code of Regulations, as an entity described in paragraph (1) or (2).

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

2403. Prepaid Telephone Calling Cards.

(a) The surcharge applies to the dollar amounts deducted or the value of the minutes deducted from the prepaid telephone calling card by the providing service supplier to the extent that those dollar amounts or minutes were deducted to pay for intrastate telephone communication services provided to the user of the prepaid telephone calling card. Dollar amounts or minutes deducted for interstate telephone communication services are exempt from the surcharge. Dollar amounts or minutes of telephone service which are forfeited because they have not been used prior to the expiration of the prepaid telephone calling card are not subject to the surcharge.

(b) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the providing service supplier may apply the surcharge to an estimate of the charges for intrastate services subject to the surcharge. The estimate of charges may be based on such call information as the providing service supplier reasonably believes demonstrates the approximate amount of intrastate telephone communication service charges subject to the surcharge.

(c) If a prepaid telephone calling card contains a statement that the price of the card includes applicable taxes and fees, the service supplier responsible for collecting and paying the surcharge on intrastate telephone communications services provided pursuant to the card may reduce the taxable measure of such services by taxes and fees which are not subject to the 911 surcharge. Taxes and fees which are not subject to the 911 surcharge include the federal excise tax and the 911 surcharge. Taxes and fees imposed on the service supplier by statute, such as those imposed by the California Public Utilities Commission, may not be deducted from the taxable measure.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41011 and 41021, Revenue and Taxation Code.

2405. Partial Payments.

~~Partial payments by a service user to a service supplier for intrastate charges for service shall be applied proportionately to the charges for service and to surcharge, unless the service user specifically directs otherwise in writing.~~

2406. Liability for Surcharge Remitted by Billing Aggregator or Billed Through Billing Agents.

~~(a) The surcharge is required to be remitted by the service supplier which provided the intrastate telephone communication services.~~

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

~~(1) The service supplier has registered with the Board in accordance with Regulation 2421.~~

~~(2) The service supplier has notified the Board in writing that the billing aggregator is authorized to act on its behalf to prepare and file returns and remit the surcharge to the Board, and such authorization is still in effect. Where the service supplier authorizes the billing aggregator to act on its behalf concerning only a portion of the telephone communication services it provides, the service supplier shall so notify the Board and must report and remit directly to the Board the surcharge due on the remainder of the telephone communication services it provides.~~

~~(3) The service supplier has provided to the Board and to the billing aggregator its written consent for the billing aggregator to disclose to the Board any and all records concerning the activities conducted on behalf of the service supplier related to the surcharge.~~

~~(4) The billing aggregator does either (A) or (B).~~

~~(A) files a separate return for each service supplier on whose behalf the return is filed which includes the name, address, account number and amount of surcharge remitted; or~~

~~(B) files a single return for more than one service supplier; provided that the billing aggregator, at such time and in such form as the board requests, shall identify the service suppliers on whose behalf it filed the return and provide documentation supporting the return.~~

~~(c) A service supplier acting as a billing agent for another service supplier, reseller or billing aggregator is not liable for remitting the surcharge on services provided by or billed on behalf of the other service supplier, reseller or billing aggregator even though those charges may be included, as a separate part of a billing, with charges for services it did provide to the service~~

~~user. A billing agent providing only billing services is not a service supplier and is not required to remit the surcharge collected on behalf of a service supplier that provided the service.~~

~~Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41021 and 41023, Revenue and Taxation Code.~~

Article 2. Exclusion and Exemptions

2413. Exemptions from Surcharge.

~~The surcharge does not apply to:~~

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

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

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

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

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

~~(4) Insurance companies, including title insurance companies, subject to taxation under California Constitution, article XIII, section 28.~~

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

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

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

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

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

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

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

Article 3. Registration, Returns and Reports

2421. Registration.

~~Every service supplier supplying intrastate telephone communication service to any service user in this state shall register with the board upon a form prescribed by the board and shall set forth the name under which it transacts or intends to transact business, the principal office address and the mailing address of the service supplier, and such other information as the board may require. The registration form shall be signed by the owner, a general partner, or a responsible officer of the corporation, as the case may be.~~

2422. Returns, Reporting, and Payment.

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

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

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

~~(c) A direct seller is required to report to the Board the amount of that portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge that the direct seller remitted for the prior fiscal year, by September 1 of each year starting with fiscal year 2016-17.~~

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

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

2425. Payment by Electronic Funds Transfer.

~~Payments by electronic funds transfer shall be made in accordance with California Code of Regulations, Title 18, Section 4905.~~

~~Note: Authority cited: Section 41060, Revenue and Taxation Code. Reference: Sections 41060 and 41062, Revenue and Taxation Code.~~

Article 4. Records

2431. Records.

~~(a) General. A service supplier shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.~~

~~(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), service suppliers shall comply with the following requirements.~~

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

- ~~(1) Totals for intrastate telephone communication in this state billed to service users.~~
- ~~(2) All exemptions allowed by law.~~
- ~~(3) Amounts of Emergency Telephone Users Surcharge collected.~~

~~Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Section 41056, Revenue and Taxation Code.~~

2432. Relief from Liability.

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

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

2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

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

~~Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Section 41099, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.~~