

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.

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

(f) 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 purchaser 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 of 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.

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

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

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.