

Final Text of 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 ~~if that~~ 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 ~~911 and 988 surcharges~~ ~~prepaid MTS surcharge~~ and local charges it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person’s books and records. Such information includes, but is not limited to, the name of the person’s business, the addresses of the person’s business locations, the date the person’s business started or will start, the business’s business

activities, the business's projected revenue, the name and branch location of the bank or other financial institution where the business maintains its accounts, and the name and contact information of at least one individual the Department may contact to obtain access to the business's books and records.

(3) "Contact information" means information the Department deems necessary to contact and communicate with a person registering 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 Employer Taxpayer Identification Number, and may also include, but is not limited to, the person's driver's license number or other

government-issued identification card number or entity number issued by the California Secretary of State.

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

(8) “Local charge” or “local charges” means the utility user taxes 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.

~~(2221)~~ “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.

~~(2322)~~ “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~~ more than a minimal amount of prepaid MTS, as defined in Revenue and Taxation Code section 42101.9, sold for a single, nonitemized price, with a mobile telephony service communications device~~a mobile telephone service communication device (commonly termed a cell phone) when purchased with prepaid MTS for a single, nonitemized price, and for other than a minimal amount of prepaid MTS.~~ 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.

~~(24)~~ Except as provided in subdivision (b)(32), a seller, ~~other than a direct seller, that is not in this state shall register with the Department under this regulation for a Prepaid MTS Account~~ by completing an application for registration with the Department. Every application for registration ~~for a Prepaid MTS Account~~ shall provide the ~~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) 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. Direct sellers are required to be registered with the Department under the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001). Direct sellers are not required to register for a Prepaid MTS Account.~~

(c) Payment of ~~Prepaid MTS 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 ~~any the combined prepaid MTS surcharge and local charges~~, even if the prepaid MTS is sold for a price that includes all applicable taxes and fees. For purposes of this subdivision, prepaid MTS ~~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) The amount of any local charges collected from the prepaid consumer, unless otherwise disclosed electronically to the prepaid consumer at the time of the retail transaction. ~~A combined amount of the prepaid MTS surcharge and local charges collected from the prepaid consumer. If the prepaid MTS were not sold to the prepaid consumer on a tax included basis, the receipt must also separately state the sales price subject to the prepaid MTS surcharge and local charges.~~

(e) Payment and Returns.

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

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

(3) Reporting Periods. Notwithstanding subdivisions (e)(1) or ~~(e)(2)~~, the Department, if it deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, 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 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 911 and 988 surcharges~~prepaid MTS surcharge~~ and local charges on retail transactions of prepaid MTS as follows:

(A) The 911 and 988 surcharges shall be remitted to the Department with a return as provided by Regulation 2440.~~That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the Public Utilities Commission, and not to the Department, for those retail transactions with a prepaid consumer in the state, along with any reports required by the Public Utilities Commission.~~

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

~~(C)~~ 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 4901 ~~California Code of Regulations, title 18, section 4901, Records.~~

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

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

(A) ~~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~~ A local charge imposed by a local agency ~~on prepaid mobile telephony services~~ shall be collected from ~~the~~ prepaid consumer by a seller at the 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) of local charges on its website by March 1, of each year. The posted rates of local charges shall be the rates that apply~~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 ~~at the combined rate.~~

Note: Authority cited: Sections ~~42020 and 42103~~, Revenue and Taxation Code. Reference: Sections ~~6455, 41040, 42004, 42010, 42010.7, 42014, 42020, 42021, 42022, 42101, 42101.5, 42101.6, 42101.7, 42101.8, 42101.9, 42102, 42102.5, 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 prepaid MTS was purchased for resale in the regular course of business ~~a sale of prepaid MTS is not at retail~~ is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the prepaid MTS ~~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)(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 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.~~The number of the Prepaid MTS Account held by the purchaser. If the purchaser is not required to hold a Prepaid MTS Account because the purchaser makes no sales of prepaid MTS in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a Prepaid MTS Account in lieu of a Prepaid MTS Account number.~~

~~4.~~(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,” “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 ~~(a)~~(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 that applies to all of its purchases of prepaid MTS ~~which provides a general description of the items to be purchased~~, 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, indicating 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)(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 ~~a~~each 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 sale or purchase of the prepaid MTS ~~was~~ subject to ~~the prepaid mobile telephony services surcharge or~~ local charges. If ~~a~~the purchase order includes both prepaid MTS to be resold and prepaid MTS to be used, the purchase order must specify which prepaid MTS is~~are~~ purchased for resale and which prepaid MTS is~~are~~ 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 ~~P~~prepaid MTS ~~A~~account 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)(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. 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: ~~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) 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 ~~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 to establish that a sale of prepaid MTS was for resale or that the local charges were paid on a sale of prepaid MTS~~that the sale was for resale or that the prepaid MTS surcharge was paid~~, is the use of “XYZ letters.” XYZ letters are letters in a form approved by the 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 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.~~Prepaid MTS Account number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the prepaid MTS purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser’s name, seller’s Prepaid MTS Account number and nature of the purchaser’s business. The statement shall be signed by the purchaser, purchaser’s employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.~~

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

~~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; or

~~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) wereis subject to ~~the prepaid MTS surcharge or local charges.~~

(D) 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 ~~an~~the XYZ letter, including making additional contact with the purchaser or other persons to determine whether ~~at~~the purchase was for resale or ~~whether the~~for use or whether the prepaid MTS surcharge or local charges were paid by the purchaser. When the Department accepts ~~at~~the 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~~as a valid response, the Department shall relieve the seller of liability for collection of the prepaid MTS surcharge or local charges.~~

~~(E) When a purchaser does not respond~~there is no response to an XYZ letter, the Department ~~will~~staff should 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~~use an alternative method to ascertain whether the seller should be relieved of the prepaid MTS surcharge or local charges under subdivision (b)(4) with respect to the questioned or unsupported transaction(s).~~

(6) 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).

~~(7) Purchaser's Liability for the Prepaid MTS Surcharge or 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, 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.~~

(be) Bad Debts. A seller of prepaid MTS is relieved from liability to collect local charges insofar as the base upon which the local charges are imposed~~the prepaid MTS surcharge insofar as the measure of the surcharge~~ 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,~~(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 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.~~A seller may claim a bad debt deduction provided that the prepaid MTS surcharge was actually paid to the state.~~

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) 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.~~Receipts Subject to the Prepaid MTS Surcharge. If the amount of an account found to be worthless and charged off is comprised in part of receipts not subject to the prepaid MTS surcharge such as sales for resale or sales subject to a Lifeline exemption and in part of receipts subject to the prepaid MTS surcharge, a bad debt deduction may be claimed only with respect to the unpaid amount upon which the prepaid MTS surcharge has been paid. The allowable amount of deduction shall be adjusted for amounts claimed as retailer reimbursement. It shall be presumed that retailer~~

~~reimbursement was claimed on all previously reported amounts subject to the prepaid MTS surcharge.~~

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

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

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

~~(B) The amount of the prepaid MTS sold with the mobile telephone communication device is a minimal amount. In such an instance, the prepaid MTS surcharge and local charges do not apply to the entire selling price. For the purposes of this subdivision, the amount of prepaid MTS will be deemed as minimal if the service allotment is for 10 minutes or less or is five dollars or less.~~

(3) 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.~~

~~(fd) Credit for Transactions in Which a Surcharge or Local Charges 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. 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.

Note: Authority cited: Sections ~~42020 and~~ 42103, Revenue and Taxation Code. Reference: Sections ~~42010, 42012, 42018 and 42020~~ 41028, 42101, 42101.6, 42101.7, 42101.9 and 42103, Revenue and Taxation Code.

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 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 _____ [Vendor's name] of the prepaid
MTS~~property~~ described below.

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

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~~ a 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~~ A 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) ~~and (g)(2)~~ of Regulation 2460, *Administration*.

Note: Authority cited: Sections ~~42020 and~~ 42103, Revenue and Taxation Code. Reference: Sections ~~420104~~42101.6, 42101.8, 42103 and 42105, Revenue and Taxation Code.