

Senate Bill No. 1481

CHAPTER 89

An act to amend Sections 42010, 42014, and 42022 of the Revenue and Taxation Code, relating to telecommunications.

[Approved by Governor July 22, 2016. Filed with
Secretary of State July 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1481, Committee on Governance and Finance. Prepaid Mobile Telephony Services Surcharge Collection Act.

The Prepaid Mobile Telephony Services Surcharge Collection Act establishes a prepaid MTS surcharge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined, that is imposed in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act and specified Public Utility Commission surcharges. The act requires, on and after January 1, 2016, and before January 1, 2020, the prepaid MTS surcharge imposed by that act on a prepaid consumer to be collected by a seller, as defined, from each prepaid consumer at the time of each retail transaction that occurs in this state. The act specifies the circumstances for determining when a transaction occurs in the state.

This bill would make correct an erroneous cross-reference and make minor revisions in the requirements relative to imposition of the prepaid MTS surcharge and the circumstances for determining when a transaction occurs in the state.

The act requires every seller to register with the State Board of Equalization. The act, commencing January 1, 2017, exempts a seller, other than a direct seller, with de minimis sales of prepaid mobile telephony services of less than \$15,000 during the previous calendar year from collecting the prepaid MTS surcharge, and requires the Department of Finance to annually review and adjust that de minimis sales threshold, as provided.

This bill would exempt from the registration requirement those sellers with de minimis sales of prepaid mobile telephony services, but would not prevent those sellers from registering with the board on a voluntary basis to collect and remit the surcharge.

The people of the State of California do enact as follows:

SECTION 1. Section 42010 of the Revenue and Taxation Code is amended to read:

42010. (a) (1) On and after January 1, 2016, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction in this state. The prepaid MTS surcharge shall be imposed as a percentage of the sales price of each retail transaction that occurs in this state.

(2) The prepaid MTS surcharge shall be in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) and the Public Utilities Commission surcharges for prepaid mobile telephony services.

(b) The prepaid MTS surcharge shall be annually calculated by the board by no later than November 1 of each year commencing November 1, 2015, by adding the following:

(1) The surcharge rate reported pursuant to subdivision (d) of Section 41030.

(2) The Public Utilities Commission's reimbursement fee and telecommunications universal service surcharges, established by the Public Utilities Commission pursuant to subdivisions (b) and (c) of Section 319 of the Public Utilities Code.

(c) (1) The board shall post, for each local jurisdiction, the combined total of the rates of prepaid MTS surcharge and the rate or rates of local charges, as calculated pursuant to Sections 42102 and 42102.5, that each local jurisdiction has adopted, not later than December 1 of each year, on its Internet Web site. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting.

(2) Notwithstanding paragraph (1), if a local agency notifies the board pursuant to subdivision (d) of Section 42101.5 that the posted rate is inaccurate or it no longer imposes a local charge or local charges or that the rate of its local charge or local charges has decreased, the board shall promptly post a recalculated rate that is applicable to the jurisdiction of that local agency. The change shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the local agency notifies the board of the inaccuracy or that it no longer imposes a local charge or that the rate of its local charge has decreased. Nothing in this section modifies the notice obligations of Section 799 of the Public Utilities Code. However, beginning January 1, 2016, the notification and implementation requirements of paragraphs (5) and (6) of subdivision (a) of Section 799 of the Public Utilities Code shall not apply to prepaid mobile telephony services.

(3) The board shall also separately post on its Internet Web site the individual rates for each of the following:

(A) Each of the Public Utilities Commission surcharges that make up the Public Utilities Commission surcharge portion of the prepaid MTS surcharge, as reported pursuant to Section 319 of the Public Utilities Code.

(B) The rate for the emergency telephone users surcharge reported pursuant to subdivision (d) of Section 41030.

(C) Each of the individual local charges reported pursuant to Section 42101.5.

(4) A seller collecting the prepaid MTS surcharge and local charges pursuant to this part and Part 21.1 (commencing with Section 42100) may rely upon the accuracy of the information posted on the board's Internet Web site in collecting and remitting all amounts of the prepaid MTS surcharge and local charges.

(d) (1) Except for amounts retained pursuant to subdivision (e), and except as provided in subdivision (f) for a seller that is a direct seller, all amounts of the prepaid MTS surcharge and local charges collected by sellers shall be remitted to the board pursuant to Chapter 3 (commencing with Section 42020).

(2) A seller that is authorized to provide lifeline service under the state lifeline program or federal lifeline program, that sells prepaid mobile telephony services directly to the prepaid customer, shall remit the prepaid MTS surcharge to the board, less any applicable exemption from the surcharge that is applicable to the retail transaction pursuant to Section 42012.

(e) A seller that is not a direct seller shall be permitted to deduct and retain an amount equal to 2 percent of the amounts that are collected by the seller from prepaid consumers for the prepaid MTS surcharge and local charges, on a pro rata basis, according to that portion of the revenues collected by the seller for each of the following:

- (1) The emergency telephone users surcharge.
- (2) The Public Utilities Commission surcharges.
- (3) Local charges.

(f) A direct seller shall remit the prepaid MTS surcharge and local charges as follows:

(1) That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the commission with those reports required by the commission. The amounts remitted to the Public Utilities Commission pursuant to this paragraph shall be deposited into the respective universal service funds created pursuant to Chapter 1.5 (commencing with Section 270) of Part 1 of Division 1 of the Public Utilities Code and to the Public Utilities Commission Utilities Reimbursement Account described in Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code.

(2) That portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the board pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) for those retail transactions with a prepaid consumer in the state, with a return filed with the board using electronic media. The amount remitted to the board pursuant to this paragraph shall be deposited into the State Emergency Telephone Number Account in the General Fund.

(3) Local charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge. 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. The amounts remitted to the local jurisdiction or local agency imposing the local charge pursuant to this paragraph shall be deposited into the respective local jurisdiction or local agency account.

(g) A direct seller shall utilize the amounts posted by the board pursuant to subdivision (c) when determining what amounts to remit to the Public Utilities Commission, the board, and each local jurisdiction or local agency.

(h) A prepaid MTS provider shall offer prepaid consumers the option to make payment for additional prepaid usage directly to the prepaid MTS provider at the provider's retail location or Internet Web site.

(i) The amount of the combined prepaid MTS surcharge and local charges shall be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of mobile telephony services by the seller, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

(j) The prepaid MTS surcharge that is required to be collected by a seller and any amount unreturned to the prepaid consumer of mobile telephony services that is not owed as part of the surcharge, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the surcharge, constitute debts owed by the seller to this state. The local charge that is required to be collected by a seller and any amounts unreturned to the prepaid consumer of mobile telephony services that are not owed as part of the local charge, but that were collected from the prepaid consumer under the representation by the seller that they were owed as part of the local charge, constitute debts owed by the seller jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing that local charge.

(k) A seller that has collected any amount of prepaid MTS surcharge and local charges in excess of the amount of the surcharge imposed by this part and actually due from a prepaid consumer may refund that amount to the prepaid consumer, even though the surcharge amount has already been paid over to the board and no corresponding credit or refund has yet been secured. Any seller making a refund of any charge to a prepaid consumer may repay therewith the amount of the surcharge paid.

(l) (1) Every prepaid consumer of mobile telephony services in this state is liable for the prepaid MTS surcharge and any local charges until they have been paid to this state, except that payment to a seller registered under this part relieves the prepaid consumer from further liability for the surcharge and local charges. Any surcharge collected from a prepaid consumer that has not been remitted to the board shall be a debt owed to the state by the person required to collect and remit the surcharge. Any local charge collected from a prepaid consumer that has not been remitted to the board shall be a debt owed jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the local charge by the person required to collect and remit the local charge. Nothing in this part shall impose any obligation upon a seller to take any

legal action to enforce the collection of the surcharge or local charge imposed by this section.

(2) A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer of mobile telephony services by this part 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.

(m) (1) A seller is relieved from liability to collect the prepaid MTS surcharge imposed by this part that became due and payable, insofar as the base upon which the surcharge is imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes by the seller or, if the seller is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A seller that has previously paid the surcharge may, under rules and regulations prescribed by the board, take as a deduction on its return the amount found worthless and charged off by the seller. If any such accounts are thereafter in whole or in part collected by the seller, the amount so collected shall be included in the first return filed after such collection and the surcharge shall be paid with the return.

(2) The board may by regulation promulgate such other rules with respect to uncollected or worthless accounts as it shall deem necessary to the fair and efficient administration of this part.

SEC. 2. Section 42014 of the Revenue and Taxation Code is amended to read:

42014. (a) For purposes of this part, a retail transaction occurs in the state under any of the following circumstances:

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

(2) If paragraph (1) 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:

(A) 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.

(B) 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.

(C) 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.

(3) If an address is not available to the seller to determine whether any of the circumstances in paragraph (2) 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.

(b) (1) A retail transaction shall occur at only one location for purposes of determining local charges. If the retail transaction is a point-of-sale transaction, the consumption of, use of, or access to, the prepaid mobile telephony service shall be presumed to be at that location.

(2) If the retail transaction is a known-address transaction, the location shall be as determined in descending order beginning with subparagraph (A) of paragraph (2) of subdivision (a); if subparagraph (A) of that paragraph is inapplicable, then pursuant to subparagraph (B) of that paragraph; if both subparagraphs (A) and (B) of that paragraph are inapplicable, then subparagraph (C) of that paragraph; and if subparagraphs (A), (B), and (C) of that paragraph are inapplicable, then paragraph (3) of subdivision (a). In a known-address transaction, the consumption of, use of, or access to, the prepaid mobile telephony service shall be presumed to be at the known address.

(c) (1) A seller that relies in good faith on information provided by the board to match the location of a point-of-sale transaction to the applicable prepaid MTS surcharge amount and local charges, that collects that amount from the prepaid consumer, and that remits the amount to the board in compliance with this part, shall not be liable for any additional MTS surcharge or local charges and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer.

(2) For a known-address transaction, the seller may collect the prepaid MTS surcharge and local charges that correspond to the five-digit postal ZIP Code of the prepaid consumer's address. A seller that, with due diligence and in good faith, relies 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 amount, that collects that amount from the prepaid consumer, and that remits the amount to the board in compliance with this part, shall not be liable for any additional MTS surcharge or local charges and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer, even if the five-digit postal ZIP Code of the prepaid consumer's address that the seller uses corresponds to more than one local charge.

SEC. 3. Section 42022 of the Revenue and Taxation Code is amended to read:

42022. Every seller, except a seller that is not required to collect the prepaid MTS surcharge pursuant to Section 42010.7 and local charges pursuant to Section 42101.7, shall register with the board. Nothing in this section prevents a seller from registering with the board on a voluntary basis to collect and remit the surcharge even if the seller meets the de minimis sales threshold provided by Sections 42010.7 and 42101.7. The board shall establish a method for registration of sellers under this part that utilizes the existing registration process for a seller's permit established pursuant to Section 6066 of the Sales and Use Tax Law (Part 1 (commencing with Section 6001)). Every application for registration shall be made upon a form

prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of its place or places of business, and such other information as the board may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

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