

Amend Revenue and Taxation Code (RTC) Section 42022 to provide that sellers with de minimis sales of prepaid mobile telephony services (prepaid MTS) are not required to register as prepaid MTS sellers with the Board of Equalization (BOE). Amend RTC Section 42014 to align the prepaid MTS surcharge known-transaction qualifying circumstances to the local prepaid MTS.

Source: Tax Policy Division

De Minimis Sales: Registration

Revenue and Taxation Code Section 42022

Existing Law. Under existing law, the Prepaid MTS Collection Act¹ (Prepaid MTS Act) requires every seller of prepaid MTS to register with the BOE and to collect and remit the prepaid MTS surcharge on retail sales of prepaid MTS.

The Prepaid MTS Act allows a seller,² commencing January 1, 2017, not to collect the prepaid MTS surcharge if that seller had prepaid MTS sales of less than \$15,000 in the previous calendar year.

The Issue. The Prepaid MTS Act requires a seller to register with the BOE whether or not they make de minimus prepaid MTS sales. These de minimus (small) sellers registered with the BOE must continue to file returns with the BOE although they are not required to collect the prepaid MTS surcharge. This creates a burden to small sellers that the de minimus provisions are intended to address.

Background. In 2014, Assembly Bill 1717 (Ch. 885) enacted the Prepaid MTS Act and Local Charge Act (Collection Acts) to create standardization with respect to the method used to collect communications taxes, fees, surcharges, utility user taxes, and other telecommunication charges from end-use consumers of prepaid MTS.

This Proposal. This proposal amends RTC Section 42022 to remove the MTS registration requirement for prepaid MTS sellers making de minimus prepaid MTS sales during the previous calendar year. Such sellers may continue to voluntarily register with the BOE, and to collect and remit the prepaid MTS surcharge. These sellers must still continue to track their sales of prepaid MTS to determine if their sales fall under the threshold each calendar year.

Amend Section 42022 of the Revenue and Taxation Code 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 42101.5, 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.

¹ Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code.

² Not including a direct seller, as defined pursuant to [RTC 42004\(b\)](#).

Known-Address Transaction: Qualifying Criteria*Revenue and Taxation Code Section 42014*

Existing Law. The Prepaid MTS Act, for the purposes of imposing the prepaid MTS surcharge, provides that a retail transaction occurs *in this state* if the consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction). If this is not applicable, a retail transaction occurs in this state if the consumer's address is in this state (known-address transaction). A retail sale is considered a known-address transaction occurring in this state under **any** one of the following circumstances:

- The retail sale involves the shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.
- The prepaid consumer's address is known by the seller to be in the state. The consumer's address is considered to be "known by the seller" 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.
- The prepaid consumer provides an address during completion 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.
- The mobile telephone number associates with a location in this state.

The Prepaid MTS Act also references the above circumstances to determine the location to impose the correct local charge rate in a known-address transaction; however, it further states that the applicability of the circumstances must be determined in descending order.

The Issue. Under existing law, it is possible for a known out-of-state resident to be charged the prepaid MTS surcharge on their prepaid MTS purchase, even if the product is shipped from an out-of-state seller to the prepaid consumer's out-of-state address. For example, a Sacramento, California resident moves to Oregon. The resident wants to maintain an existing wireless telephone number with the (916) area code, which is now common practice. If that Oregon resident purchases prepaid MTS in a transaction where their address is not available to the retailer, the Prepaid MTS surcharge applies, even if the retailer knows the prepaid consumer has an Oregon address. The Prepaid MTS surcharge applies to the prepaid consumer's purchase, which is an in-state known-address transaction, as the wireless telephone number is associated with a location in California (due to its assigned (916) area code). The prepaid MTS surcharge serves to fund in-state services, just as those services were taxed prior to the Collection Acts becoming operative. Accordingly, it is unfair for an Oregon resident to be charged the prepaid MTS surcharge when the seller knows the prepaid purchaser resides outside of California based on their address.

This Proposal. This proposal revises the rules used to determine whether a retail sale of prepaid MTS occurs in California by limiting the circumstances under which a transaction is considered to be a known-address transaction occurring in this state to the prepaid consumer's address, relying upon the consumer's area code only if the address is unknown.

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) If 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.

~~(D)~~ (3) If an address is not available to the seller to determine whether the provisions of subparagraph (A), (B) or (C) of paragraph (2) apply, 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)~~subparagraph (D) of that paragraph~~. 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 PREPAID 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 prepaid 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.