

Via Email

January 21, 2015

Ms. Susanne Buehler, Chief
Tax Policy Division, Sales and Use Tax Department
State Board of Equalization
450 N Street
Sacramento, CA 94279-0092

Subject: MuniServices – Interested Parties Comments – Implementing AB 1717 (Chapter 885, Statutes of 2014), Prepaid Mobile Telephony Services

Dear Ms. Buehler,

MuniServices is pleased to respond to the Board of Equalization's (BOE) request for comments by January 21, 2015, on the Initial Discussion Paper for the Proposed Rulemaking to incorporate the provisions of AB 1717 (Chapter 885, Statutes of 2014) regarding prepaid mobile telephony services. Currently, a formal BOE regulation number for implementing AB 1717 is pending.

MuniServices provides a variety of utility users tax (UUT) compliance services for approximately 60 California public agencies, which represent about 70% of the total UUT tax revenue generated in the State of California. MuniServices (and Donald Maynor, Esq.) worked diligently with stakeholders and numerous UUT public agencies over the last five years in the coordination and development of consensus positions on AB 1717 and its predecessor bills.

Now that AB 1717 has been enacted, MuniServices and its client public agencies are keenly interested in the proper and cost-effective implementation of this new state law. To organize and facilitate our "group" involvement, MuniServices is in the process of establishing an informal "UUT Working Group" comprised of city employees with local tax expertise from small and large public agencies. During the coming implementation of AB 1717, and particularly during the BOE's current rulemaking proceeding, the UUT Working Group intends to offer future consensus-based positions on the proper and cost effective implementation of AB 1717. For purposes of these comments, however, the following comments of MuniServices are its own.

General Comments Regarding BOE Rulemaking

MuniServices has reviewed the BOE's "Initial Discussion Paper" and we generally approve contents of the "Discussion Paper" and the proposed "Regulations." MuniServices also shares the BOE's conclusion (at p.12) that the BOE should "work with interested parties to develop guidelines so that everyone can easily understand and comply with their obligations." We also appreciate the BOE's interest in soliciting "comments, suggestions, and input from interested parties" *in additional areas*.

Specific Comments Regarding BOE Proposed Rulemaking

1. Frequency of UUT Remittances by Direct Sellers. At the "discussion meeting" on January 6th, we raised the question as to the frequency of UUT payments by "direct sellers" to local taxing jurisdictions on prepaid wireless services: will they be quarterly or monthly? Two wireless representatives expressed a desire to remit the prepaid UUT on a monthly basis, per the local UUT ordinances. We support that approach, and recommend that the BOE reflect that consensus position in its Regulations.
2. Definition of "prepaid mobile telephony services". At page 10 of the "discussion paper" and at page 2 of Exhibit 1 and Exhibit 4, the BOE proposes to "clarify" the definition of "prepaid mobile telephony services" using the phrase "right to access" rather than "right to utilize" as it reads in *Rev. & Tax Code Sec. 42004(n)*. We would suggest that the clarification read: "right to utilize and/or access".

Specific Comments and Suggestions in Other Areas

1. BOE Agreement with UUT Public Agency. The BOE properly identifies three statutory inclusions in the BOE Agreement with the UUT public agency where the public agency must: i) certify that its UUT ordinance applies to prepaid MTS; ii) agree to indemnify and hold harmless the BOE for liability for damages resulting from collection pursuant to the Agreement; and, iii) certify the proper "tiered rate" for its UUT. In addition to these three statutory requirements, we would urge the BOE to describe the various obligations of the public agency and the BOE under the statute in collecting and auditing the local tax (other than from direct sellers). This would include how the local agency (or its third party agent) can gain access and review BOE records regarding the local tax on prepaid MTS (*See Rev. & Tax. Code Sec. 42110*).

It would be our strong recommendation, "so that everyone can easily understand and comply with their obligations", that the BOE submit, as soon as possible, a draft agreement to public agencies (who are interested parties) for their review and comments of the Agreement to assure there is a clear understanding of their respective obligations.

2. Cost Effective Implementation of AB 1717. Throughout the legislative process of AB 1050 and AB 1717, there was concern and controversy over BOE estimates of its implementation costs. In part, there was a significant difference of opinion as to the number of affected “sellers” and the amount of taxes to be collected. Only actual implementation will determine those numbers. *[See Rev. & Tax. Code Sec. 42109 and Section 10(b) of AB 1717 requiring a BOE report to the Legislature of actual costs revenues and number of sellers for calendar year 2016].*

However, we believe that good opportunities (if not the best opportunities) to explore cost reduction measures will occur during the *earliest stages of implementation*. We, therefore, strongly urge the BOE and other stakeholders to vigorously to pursue those opportunities now. Accordingly, with respect to the local UUT on prepaid MTS, we would urge the BOE to share its current estimates of implementation costs allocated for particular local tax activities as soon as possible. This would give public agency “interested parties” the opportunity to recommend possible alternatives to reduce those BOE costs. In particular, *Revenue and Taxation Code Section 42103(f)* includes an important provision that allows the BOE to take advantage of existing local resources or expertise for the collection, auditing or responding to inquiries regarding the local UUT on prepaid MTS. For example, local government resources may be a cost effective in developing the local prepaid MTS rates for individual UUT public agencies for the BOE website *[See Rev. & Tax. Code Sec. 42010 (c) (1)]*.

Conclusion

MuniServices appreciates the opportunity to submit comments and recommendations, and we will continue to participate in the BOE’s Rulemaking process to achieve the mutual goals of the various stakeholders and especially the proper and cost efficient implementation of AB 1717. Should you have any questions or require additional information please contact me or colleague Fran Mancina, Vice President, Government Relations at 559.288.7296 or Donald H. Maynor, Esq. at 650-327-2894 or maynor1@comcast.net.

Sincerely,



Brenda Narayan, Director of Government Relations
916.261.5147 or brenda.narayan@muniservices.com

cc: Robert Wilke, BOE Business Taxes Committee (Robert.Wilkie@boe.ca.gov)
Donald Maynor, Esq.