



AFL-CIO

California School Employees Association

Michael Bilbrey
Association President

Dave Low
Executive Director

Governmental Relations
1127 11th St., Suite 346
Sacramento, CA 95814

(916) 444-0598
(800) 867-2026
FAX (916) 444-8539
www.csea.com

Dave Low
Director

Jai Sookprasert
Assistant Director

Dolores Duran-Flores
Legislative Advocate

Steve Henderson
Legislative Advocate

Tristan Brown
Legislative Advocate

Member of the AFL-CIO

*The nation's largest
independent classified
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The Honorable Jerome Horton, Chair
State Board of Equalization
450 N Street, MIC:72
Sacramento, CA 95814

Re: Opposition of the California Tax Reform Association to Petition to Repeal Sales and Use Tax Regulation 1585, Cellular Telephones, Pagers, and Other Wireless Telecommunication Devices

Dear Chairman Horton:

The California School Employees Association (CSEA), AFL-CIO, joins your staff in opposition to the petition to Repeal Sales and Use Tax Regulation 1585, Cellular Telephones, Pagers, and Other Wireless Telecommunication Devices.

When a wireless company sells a cell phone at a discounted price to a consumer, it does not lose profit. Instead of earning its mark-up on the sale of the phone, the company earns money by requiring the consumer to sign up for a new multi-year contract. The earnings from such a contract may exceed the earnings from the company's mark-up on the normal retail price of the phone.

Regulation 1585 addresses the application of the Sales and Use Tax Law to sales and purchases of wireless telecommunication devices. Regulation 1585 defines the sales price of a cell phone as the actual "price at which the retailer has sold [such] specific wireless telecommunication devices to customers who are not required to activate or contract for utility service with the retailer or with an independent wireless telecommunications service provider for utility service as a condition of that sale." (Reg. 1585, subd. (a)(4).)

As your staff noted, the Regulation is consistent with case law holding that a retailer's gross receipts include all of the retailer's receipts from the sale of tangible personal property, not solely amounts that the retailer actually received directly from a consumer (See, e.g., *Anders v. State Board of Equalization* (1947) 82 Cal.App.2d 88. This rule is important because it guides the state to not permit companies to escape paying taxes by artificially transforming a clearly taxable transaction (sale of a phone) to another, possibly more lucrative transaction (in this case, the extended phone contract), and then also to claim an exemption from taxes.

The Legislature has on multiple occasions rejected efforts to change this rule. The annual loss to the General Fund of granting the exemption could total more than \$300 million.

For these reasons, we respectfully urge your "No" vote against this petition. Please do not hesitate to call me if there are any questions regarding this issue at (916) 329-3623.

Sincerely,

Jai Sookprasert
Assistant Director of Governmental Relations

cc: All Members of the Board of Equalization
Dave Low, Executive Director

JS:sk