

Sales/Use/Indirect:

California Appellate Court Reverses Lower Court's Invalidation of Regulation on Bundled Sales of Cell Phones

Case No. C093763, Cal. Ct. App. (2/27/24). Reversing the trial court's 2020 decision to the extent it had invalidated an administrative regulation ("Regulation 1585") involving the discounted price of a wireless telecommunications device (*i.e.*, a cell phone) that a carrier-retailer charges in a sale bundled with wireless cellular service as applied to bundled cell phone sales in which the carriers pay no commissions to the retailers [see Case No. 34-2015-80002242-CU-WM-GDS, Cal. Super. Ct., Sacramento County (10/27/20) for details on this 2020 decision], a California Court of Appeal (Court) concluded that:

URL: <https://www.courts.ca.gov/opinions/documents/C093763.PDF>

1. The California Department of Tax and Fee Administration (CDTFA) may allocate a portion of the contract price in such a bundled transaction to the cell phone, and
2. Regulation 1585 was adopted in compliance with the California Administrative Procedure Act.

In doing so, the Court noted that the parties in this case did not dispute that only the payment for the cell phone is taxable, but they disagreed on how to measure the payment – thus, it is “an accounting problem of segregation” rather than “a legal problem of taxability.” In this respect, the Court reasoned that Regulation 1585 “fills the gap, effectively attributing the portion of the contract price that is equivalent to the unbundled sales price to the cell phone, and the rest to the wireless services” where only the portion of the contract price allocated to the cell phone is subject to California sales tax. Accordingly, on remand, the Court directs the trial court to “enter an order denying the petition for writ of prohibition.” This generally reinstates the CDTFA's position that wireless customers must pay sales tax based on the “unbundled sales price” of the cell phone. Please contact us with any questions.

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