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Insurance-Co-Exemption-2

An insurance company obligated to pay the California gross premiums insurance tax is exempt under California Constitution Article XIII; Section 28 from the Emergency Telephone Users Surcharge. 2/19/90.

(916) 445-5550

December 19, 1990

Dear (redacted)

RE: (redacted)

This is in response to your letter dated (redacted). You state that (redacted) is incorporated in California and pays the gross premiums insurance tax to the State of California. You asked for confirmation that, as an insurance company paying gross premiums taxes, you are exempt from use tax and emergency telephone tax.

Article 13, section 28 of the California Constitution imposes a tax on insurers measured by their gross premiums. Subdivision (f) of section 28 provides that this tax is in lieu of all other taxes and licenses, with certain exceptions not relevant here. The in lieu provision is also set forth by statute in Revenue and Taxation Code section 12204.

The Emergency Telephone Users Surcharge Act, Revenue and Taxation Code section 41001, et seq., imposes a tax on service users with respect to charges for certain telecommunication services. (Rev. & Tax. Code § 41020.) Since this tax is imposed upon the user, when (redacted) is the user the tax would be imposed upon (redacted) Under the in lieu provision cited above for insurance companies paying the California gross premiums tax, (redacted) is exempt from paying the emergency telephone users surcharge. (Reg. 2413 (b).)

California's use tax is imposed on the use of property purchased from a retailer for use in this state. (Rev. & Tax. Code § 6201.) Since the use tax is imposed upon the purchaser of property purchased for use in California, an insurance company such as (redacted) which pays California's gross premiums tax is exempt from the use tax under the in lieu provision cited above. (Rev. & Tax. Code §§ 6202, 6352, Regs. 1567, 2413 copies of which are enclosed.) On the other hand, please note that an insurance company's purchases which are subject to sales tax are not exempt from that tax because California's sales tax is imposed upon the retailer, not upon the purchaser. (Rev. & Tax Code § 6051.) Although a retailer may collect reimbursement from its purchaser for the retailer's sales tax liability (usually itemized as "sales tax"), this reimbursement is by contract and does not change the fact that the legal incidence the sales tax is upon the retailer. (See Civ. Code § 1656.1.)

Sincerely,

DHL:cs

Enclosures: Regulations 1567, 2413

Bc: Mr. Monte Williams
Mr. Clarence Ward
Downey District Administrator