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Service Supplier—Telemanagement or Shared User Services

An entity which provides both shared use (or "telemanagement") service and services subject to CPUC regulation must pay the surcharge only on charges provided "pursuant to California intrastate tariffs." Shared user services are not provided pursuant to CPUC tariffs. Therefore, even if a provider qualifies as a "service supplier" for other services it provides, it is not liable for the surcharge on charges for non-tariffed services. 8/26/96.

M e m o r a n d u m

To: Monte Williams
Administrator, Excise Tax Division

Date: August 26, 1996

From: Susan Scott
Tax Counsel

Subject: **Request for Opinion -- Shared Tenant Service**

Mary Armstrong referred to me the review of Al Michel's letter to (redacted) responding to the above request. By letter dated (redacted) requested advice on the application of the 911 surcharge to charges by an entity which provides both shared user service (called "telemangement" service) as well as services subject to PUC regulation. From (redacted) letter and from my conversation with Al Michel, it appears that (redacted) is currently applying the 911 surcharge to charges for the non-tariffed services and tariffed services are charged under a separate account number and exempted from the surcharge. A conversation with Jim Van Gundy five years ago led Ms (redacted), to believe that the BOE's position regarding taxability of such services would vary depending upon whether the entity was licensed by the PUC, regardless of whether the services at issue were tariffed services.

I agree with Mr. Michel's analysis that it is the nature of the service for which the charges are made which determines whether the surcharge is owing, not the nature of some other service provided by the same entity. The service for which the charge is made must be provided "pursuant to California intrastate tariffs" in order for its provider to qualify as a "service supplier" under section 41007 for that service, but, as we have recently established in the proposed third party billing regulations, a "service supplier" for some services may be a user or billing agent for others.

If you have any questions, feel free to call me at 327-2455.

cc: Bill Kimsey
Mark Walker
Al Michel
Mary Armstrong
Janet Vining

August 30, 1996

Dear Ms. (redacted)

In your letter to Mr. William P. Kimsey dated June 19, 1996, you asked our advice on your 911 tax liability for telephone charges to an entity which provides both shared user service (i.e. telemanagement service) and also services subject to California Public Utilities Commission (CPUC) regulation. Mr. Kimsey has requested that I respond to your request.

In our opinion to you dated November 7, 1988, (copy enclosed) we advised you that your charges for shared user service to a shared user provider would be subject to the 911 tax unless those charges were specifically exempt. The basis for this opinion was that the shared service provider was not required to file tariffs with the CPUC and therefore was not a service supplier under Section 41007.

You now seek advice on your tax liability for telephone charges billed to a shared service provider that also provides other services to other service users which require the filing of a tariff with the CPUC. In this instance, the entity is a service supplier for the tariffed services and your charges should not include the 911 tax because the service supplier will be liable for the 911 tax when it subsequently bills the service user. The service supplier will be liable to remit the 911 tax on its tax return when due.

Since your customer can either be a service user or a service supplier depending on the service provided, your charges for shared service and tariffed services should be segregated and your charges for shared service taxed while your charges for tariffed services exempted. There is no provision in the law to exempt your charges for taxable shared user service on the basis that your customer also provides other services which require the filing of a 911 tax return.

If you have any questions, please feel free to call me at the phone number listed above.

Sincerely,

Al Michel
Senior Tax Auditor
Excise Taxes Division

AM:mg

Enclosure

cc: Ms. Mary C. Armstrong
Ms. Susan Scott
Mr. Monte Williams
Mr. Bill Kimsey

Memorandum

To: Monte Williams
Administrator, Excise Tax Division

Date: August 26, 1996

From: Susan Scott
Tax Counsel

Subject: request for Opinion -- Shared Tenant Service

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If you have any questions, feel free to call me at 327-2455.

cc: Bill Kimsey
Mark Walker
Al Michel
Mary Armstrong
Janet Vining

November 7, 1988

Attention: (redacted)

Dear Ms.(redacted)

This is in reference to your letter of June 13, 1988, and several subsequent telephone conversations, in which you requested guidance on the tax on "Shared User Service".

Our legal staff has been consulted and has developed the following analysis:

Although the Internal Revenue Service (IRS) considers the Shared Service Provider to be the manager of the shared service arrangement and that such manager resells to the other joint users, the Public Utilities Commission (PUC) considers the Shared Service Provider to be a service user not subject to regulation. This apparently means that the Shared Service Provider does not file a tariff with the PUC with respect to its Shared Service Provider activities.

The Emergency Telephone Users surcharge is imposed upon the service user and is required to be collected by the service supplier. (Revenue and Taxation Code Sections 41021, 41022.) The tax imposed upon insurance companies under California Constitution, Article XIII, Section 28, is in lieu of all other taxes imposed upon those insurance companies with exceptions not relevant here. Thus, a service supplier provides service directly to an insurance company, the surcharge, which would otherwise be imposed directly upon the insurance company, does not apply. [Revenue and Taxation Code Section 41027, Regulation 2413 (b) (4).]

A service supplier for purposes of the surcharge is any person providing intrastate telephone communication services pursuant to California Intrastate Tarriffs. (Revenue and taxation Code Section 41007. We interpret the provisions of the Surcharge Law such that the providing of service by one service supplier to another "is not subject to the surcharge as the providing of service to a service user if the purchasing service supplier does not use the provided service except to provide it to another person. When a service supplier provides service to a person who is not a service supplier, that person is a service user, unless specifically exempted, and is required to pay the surcharge when it pays its billing to the service supplier. (Revenue and Taxation Code Sections 41009, 40202, 41021, 41027.)

It is assumed that (redacted) does not directly contract with the insurance company. Rather, it appears that (redacted) a service supplier, provides service to the Shared Service Provider who manages the use of that service. The shared Service Provider does not supply services pursuant to an intrastate tariff and, therefore, must be regarded as the user of the service provided by the service supplier. As a service user, it must pay the surcharge which the service supplier is required to collect. The fact that the manner in which the Shared Service Provider uses the service involves sharing it with an insurance company does not affect the analysis. Since the service user in this situation is the Shared Service Provider and not the insurance company, the surcharge applies.

The fact that an insurance company reimburses the Shared Service Provider for a portion of the surcharge imposed upon the shared service Provider does not mean that the insurance is paying a surcharge and does not form the basis of an exemption for a part of the surcharge paid by the Shared Service Provider. This is similar to the analysis under the sales and Use Tax Law. When a retailer

makes a sale to an insurance company which would otherwise be subject to use tax imposed upon the insurance company, no tax is imposed. [Regulation 156.7(b).] On the other hand, when a retailer makes a sale to an insurance company subject to sales tax, sales tax does apply. Even if the insurance company pays sales tax reimbursement to the retailer, the tax is imposed upon the retailer and not the insurance company and the in lieu provisions of the Constitution do not provide for exemption. Similarly, the surcharge in the case at issue is imposed upon the Shared Service Provider. Regardless of reimbursement paid by the insurance company, the surcharge remains applicable. The application of Federal Excise Tax under Federal Law does not affect the analysis under the Emergency Telephone Users Surcharge.

I appreciate your continuing input on this issue.

Sincerely,

James B. Van Gundy
Senior Tax Auditor
Excise Tax Unit

JBVG:bs

0349K

June 19, 1996

Mr. William P. Kimsey Excise Taxes
Division State Board of Equalization
P.O. Box 942879, MIC:56
Sacramento, CA 94279-0056

Dear Mr. Kimsey:

This is a request for advice pursuant to Revenue and Taxation Code §41049.

In 1988, Pacific Bell contacted your office regarding the 911 tax treatment of "Shared User Service," or "Shared Tenant Service" (see attached letter. The service is now referred to as "telemangement services"). Jim Van Gundy advised that, since they did not fit the definition of a service supplier (Section 41007), 911 tax was applicable to the Shared Tenant Service provider as Pacific Bell's end user.

A few years later, one of these providers contacted us with a request that they be exempted from the surcharge as a service supplier. This particular company did hold a Certificate of Public Convenience ("CPCN") with the California Public Utilities Commission ("CPUC") for other types of service that they provided. We again contacted Mr. Van Gundy by telephone and asked if the shared tenant services we provided to this company could be exempted from the surcharge, by

reason of the fact that they were regulated in other lines of business. Mr. Van Gundy stated that he felt that as long as this company was eligible to file a 911 tax return, he saw no reason why we could not exempt this particular shared tenant service from tax.

This issue has arisen again with another company. Our marketing staff is concerned about changing this particular company's tax status on their telemarketing services based on a conversation we had approximately 5 years ago, and have asked me to seek the Board's opinion in writing.

Because of increasing competition, we believe this issue will arise again. We would like you to confirm that all resold services provided to a regulated company may be exempted from the 911 surcharge, even if those particular services are not regulated.

In accordance with Revenue and Taxation Code §41049, a response is requested within 30 days of your receipt of this letter. If you have any questions, please call me at (415) 394--3842.

Sincerely,

Julie M. Lane
Tax Auditor
Attachment