

STATE BOARD OF EQUALIZATION

STREET, SACRAMENTO, CALIFORNIA

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EXCISE TAX

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Controller, SacramentoCINDY RAMBO
Executive Director

October 24, 1989

Ms.

Dear Ms. :

This is in response to your letter to Mr. _____ dated _____ . You refer to an article in the September issue of the Californian Magazine regarding the surcharge on electrical energy. We note that _____ , referred to in the article, is not employed by the State Board of Equalization but rather is a representative of the _____ (_____). You state that your monthly rent statement includes an amount listed for city utility tax and ask if this is the same tax referred to in the article. Specifically, you ask whether a city utility tax is the same as a surcharge tax.

The California Energy Resources Surcharge Law imposes a surcharge (tax) on the consumption of electrical energy purchased from an electrical utility, and the Board of Equalization administers this law. This Board does not administer the taxes imposed by local governmental entities on charges for electrical energy. Although the application of city utility taxes may be similar to the application of the energy resources surcharge, we do not have specific information on this topic. Since you live in San Jose, we recommend that you contact appropriate officials of the City of San Jose for information pertaining to any tax the city imposes upon your utility charges. If the San Jose department that collects utility payments cannot assist you, they should at least be able to direct you to the appropriate agency.

Although you do not specifically ask about the state surcharge, the article to which you refer related to that surcharge. For your general information, we provide the following discussion; however, we note that it applies only to the California Energy Resources Surcharge and not to any tax or surcharge imposed by cities or other local entities.

Electricity consumed in a mobilehome park is often delivered to a master meter and billed to the park owner. The

electricity would then be redistributed through submeters at each resident's space, and billed by the park owner to the residents based on the amount of electricity used by the residents as indicated by their respective submeters.

The California Energy Resources Surcharge Law imposes a surcharge on the charge for electricity provided a consumer by an electric utility. For purposes of the surcharge, the term "electric utility" does not include a person, such as a mobilehome park owner, who redistributes electrical energy solely for the use of his tenants. Thus, the park owner is regarded as the consumer of the electricity, and the surcharge is imposed on the electric utility's sale of electricity to him, not on the park owner's sale to the residents.

As indicated in the article to which you refer, we agree that the park owner should not itemize the energy surcharge as "state tax" because that indicates that the owner is an electric utility collecting the surcharge from the consumer and remitting it to the state. Rather, since the owner is the consumer, the electric utility selling electricity to the owner collects the surcharge from the owner and remits it to the state. However, this does not mean that the owner cannot collect reimbursement from the tenants for the amount of the surcharge the owner paid as relates to electricity used by the residents.

My understanding is that the Public Utilities Commission (PUC) regulates this type of redistribution, including the amounts park owners must charge. For example, Public Utilities Code Section 739.5 provides that the PUC shall require that the park owner under these circumstances shall charge each user (mobilehome park resident) at the same rate that would be applicable if the user were receiving the electricity directly from the electric utility. I have been informed that this also means that the park owner must charge the resident for the same taxes as each resident would pay if it purchased the electricity directly from the utility. You may wish to contact the PUC regarding its regulation of this activity and for further information about amounts required and allowed to be charged by the park owner.

As indicated in the article, we believe that it would be appropriate to itemize the amount of the California Energy Resources Surcharge at issue as a "business expense." It would also be appropriate for the owner to itemize it as "energy surcharge reimbursement" or "state tax reimbursement."

If you have further questions on the state surcharge, feel free to write again. As mentioned above, if you have

questions regarding your city's utility tax, we recommend you contact the appropriate department of the city.

Sincerely,



David H. Levine
Tax Counsel

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- bc: Mr. E. L. Sorensen, Jr.
Mr. Edward King
Mr. Monte Williams
Mr. Jim Van Gundy
Mr. Terry Grubbs