

7/10/88 Necessary - already covered - by Levine 4/24/88 memo

Annotate -
for Emergency
Tel. tax
(not for
insurance
tax)

6596 REVIEW REQUIRED
REFERENCE: <u>Art. XIII Sec. 28(f)</u>
APPROVED: _____

(916) 445-5550-

December 19, 1990 2413

NO in regulation 2413
RECEIVED
DEC 20 1990
EXCISE TAX DIVISION

Ms. _____

RE: _____

Dear Ms. _____:

This is is response to your letter dated November 20, 1990. You state that _____ Company 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 _____ is the user the tax would be imposed upon _____. Under the in lieu provision cited above for insurance companies paying the California gross premiums tax, _____ 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 _____ 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.)

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:cs

Enclosures: Regulations 1567, 2413

bc: ✓ Mr. Monte Williams
Mr. Clarence Ward
Downey District Administrator