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Mr. Robert Frank
Excise Tax Unit

October 24, 1988

David H. Levine
Tax Counsel

911 Shared Service Providers

This is in response to your memorandum dated August 9, 1988 in which you ask us to review a response from your staff to a request for exemption under the 911 Surcharge for an insurance company which shares services through a Shared Service Provider. Jim Van Gundy of your staff states that although the Internal Revenue Service 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 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. (Rev. & Tax. Code §§ 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, when 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. (Rev. & Tax. Code § 41027, Reg. 2413(b)(4).)

A service supplier for purposes of the surcharge is any person providing intrastate telephone communication services pursuant to California Intrastate Tariffs. (Rev. & Tax. Code § 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. Then 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. (Rev. & Tax. Code §§ 41009, 41020, 41021, 41027.)

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I assume that [illegible] does not directly contract with the insurance company. Rather, it appears that [illegible], 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 company 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. (Reg. 1567(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.

You asked us to review the analysis of Mr. Van Gundy. Although we basically agree with his analysis, we believe that perhaps the above explanation would be easier for the parties to understand.

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cc: Lawrence A. Augusta
E. Leslie Sorensen, Jr.