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LA Co Utility Users 911 Surcharge

The Los Angeles County Utility Users Tax is imposed directly by the county on the end user. Such taxes which are not imposed by the service supplier are not "charges for services" and therefore are not subject to the Emergency Telephone Users Surcharge; but the PUC fee reimbursement and the Lifeline surcharge and the Deaf and Disabled surcharge are imposed on the service supplier and passed on to the service user as part of the "charges for services" under Revenue and Taxation Code Section 41011 and therefore would be subject to the 911 Surcharge. 7/13/94. (Am 2003-1).

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

LEGAL DEVISION, APPEALS REVIEW SECTION

In the Matter of the Petition for)
Redetermination Under the Emergency)
Telephone Users Surcharge Law of:)
)
)
)
Petitioner _____)

DECISION AND RECOMMENDATION

No.

The Appeals conference in the above-referenced matter was held by Senior Staff Counsel James E. Mahler on (redacted) in Sacramento, California.

Appearing for Petitioner: (Redacted)

Appearing for the Excise Tax Division: Joel Ragsdale
Senior Tax Auditor

Protested Item

The protested liability for the period July 1, 1989, through June 30, 1992, is measured by:

<u>Item</u>	<u>Amount</u>
Other taxes, surcharge and fees billed to and paid by Service users for intrastate telephone communication Services	\$29,661,160

Petitioner's Contention

The disputed charges are "for other than communications service" and are therefore expressly excluded from the measure of the surcharge under Revenue and Taxation Code Section 41011.

Summary

Petitioner is a corporation engaged in the business of providing long-distance telephone services. On its bills to subscribers for intrastate calls in California, it includes charges for California Public Utilities Commission fees ("PUC fees"), Universal Lifeline Telephone Service surcharges ("Lifeline surcharges"), Deaf and Disabled Telecommunications Program surcharges ("D&D surcharges") and the Los Angeles

County Utility Users tax ("LA tax"). The issue is whether the amounts so billed are included in the measure of the measure of the Emergency Telephone Users Surcharge.

The Lifeline and D&D surcharges were listed as separately stated as separately stated charges on petitioner's invoices to its subscribers. The PUC fees were apparently commingled with other charges under the label "State and Local Surcharges". The LA Tax was commingled with other charges labeled "State and Local Tax".

Analysis and Conclusions

Revenue and Taxation Code section 41020 imposes the surcharge as a percentage of "charges made for such (intrastate telephone communication) services..." Section 41021 requires the service supplier to collect the surcharge from the service user, and section 41023 provides that the amounts the service supplier is required to collect are "debts owed by the service supplier to this state."

The term "charges for services" is defined in section 41011 of the Code, in relevant part, as follows:

" 'Charges for services' means all charges billed by a service supplier to a service user for intrastate telephone communication services....
'Charges for services' shall not include any tax imposed by the United States or any charter city

* * *

" 'Charges for services' shall not include...
charges for other than communications service...."

Petitioner contends that taxes are never charges for communications services. They are imposed by governments for purposes that may or may not be related to communications, but they are not part of the service and are not necessary to the service itself. By definition, taxes are for "other than communications service" and are therefore excluded from the term "charges for services".

The argument proves too much. Statutes must be interpreted to give effect to the whole, so that no part is rendered useless or meaningless. (California Code of Civil Procedure, § 1858; see also Los Angeles County v. Emme (1941) 42 Cal. App. 2d 239.) Here, the statute provides that "charges for services" do not include "any tax imposed by the United States or by any charter city"; if taxes were never considered "charges for services" under any circumstances, the explicit provision for federal and city taxes would be meaningless surplusage. We must reject that construction.

The staff's position is that a tax or fee imposed on the service supplier, which the service supplier passes on to the service user, is included in "charges for services". More specifically, it is not the tax or fee itself that is included, but rather the reimbursement therefor. Taxes and fees are simply part of the service supplier's costs of doing business, just as overhead and other operating expenses. When those costs are

passed through to the service user, the reimbursement is a necessary part of the charge for the communications service and is therefore subject to the surcharge.

This precise issue was presented to the Board in a prior audit of petitioner, and the Board upheld the staff's position. The Notice of Redetermination in that matter states:

“...The Board further concluded that the fee and tax liabilities of petitioner, which petitioner separately itemizes and passes through to subscribers, are not excluded from taxable revenues because they are part of petitioner's operating expenses. Only taxes and fees imposed directly on subscribers by statute are excludable from taxable revenues...”

In accordance with the Board's decision, the staff now concedes that the LA tax is not subject to the surcharge because it is imposed directly on the service users, not on petitioner. We have not seen a copy of the ordinance imposing the tax, and have therefore not been able to review the staff's conclusion, but since the tax is named a “Users Tax” we assume the staff is correct. Accordingly, we recommend a reaudit to remove the LA tax from the measure of the surcharge.

The PUC fees, however, were imposed directly on petitioner. Subdivision (a) of Public Utilities Code section 401 provides that the fee is intended to fund the Public Utilities Commission and is “imposed upon...each public utility that the commission regulates...” In fact, the PUC fee is the precise fee at issue in petitioner's prior audit, and the Board found that the amount of this fee which petitioner passes on to its subscribers is a “charge for service”. We recommend no adjustments for this fee.

The Lifeline and D&D surcharges were apparently not involved in the prior audit; at least they were not discussed in the Decision and Recommendation or mentioned in the Board's decision. We therefore turn to the statutes authorizing those surcharges to determine whether they are subject to the Telephone Users surcharge.

The Lifeline surcharge is authorized by sections 871 et seq. of the Public Utilities Code. Section 871.5 declares the Legislature's intent to insure “basic telephone service at affordable rates to the greatest number of citizens...” Under section 874, the charge for Lifeline services is to be lower than the basic telephone rates. Section 879, subdivision (a), requires telephone companies to inform the Public Utilities Commission of their funding requirements for providing lifeline services. Subdivision (b) authorizes the commission to “issue an order setting...the funding methods”. The statute continues:

“(b)...The commission may establish a lifeline service pool composed of the rate adjustments and surcharges imposed by the commission pursuant to this section for the purpose of funding lifeline telephone service.

“(c) Any order issued by the commission pursuant to this section shall require telephone corporations providing lifeline telephone service to apply the funding requirement in the form of a surcharge to service rates which may be separately identified on the bills of customers using those services...”

As for the D&D surcharge, Public Utilities Code section 2881, subdivision (a), directs the Public Utilities Commission to “design and implement a program whereby each telephone corporation shall provide a telecommunications device” for people who are deaf or hearing impaired. Subdivision (d) provides: “the commission shall establish a rate recovery mechanism through a surcharge...to allow telephone corporations to recover costs as they are incurred under this section.”

These statutes are certainly not models of clarity. In both cases, however, telephone service suppliers must incur extraordinary costs to provide special services or equipment to needy individuals. To recoup those costs, the suppliers are allowed to increase (*i.e.*, add a surcharge to) the rates charged to the general public for telephone services. Since the surcharges are simply additional amounts which the general public must pay for telephone services, they are “charges for services” under Revenue and Taxation Code Section 41011. The audit properly included them in the measure of the Emergency Telephone Users Surcharge.