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City of Torrance v. Southern California Edison Company

Court of Appeal, Second District, Division 3, California - March 17, 2021 - Cal.Rptr.3d - 2021 WL 1015875 - 21 Cal. Daily Op. Serv. 2447 - 2021 Daily Journal D.A.R. 2433

City brought action against electrical utility, alleging that utility miscalculated municipal tax on electrical usage by applying annual credit relating to state-wide greenhouse gas emissions policy to reduce consumers' tax base, and seeking declaratory relief and an order compelling utility to comply with the electricity tax ordinance.

The Superior Court sustained utility's demurrer without leave to amend and entered judgment of dismissal, and city appealed.

The Court of Appeal held that:

- Credit was not subject to deduction from tax base;
- Utility was not liable to city for users' unpaid taxes; and
- City was entitled to opportunity to amend complaint to assert claim for unpaid taxes against any consumer that had underpaid its tax.

Municipal electricity users' tax imposed on the "charges made for such energy" was imposed on amount utility charged for electricity consumed and any ancillary services, and thus annual IA credit relating to state-wide greenhouse gas emissions policy did not affect the electricity users' tax base and utility could not deduct that credit before applying the tax; ordinance defined "charges" to include "charges made for 1) metered energy, and 2) minimum charges for service, including customer charges, service charges, demand charges, standby charges and annual and monthly charges," and did not include any deduction for credits.

Electric utility was not liable to city for municipal electricity users' taxes that had not been paid by its consumers due to utility's collection of the tax after mistakenly applying annual IA credit relating to state-wide greenhouse gas emissions policy to users' accounts; city ordinance stated that while any such tax collected from a service user which has not been remitted is a debt owed to the city by the person required to collect and remit, the tax itself was a debt owed by the service user.

City, which brought action against electrical utility regarding collection of municipal tax on electrical usage, was entitled to opportunity to amend complaint to assert claim for unpaid taxes against any consumer that had underpaid its electricity user's tax due to utility's incorrect tax base calculations, as well as any other viable claims or defenses.

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