TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 81-506
of	:	MAY 5, 1982
GEORGE DEUKMEJIAN Attorney General	:	
Anthony S. Da Vigo Deputy Attorney General	:	

THE HONORABLE PETE DANGERMOND, JR., DIRECTOR, STATE DEPARTMENT OF PARKS AND RECREATION, has requested an opinion on the following questions:

1. May the City of Pacific Grove require the collection by the state or its agents of a transient occupancy tax for the occupation of rooms at the Asilomar Conference Grounds?

2. May the County of Monterey require the collection by the state or its agents of a transient occupancy tax for the occupation of rooms at the Pfeiffer Big Sur State Park?

3. For such purposes, may the City of Pacific Grove or the County of Monterey require the state or its agents to pay a penalty for late transmittal of tax receipts collected by the state or its agents?

CONCLUSIONS

1. The City of Pacific Grove may require the collection by the state or its agents of a transient occupancy tax for the occupation of rooms at the Asilomar Conference Grounds.

2. The County of Monterey may require the collection by the state or its agents of a transient occupancy tax for the occupation of rooms at the Pfeiffer Big Sur State Park.

3. For such purposes, the City of Pacific Grove and the County of Monterey may require the state or its agents to pay a penalty for late transmittal of tax receipts collected by the state or its agents.

ANALYSIS

I. THE CITY ORDINANCE

The Asilomar Conference Grounds (hereinafter, "Asilomar"), a unit of the State Park System classified under section 5019.56, subdivision (d) of the Public Resources Code as Asilomar State Beach (tit. 14, Cal. Admin. Code, § 4753), is situated within the City of Pacific Grove.[1] Asilomar, which is owned in fee by the state, is operated by the Pacific Grove-Asilomar Operating Corporation, a nonprofit corporation, under a concession agreement with the State Department of Parks and Recreation. (Cf. Pub. Res. Code, § 5019.10.) The relationship between the state and its concessionaire is that of principal and agent. (*Pacific Grove-Asilomar Operating Corp.* v. *County of Monterey* (1974) 43 Cal.App.3d 675, 687-689.)

The concession agreement of July 1, 1970[2], known as "Amendment No. 2 To Concession Agreement Of June 1, 1958," provides in part that the concessionaire shall maintain and operate the conference grounds and related services and accommodations including lodging and dining for the use and enjoyment of the general public; may afford accommodation of casual guests when such facilities are not employed for conference purposes, so long as such accommodation does not conflict with the conference functions of the grounds; shall not promote or make special arrangements so that the facilities would lend themselves to an overnight hotel or motel type operation; and shall at all times comply

[1] There is no provision in the law of California which creates enclaves on property owned by the state comparable to the federal enclaves of exclusive federal jurisdiction which exist within the several states. (*Board of Trustees* v. *City of Los Angeles* (1975) 49 Cal.App.3d 45, 48-49.)

[2] Subsequently amended in respects not pertinent to this analysis.

with applicable laws, general rules or regulations of any governmental authority relating to sanitation or public health, safety, taxes and licenses, and with all laws, rules and regulations applicable thereto adopted by federal, state or other governmental bodies or departments or offices thereof.

The first inquiry is whether the City of Pacific Grove may require the collection by the state or its agent of a transient occupancy tax for the occupation of rooms at Asilomar. The city has enacted an ordinance, chapter 6.09, imposing a tax on the occupancy of a room in a qualifying structure[3] for 30 days or less. The tax is upon the occupant but is required to be collected by the operator[4] of the structure and remitted quarterly. Once collected, the tax is to be held in trust and is deemed a debt owed by the operator to the city. If the operator fails to remit the tax, it is liable for penalties and interest.

The state is ordinarily regarded as exempt from taxes imposed by a local agency unless the Legislature has expressly provided therefor. (*Inglewood* v. *County of Los Angeles* (1929) 207 Cal. 697; *City Street Imp. Co.* v. *Regents, etc.* (1908) 153 Cal. 776;

---

[3] 6.09.010(b):

"'Hotel' means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structures or portion thereof, except that no lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location or other similar structure shall be deemed a hotel, when less than ten percent of the annual dollar value of the rentals it earns derives from transient occupancy, and when it does not by signs or other advertising invite transient occupancy."

[4] 6.09.010(f):

> "'Operator' means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purpose of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both."

6.09.010(a):

"'Person' means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit."

Rec. Dist. No. 551 v. *County of Sacramento* (1901) 134 Cal. 477, 479; 46 Ops.Cal.Atty.Gen. 16, 17 (1965).) Accordingly, an attempt to tax the concessionaire of the state has been determined invalid. (31 Ops.Cal.Atty.Gen. 46, 50 (1958).) However, a transient occupancy tax is an excise tax upon the occupant and not upon the proprietor. (See *Douglas Aircraft Co., Inc.* v. *Johnson* (1939) 13 Cal.2d 545; *Ingels* v. *Riley* (1936) 5 Cal.2d 154; *Gowens* v. *City of Bakersfield* (1961) 193 Cal.App.2d 79; 46 Ops.Cal.Atty.Gen., *supra*, at 17.) Thus, the sole issue is whether the state or its agent may be required[5] to *collect* the tax for and on behalf of the city.

The power of taxation residing in a local agency *ordinarily* emanates from the Legislature. (Cal. Const., art. XIII, § 24; *Ex parte Jackson* (1904) 143 Cal. 564, 567; *Ferguson* v. *Gardner* (1927) 86 Cal.App. 421, 428-430.) However, the levy and collection of taxes by a city having a *charter*, such as the City of Pacific Grove, under our constitution is a *municipal affair*. (Cal. Const., art. XI, § 5(a); *City of Glendale* v. *Trondsen* (1957) 48 Cal.2d 93, 98-99; *Ex parte Braun* (1903) 141 Cal. 204; *In re Groves* (1960) 54 Cal.2d 154; *Gowens* v. *City of Bakersfield*, *supra*, 193 Cal.App.2d 79; *Redwood Theatres* v. *City of Modesto* (1948) 86 Cal.App.2d 907; 45 Ops.Cal.Atty.Gen. 23, 24 (1965).) It is well settled, of course, that insofar as a charter city legislates with regard to municipal affairs, its charter prevails over general state law (*Ector* v. *City of Torrance* (1973) 10 Cal.3d 129, 133), while as to matters of statewide concern charter cities remain subject to state law (*Bishop* v. *City of San Jose* (1969) 1 Cal.3d 56, 61-62; *Baggett* v. *Gates* (1981) 127 Cal.App.3d 229, 236-239). (Cf. 64 Ops.Cal.Atty.Gen. 234, 237 (1981).)

In *City of Modesto* v. *Modesto Irrigation Dist.* (1973) 34 Cal.App.3d 504, it was held that an irrigation district, a state agency functioning under state law and distributing and selling electrical energy within the boundaries of a chartered city, was properly compelled by city ordinance to collect a utility users' tax from its patrons. The court said in part (*id.*, at 508):

> "We affirm the judgment for another reason. The power of a city operating under a home rule charter to levy a utility users' tax is a municipal affair and stems from the Constitution. (Cal. Const., art. XI, § 5; *Rivera* v. *City of Fresno*, *supra*, 6 Cal.3d 132, 135; *West Coast Adver. Co.* v. *San Francisco*, 14 Cal.2d 516, 521-522 [95 P.2d 138].) But, it is obvious that such city has no practical nor economical means of collecting such a tax without the cooperation of the supplier of the utility service. For example, to collect a mere 5 percent of the monthly or bi-monthly charges made by

[5] We express no opinion as to whether the ordinance by its terms applies to the state or its agents. The inquiry is simply whether the city *may* adopt such an ordinance. Nor do we consider the application of any such ordinance to government employees on official business.

> appellant districts for electrical energy supplied to city users, the city would have to audit the books and records of each district on a monthly or bi-monthly basis in order to ascertain the exact charges made by the districts, and then the city would have to bill separately each user *or* the city would have to duplicate the meter reading and billing procedures of the districts *or* the city would have to canvass each user to find the amount charged. It seems clear to us that the cost of collection could, in many cases, exceed the tax bill and that a substantial part, if not all, of the city's tax revenue from the use of electrical energy by city consumers sold by the districts would be lost in the collection process.
>
> "It is basic that the power to tax carries with it the corollary power to use reasonable means to effect its collection; otherwise, the power to impose a tax is meaningless. (*Ainsworth* v. *Bryant*, 34 Cal.2d 465, 476 [211 P.2d 564].) It is also basic that if there is a conflict between the California Constitution and a law adopted by the Legislature, the California Constitution prevails. *While irrigation districts may be state agencies*, *they are nevertheless creatures of the Legislature*, *and like the Legislature must submit to a constitutional mandate*; *the California Constitution is the paramount authority to which even sovereignty of the state and its agencies must yield*. *It follows that the collection requirement of respondent's ordinance*, *though applicable to state agencies*, *is a reasonable exercise of the city's constitutional power to tax for revenue purposes*." (Emphasis added.)

(See also *Weekes* v. *City of Oakland* (1978) 21 Cal.3d 386, 398—city employment tax on state employees: "Indeed, the power to impose a reasonable privilege tax extends even to those activities which the city can neither forbid, nor regulate." (*Id.*, at 395, citations omitted).) Accordingly, it is concluded that the City of Pacific Grove may require the collection by the state or its agent of a transient occupancy tax for the occupation of rooms at Asilomar.

II. THE COUNTY ORDINANCE

The Pfeiffer Big Sur State Park (hereinafter, "Pfeiffer"), a unit of the State Park System classified under section 5019.53 of the Public Resources Code as a state park (tit. 14, Cal. Admin. Code, § 4751), is situated within the County of Monterey, a general law county. Pfeiffer, which is owned in fee by the state, is operated by G & T Distributors, Incorporated under a concession agreement with the State Department of Parks and Recreation.

The concession agreement of January 1, 1965, as amended, provides in part that the concessionaire shall maintain and operate lodge rooms and cabins; shall at all times faithfully obey and comply with all laws, rules, and regulations applicable thereto adopted by federal, state or other governmental bodies or departments or officers thereof; and shall pay all lawful taxes, assessments or charges which at any time may be levied by the state, county, city or any tax or assessment levying body upon any interest in this contract or any possessory right which concessioner may have in or to the premises covered hereby or the improvements thereon by reason of its use or occupancy thereof or otherwise as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about said premises.

The second inquiry is whether the County of Monterey may require the collection by the state or its agent of a transient occupancy tax for the occupation of rooms at Pfeiffer. The county has enacted an ordinance, number 1404, imposing a transient occupancy tax substantially similar to that of the City of Pacific Grove, as previously described. Unlike the city ordinance, however, the term "hotel" contains the following specific exclusion: "any housing owned by a governmental agency and used to house its employees or for governmental purposes." Nevertheless, we address only the inquiry whether the county *may* adopt such an ordinance applicable by its terms to Pfeiffer.[6]

California Constitution article XI, section 7, provides:

> "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with the general laws."

Thus, while the legislative authority of a general law county[7] or city is subordinate to state legislation in the event of a conflict (*Abbott* v. *City of Los Angeles* (1960) 53 Cal.2d 674, 681), the scope of such authority, at least with respect to the "police power" (cf. 63 Ops.Cal.Atty.Gen. 905, 906-907 (1980)), is generally as broad as that of the state itself. (*Birkenfeld* v. *City of Berkeley* (1976) 17 Cal.3d 129, 140.) Nevertheless, as previously noted, the power of taxation specifically emanates from the Legislature. (Cal. Const., art. XIII, § 24.)

Government Code section 23003 provides generally:[8]

---

[6] See footnote 5, *ante*.

[7] With respect to chartered counties, see article XI, section 4.

[8] Government Code section 25207 provides:

"The board may do and perform all other acts and things required by law not enumerated in this part, or which are necessary to the full discharge of the duties of the

"A county is a body corporate and politic, has the powers specified in this title, and such others necessarily implied from those expressed."

Among the enumerated general powers is the power to levy and collect taxes *authorized by law*. (Gov. Code, § 23004, subd. (e).) A county is authorized by law to levy a transient occupancy tax. Revenue and Taxation Code section 7280 provides:

"The legislative body of any city or county may levy a tax on the privilege of occupying a room or rooms in a hotel, inn, tourist home or house, motel or other lodging unless such occupancy is for any period of more than 30 days. Such tax when levied by the legislative body of a county shall apply only to the unincorporated areas of the county."

Do the provisions of Revenue and Taxation Code section 7280, in the absence of any specific reference whether express or implied, apply to a *state facility*? In determining whether the general terms of a statute are applicable to a public jurisdiction, well established rules of construction must be followed. (63 Ops.Cal.Atty.Gen. 24, 26-27 (1980).) The California Supreme Court has recently reviewed these principles:

"[I]n the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute. [Citations.] But this rule excludes governmental agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon sovereign governmental powers. 'Where . . . no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only.' [Citations.]" (*City of Los Angeles* v. *City of San Fernando* (1975) 14 Cal.3d 199, 276-277; accord *Regents of University of California* v. *Superior Court* (1976) 17 Cal.3d 533, 536.)

The crucial distinction in each case is whether the particular legislation affects the fundamental purposes and functions of the governmental body. Immunity is granted if statutorily mandated activities are impaired (see *Hall* v. *City of Taft* (1956) 47 Cal.2d 177, 182-183; *City of Orange* v. *Valenti* (1974) 37 Cal.App.3d 240, 244), while no exception is provided when the agency's public purposes are unaffected. (See *Regents of University of California* v. *Superior Court*, *supra*, 17 Cal.3d at 537; *Flournoy* v. *State of California* (1962) 57 Cal.2d 497, 498-499; *State of California* v. *Marin Mun. Water*

---

legislative authority of the county government." (*San Joaquin County Employees' Assn., Inc.* v. *County of San Joaquin* (1974) 39 Cal.App.3d 83, 89.)

District (1941) 17 Cal.2d 699, 704-705; *City Streets Imp. Co.* v. *Regents, etc.* (1908) 153 Cal. 776, 779; *Dropo* v. *City & County of S.F.* (1959) 167 Cal.App.2d 453, 460.)

The rule that governmental agencies are excluded from the operation of general statutory provisions, in the absence of express words to the contrary, only if their inclusion would result in an infringement upon sovereign powers, is long established. (*Butterworth* v. *Boyd* (1938) 12 Cal.2d 140, 150; *Hoyt* v. *Board of Civil Service Commissioners* (1942) 21 Cal.2d 399, 402.) Hence, Revenue and Taxation Code section 7280 would *not* apply to a state facility *only* if (1) the operation of such facility involves the exercise of sovereign power, *and* (2) its application would impair such operation.[9]

We first examine whether the maintenance and operation of lodge rooms and cabins as an integral facet of a state park involves the exercise of sovereign power.

The state park system is under the control of the Department of Parks and Recreation. (Pub. Res. Code, § 5001.) The department is authorized to "administer, protect, develop, and interpret the state park system for the use and enjoyment of the public." (Pub. Res. Code, § 5003.) The Legislature has expressly found and declared that the multiple use, including hunting, fishing, swimming, trails, camping, campsites and *rental vacation cabins* in designated areas of the state park system, is in the public interest. (Pub. Res. Code, § 5003.1; and cf. §§ 5052, 5053.)[10]

It has been said that functions related to the "police powers" of the state involve the exercise of its sovereign authority. (Cf. 61 Ops.Cal.Atty.Gen. 528, 534 (1978).) The police power is the inherent authority of the state to enact and enforce laws for the promotion of the general welfare, including the economic welfare, public convenience and general prosperity of the community. (See *Birkenfeld* v. *City of Berkeley*, *supra*, 17 Cal.3d at 160; 63 Ops.Cal.Atty.Gen., *supra*, at 906-907.) There can be little doubt, then, that the operation and maintenance, as authorized by law, of a state park system involves the exercise of the state's sovereign power. Thus, with respect to the power of eminent domain (Code Civ. Proc., § 1240.010), which is universally recognized as one of the indisputable

---

[9] Consent to local regulation is a question of legislative intent. (*Hall* v. *City of Taft*, *supra*, 47 Cal.2d at 183.) If the statute is not applicable according to the stated criteria, then such consent may not be given whether by an agreement or otherwise by the Department of Parks and Recreation, and any attempt to do so would be *ultra vires*. (Cf. 63 Ops.Cal.Atty.Gen. 840, 841 (1980).) Hence, we do not, for purposes of this discussion, undertake to construe the terms of the agreement between the department and its agent.

[10] The department may enter into contracts with persons, firms, or corporations to construct, maintain, and operate concessions within the state park areas for the safety and convenience of the general public in the use and enjoyment of the state park system. (Pub. Res. Code, § 5019.10.)

attributes of sovereignty (*Bauer* v. *County of Ventura* (1955) 45 Cal.2d 276, 282), the Legislature has declared that if property is appropriated to public use as, inter alia, a state park, it is presumed to have been appropriated for the "best and most necessary public use." (Code Civ. Proc., § 1240.680.) In another context, it has been held that the maintenance by a public entity of a park for the benefit of the public and not for profit is a governmental as distinguished from a proprietary function for purposes of the application of the common law[11] sovereign immunity from liability for tort. (*McKinney* v. *City and County of San Francisco* (1952) 109 Cal.App.2d 844, 845-846; *Meyer* v. *San Francisco* (1935) 9 Cal.App.2d 361, 363; *Kellar* v. *City of Los Angeles* (1919) 179 Cal. 605, 608-609.) In our view, therefore, the operation of a state park, in the absence of consent, is not subject to local regulation. (See 32 Ops.Cal.Atty.Gen. 143 (1958).)

The focus of our present concern, however, is not the operation of a state park as such, but rather of rental vacation cabins situated therein. While such cabins are authorized by law, declared to be in the "public interest" (Pub. Res. Code, § 5003.1, *supra*), and serve the public convenience, it does not follow inexorably that they partake of the sovereign nature of the principal activity; the mantle of sovereignty does not extend as of course to everything maintained *within* a public park. (*McKinney* v. *City and County of San Francisco*, *supra*, at p. 846.) Returning, by way of analogy, to the cases involving common law immunity from liability for tort, it has been stated that the nature of the activity, not its location, nor by what department carried on, nor the fact that the facility may also be used for governmental purposes, determines its proprietary character. (*Chafor* v. *City of Long Beach* (1917) 174 Cal. 478, 488; *Guidi* v. *State of California* (1953) 41 Cal.2d 623, 626; *Rhodes* v. *City of Palo Alto* (1950) 100 Cal.App.2d 336, 341.) Thus, it was held that the operation by the State Harbor Commission of the State Belt Railroad as a public carrier, an industrial or business enterprise conducted for the benefit of commerce and without profit, was proprietary although the principal function of the agency was governmental. (*People* v. *Superior Court* (1947) 29 Cal.2d 754, 760.) The management and control of a housing project by a housing authority is a business activity of a proprietary nature, and may be considered separately from the welfare purposes of the California Housing Authorities Law. (*Muses* v. *Housing Authority* (1948) 83 Cal.App.2d 489.) In *Rhodes* v. *City of Palo Alto*, *supra*, the operation by the city recreation department of a community theater *in a public park* did not alter its proprietary character when used by patrons of the theater. Similarly, when the state entered into activities to amuse and entertain the public it acted in a proprietary capacity, although such activities occurred at the state fair, otherwise a governmental function. (*Guidi* v. *State of California*, *supra*, at 627.) We view these cases as controlling where the state engages in the rental of vacation cabins, whether in a state park or elsewhere. (Cf. *Chafor* v. *City of Long Beach*, *supra*, at 488; *Dineen* v. *San Francisco* (1940) 38 Cal.App.2d 486, 494.)

[11] See now Government Code section 810 et seq. (Stats. 1963, ch. 1681, § 1.)

Inasmuch as the cabin facilities at Pfeiffer are operated by the state in a proprietary capacity, such facilities fall within the general terms of Revenue and Taxation Code section 7280. The County of Monterey may, therefore, by virtue of such consent thereby provided, and as a reasonable exercise of its authority to levy such tax, require the collection by the state or its agent of a transient occupancy tax for the occupation of such facilities. (Cf. *City of Modesto* v. *Modesto Irrigation Dist.*, *supra*, 34 Cal.App.3d at 508.)

III. PENALTIES

The final inquiry is whether the City of Pacific Grove or the County of Monterey may require the state or its agents to pay a penalty for late transmittal of tax receipts collected by the state or its agents. Unlike the tax, the penalty is assessed against the operator rather than the occupant. In *City of Modesto* the court, while not reaching the question as to whether the penalty provision of the city's ordinance was invalid as applied to the public district, observed (*id.*, at 509):

> "While not mentioned by the parties, we note that the city's ordinance delegates to the city finance director the power to assess penalties against the person who, after having collected the city tax through negligence or fraud, fails to report or remit the tax. Arguably, this provision of the city's ordinance is arbitrary and not essential to a reasonable exercise of the city's constitutional power to tax for revenue purposes; as to public districts, the prerogative to impose penalties against public employees for negligent and fraudulent conduct should rightfully belong to the Legislature."

The rule that words in a statute providing for the payment of fees or imposing burdens on property shall not be deemed to apply to public agencies or public property, unless such intent is clearly expressed, is long established. (*Marin Municipal Water Dist.* v. *Chenu* (1922) 188 Cal. 734, 736.)

In 1963, the following specific legislation was enacted as section 818 of the Government Code:

> "Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant."[12]

---

[12] Section 3294 of the Civil Code provides:

"In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the

In *State Dept. of Corrections* v. *Workmen's Comp. App. Bd.* (1971) 5 Cal.3d 885, 888, the court said:

> "This section was added to the code upon a recommendation of the California Law Revision Commission, which commented, 'Public entities shall not be liable for punitive or exemplary damages. Such damages are imposed to punish a defendant for oppression, fraud or malice. They are inappropriate where a public entity is involved, since they would fall upon the innocent taxpayers.' (Recommendations Relating to Sovereign Immunity, No. 1—Tort Liability of Public Entities and Public Employees, 4 Cal.Law Revision Com. Rep. (Jan. 1963) p. 817; see also *City of Salinas* v. *Souza & McCue Construction Co.* (1967) 66 Cal.2d 217, 228 [57 Cal.Rptr. 337, 424 P.2d 921].)"

It may be argued that the penalties in question would clearly exceed any "legitimate and fully justified compensatory functions" and are therefore "simply, that is solely, punitive." (Cf. *People* ex rel. *Younger* v. *Superior Court* (1976) 16 Cal.3d 30, 35-36; *State Dept. of Corrections* v. *Workmen's Comp. App. Bd.*, *supra*, at 891.) The *Younger* case involved the imposition upon the Port of Oakland of statutory civil penalties for causing or permitting an oil spill. The court held that such penalties were not precluded under Government Code section 818 since they were not "simply punitive," and because the public entity was engaged in an *enterprise*. The court expounded (*id.*, at 39, fn. 7):

> "The California Law Revision Commission indicated that it was inappropriate to subject a public entity to liability for punitive damages since such damages are imposed for wrongdoing (oppression, fraud, malice) and the impact falls not on the wrongdoer (public entity or public employee) but upon the innocent taxpayer. (4 Cal.Law Revision Com. Rep., *supra*, p. 817.) This court pointed out in *Helfend* that this is not the case where the public entity incurs liability as the result of its maintaining an enterprise due to the fact that tort 'recoveries are the normal cost of maintaining an enterprise, and represent no grievous injury to taxpayers since the entity and its insurer are in an excellent position to spread the risk of loss and to take precautionary measures to prevent injuries.' (*Helfend* v. *Southern Cal. Rapid Transit Dist.*, *supra*, 2 Cal.3d 1, 8-9, fn. 9.) Defendant Port of Oakland is clearly an enterprise."

---

plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."

In our view, the operation of vacation cabins is an enterprise. Further, the payment of the penalties in question is a normal cost of business which is readily avoidable. In addition, the responsibility for such penalties, as between the state and its agent, is strictly a matter of the contractual relationship between those parties. Finally, assuming an ultimate impact upon the (state) taxpayers, the resultant advantage is also upon the (city) taxpayers.

It is concluded therefore that the City of Pacific Grove and the County of Monterey may require the state or its agents to pay a penalty for late transmittal of tax receipts collected by the state or its agents.

*****