

**Opinion No. 00-1104—May 24, 2001**

Requested by: COUNTY COUNSEL, County of Madera

Opinion by: BILL LOCKYER, Attorney General  
Jonathan R. Davis, Deputy

THE HONORABLE JEFFREY L. KUHN, COUNTY COUNSEL, COUNTY OF MADERA, has requested an opinion on the following question:

May the Madera County Auditor allocate a portion of property tax revenues to an irrigation district that levied only an ad valorem assessment prior to the 1978-1979 fiscal year?

CONCLUSION

The Madera County Auditor may not allocate a portion of property tax revenues to an irrigation district that levied only an ad valorem assessment prior to the 1978-1979 fiscal year.

ANALYSIS

At the 1978 Primary Election, California voters approved Proposition 13, which added Article XIII A to the Constitution. Section 1, subdivision (a) of Article XIII A provides:

"The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

We are asked to determine whether the Madera Irrigation District ("MID") may share in the property tax revenues collected by the Madera County Auditor based upon the fact that MID levied an ad valorem ("according to value") assessment prior to the 1978-1979 fiscal year. We conclude that MID is not entitled to an allocation of property tax revenues.

In order to implement the one percent tax limitation of Proposition 13, the Legislature enacted Government Code section 26912, which provides:

"(a) For the purposes of this section, a local agency includes a city, county, city and county, and special district, as such terms are defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code, if such local agency levied a property tax during the 1977-78 fiscal year or if a property tax was levied for such local agency for such fiscal year, except that the Bay Area Pollution Control District shall be considered a local agency.

"(b) For the 1978-79 fiscal year only, the amount of revenue derived from levying a tax pursuant to subdivision (b) of Section 2237 of the Revenue and Taxation Code shall be allocated by the county auditor, subject to the allocation and payment of funds, as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, to each local agency, school district, county superintendent of schools, and community college district in the following manner:

"(1)(A) The auditor shall determine the local agency share of 1978-79 property tax revenue by dividing the amount of property tax revenue received by all local agencies in 1977-78 by the total amount of property tax revenue received by all local agencies, school districts, community college districts, and county superintendents of schools in the 1977-78 fiscal year, and multiplying the quotient by the total amount of revenue generated pursuant to subdivision (b) of Section 2237 of the Revenue and Taxation Code.

"(B) For each local agency, the county auditor shall compute a factor equal to the average amount of property tax revenue received in the three fiscal years prior to the 1978-79 fiscal year by each local agency within the county, divided by the average amount of property tax revenue received by all such agencies during the three fiscal years prior to the 1978-79 fiscal year. The county auditor shall multiply the factor for each local agency by the amount of revenue determined pursuant to subparagraph (A).

"(C) .....

"(4) The amounts computed under this subdivision shall be the amount of property tax allocated to each local agency for the 1978-79 fiscal year.

" .....

The general apportionment formula of Government Code section 26912 has been followed for each year subsequent to fiscal year 1978-1979. (See Rev. & Tax. Code, §§ 93, 96, 96.1, 96.2.) The primary requirement for an allocation under these statutes is that the local entity must have "levied a property tax during the 1977-78 fiscal year." (Gov. Code, § 26912, subd. (a).)

The Irrigation District Law authorizes irrigation districts to levy "assessments" (see, e.g., Wat. Code, §§ 25650, 25652, 25653) and "charges" for services (Wat. Code, § 22280), but not "taxes." In *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545, 552-553, the court explained the difference between a property tax and an assessment, sometimes called a "special assessment," in the following terms:

" . . . Although a special assessment is imposed through the same mechanism used to finance the cost of local government, in reality it is a compulsory charge to recoup the cost of a public improvement made for the special benefit of particular property. It has been said that, strictly speaking, a special assessment is not a tax at all, but a benefit to specific real property financed through use of public credit. As the court observed in *Spring Street Co. v. City of Los Angeles* (1915) 170 Cal. 24, 29, 'a special assessment is not, in the constitutional sense, a tax at all. It is a "compulsory charge placed by the state upon real property within a pre-determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein, . . . "' This view makes a clear distinction between taxes, which are levied for general revenue and for general public improvements; and special assessments, which are levied for local improvements which directly benefit specific real property."

In interpreting the language of Government Code section 26912, we may consider well settled principles of statutory construction. "When construing a statute we must 'ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.]" (*Wilcox v.*

Birtwhistle (1999) 21 Cal.4th 973, 977.) "Our first step [in determining the Legislature's intent] is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. [Citations.]' [Citation.]" ( California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist. ( 1997) 14 Cal.4th 627, 633.) "Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citation.]" (Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, 1387.)

Applying these rules of construction, we find that the term " property tax," as used in Government Code section 26912, is not ambiguous. Although the Legislature has not specifically defined the term, it is one of commonly understood meaning. We need not look to other terms in other codes defined for other purposes. (See, e.g., Rev. & Tax. Code, §§ 2202, 2213, 2215.) Simply put, MID is authorized to levy assessments; assessments are not taxes in the constitutional sense; hence, MID is not entitled to share in the collection of property taxes collected by the Madera County Auditor. (See Knox v. City of Orland (1992) 4 Cal.4th 132, 136; J. W. Jones Companies v. City of San Diego (1984) 157 Cal.App.3d 745, 750-754; City Council v. South (1983) 146 Cal.App.3d 320, 328-332; American River Flood Control Dist. v. Sayre (1982) 136 Cal.App.3d 347, 354- 355; Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d at pp. 556-557; County of Fresno v. Malmstrom (1979) 94 Cal. App.3d 974, 979-982; 67 Ops.Cal.Atty.Gen. 17, 19-23 (1984); 65 Ops.Cal. Atty.Gen. 603, 604-605 (1982); 64 Ops.Cal.Atty.Gen. 790, 791-795 (1981).)

We have examined in detail the legislative history of Government Code section 26912. (Stats. 1979, ch. 225, § 1; Stats. 1978, ch. 332, § 24; Stats. 1978, ch. 292, § 24.) It is clear that the Legislature intended for the term "property tax" to have its traditionally accepted meaning. Only such meaning carries out the purpose of the statute to distribute property taxes as limited by Proposition 13. Since assessments are not taxes, they are not subject to Proposition 13's tax limitation--the limitation that Government Code section 26912 was intended to implement. It would be patently unreasonable to distribute property taxes to local entities that are not subject to the constitutional tax limitation.

MID did not levy a "property tax" in fiscal year 1978-1979 or in any other year. It has no basis upon which to claim a portion of the property taxes distributed by the Madera County Auditor pursuant to the provisions of Government Code section 26912 and related statutes.

We conclude that the Madera County Auditor may not allocate a portion of property tax revenues to an irrigation district that levied only an ad valorem assessment prior to the 1978-1979 fiscal year.

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