

Memorandum



To : Mr. Verne Walton

Date September 6, 1985

From : *Barbara G. Elbrecht*
Barbara G. Elbrecht

Subject : Application of Exemption Statutes to Special Taxes Authorized by Government Code, section 50075

This is in response to your memorandum of July 31, 1985 regarding the application of exemption statutes to special taxes authorized by Government Code, section 50075. You have received a letter from the Tehama County Assessor's Office stating that the Tehama County Board of Supervisors plans to submit to the electorate this November a special tax for the benefit of the Tehama County Free Library. The proposed special tax will be a fixed amount of \$50 to be applied to each dwelling unit, including apartments, mobilehomes, and owner-occupied dwellings in Tehama County.

You have asked if property tax exemptions are applicable to such taxes or if such taxes should be considered special assessments in which case they are not subject to exemption.

A tax levied on the ownership of property is considered a property tax (Flynn v. San Francisco (1946) 18 Cal.2d 210). There are two types of property taxes, general and special. General taxes are those taxes imposed on all taxable property within the taxing jurisdiction for general revenue purposes. Special taxes have been defined by the courts to mean "taxes which are levied for a special purpose rather than ... a levy placed in the general fund to be utilized for general governmental purposes" (City and County of San Francisco v. Farrell (1982) 32 Cal.3d 47, 57). The Legislature has also defined special taxes in Government Code, sections 50075 and 50076 which enable local governments to enact such taxes. Those code sections provide that:

It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution.

As used in this article, "special tax" shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.

The provisions of Article XIII A referred to in section 50075 are contained in Section 4 of Article XIII A which provides that:

Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such city, county or special district. (Emphasis added.)

In contrast to special taxes, special assessments are levies upon real property particularly and directly benefited by a local improvement in order to pay for the cost of that improvement (Solvang Mun. Improvement Dist. v. Bd. of Supervisors (1980) 112 Cal.App.3d 545). The rationale of special assessments is that the property which has received a special benefit over and above that received by the general public should pay for the costs of the special benefit received (Solvang, supra, at 552). To determine if a particular levy is a tax or special assessment, it is necessary to determine the character of the levy by examining the incidence of the levy (Flynn, supra, at 214).

The proposed fixed dollar special tax of \$50 for the benefit of the Tehama County Free Library will be imposed on each dwelling unit in Tehama County. The term "dwelling unit" has been defined to include apartments, mobilehomes, and owner-occupied dwellings. The fact that only dwelling units and not other types of property such as commercial or agricultural property will be taxed raises the inference that there is some direct benefit conferred on dwelling units by the County Free Library which is not conferred on other types of property. A levy which is imposed on certain property because of benefits conferred would be a special assessment; therefore, since constitutional and statutory exemptions are construed as applying to general taxes only, and not to special assessments, such exemptions would not apply to the proposed tax.

Nor would the exemptions apply if the tax is a special tax enacted pursuant to Government Code, section 50075.

The California Constitution in Article XIII, Section 1, as it read before revision in November 1974, set forth the basic principle of ad valorem taxation and stated that:

"[a]ll property in the State except as otherwise in this Constitution provided, ... not exempt under the laws of the United States, shall be taxed in proportion to its value."

In 1974, the current version was enacted which reads, in pertinent part:

Unless otherwise provided by the Constitution or the laws of the United States: (a) all property is taxable and shall be assessed at the same percentage of fair market value.

This revision, however, which was drafted by the Constitutional Revision Commission made "only technical changes in the Constitution and [clarified] the meaning of existing sections" (Argument in Favor of Proposition 8, California voters Pamphlet, November 5, 1974, p. 31). Therefore, despite the change in wording, the principle of ad valorem taxation remained unchanged. While Proposition XIII A changed the definition of value by replacing the fair market value standard of Section 1 with that of acquisition value, it did not alter the concept of property taxation based on value (R. E. Hanson Jr., Mfg. v. Los Angeles County (1980) 27 Cal.3d 870).

In addition to setting forth the principle of ad valorem taxation, Article XIII specifically exempts certain types of property from taxation (§ 3) and also empowers the Legislature to enact exemptions of other types of property (§§ 2, 4). These sections are counterparts of pre-1974 exemptions which were exemptions from ad valorem property taxation. Court cases construing these sections frequently use the phrase "exemption from ad valorem taxation." (See, for example, English v. County of Alameda (1977) 70 Cal.App.3d 226, 231 and Santa Catalina Island Conservancy v. County of Los Angeles (1981) 126 Cal.App.3d 221, 227.)

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The provisions of section 50075 and section 4 of Article XIII A permit cities, counties, and special districts to enact special taxes, except ad valorem taxes on real property. Since the constitutional and legislative exemptions from property taxation are from ad valorem taxation, they cannot apply to special taxes enacted pursuant to section 50075.

Because of the complexity of these issues, particularly the determination of whether the proposed tax is a special tax or a special assessment, the County may wish to seek an opinion from the Attorney General regarding the questions its letter has raised.

BGE:cb

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson