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August 14, 2001

Mr. Douglas W. Nelson
Acting County Counsel
County of Madera
333 W. Olive Avenue
Madera, CA 93637

Attention: David M. Kennedy, Deputy County Counsel

RE: The Assessment of Property Located Within the Boundaries of a Member of a Joint Powers Agency.

Dear Mr. Kennedy:

This is in reply to your letter dated May 21, 2001 to Assistant Chief Counsel Larry Augusta questioning whether property located within the boundaries of a member of a joint power agency and to be developed by the agency is exempt from property taxation.

As discussed further below, it is our opinion that privately-owned land located within the boundaries of a member of a joint powers agency, a mutual water company, and to be developed by the agency is not exempt and remains subject to property tax assessment. The mere creation of the joint powers agency does not transmute the character of the land from taxable property to exempt property.

Factual Background

Based upon your letter and our telephone conversation of August 1, 2001, it is our understanding that the following summarizes the facts related to the real property in question:

1. In November 1998, the City of ("City"), located in Fresno County, and Mutual Water Company ("Water Company"), a private mutual water company located in Madera County, formed the Public Financing Authority ("JPA"), a joint powers agency. Water Company is owned by a landowner-developer, ("Developer").
2. One of the purposes of JPA is the development of a golf course on land owned by Developer located in Madera County. This land is served by Water Company and is within the boundaries of Water Company. The land was owned by Developer individually, and not Water Company, from the creation of JPA in November 1998 until October 2000.
3. In October 2000, Public Utilities District ("PUD") was formed, becoming a member of JPA. PUD acquired the land to be developed for the golf course and the land is within the boundaries of PUD and JPA.

4. You have concluded that the land in question is exempt from property taxation as of the October 2000 acquisition of the property by PUD. However, you have posed the following question to us: Is the land in question also exempt from property taxation from November 1998 to October 2000, since the creation of the joint powers agency, as the property is within the boundaries of one of the agency's members, Water Company?

Law and Analysis

The following facts are relevant to your question: (1) Water Company became a member of a joint powers agency; (2) the land in question is within the boundaries of Water Company and thus within the boundaries of JPA; and (3) the land was owned by Developer from the creation of JPA in November 1998 until October 2000. Based upon these facts, since the land in question was privately-held by Developer during this period, the property was taxable throughout this same period.

The Joint Exercise of Powers Act¹ authorizes two or more public entities to enter into an agreement to exercise jointly any power common to them.² As a general rule, only public entities may form a joint powers agency. 81 Ops.Cal.Atty.Gen. 213 (1998). A mutual water company is not a public entity, but rather is a private corporation or association.³ Nevertheless, the Joint Exercise of Powers Act specifically provides that a mutual water company can become a member of a joint powers agency under certain circumstances.⁴ However, there is no provision in the Joint Exercise of Powers Act which provides that a mutual water company is considered an exempt public entity when such a company becomes a member of a joint powers agency.

Thus, even if the land in question was owned by Water Company during this period, the land would still be taxable property. As explained in Assessors' Handbook Section 542, Assessment of Water Companies and Water Rights, Part 1, page 17, all property owned by a mutual water company is taxable because a mutual water company is not a government entity nor a charity exempt from taxation. Furthermore, since becoming a member of a joint powers agency does not convert Water Company into a government or tax-exempt entity, the property in question is not transmuted from taxable property to exempt property.

Moreover, the creation of a joint powers agency or the fact that the property is within the boundaries of one of the members of a joint powers agency does not transmute the taxable character of the property to exempt property. The "Guidelines for the Assessment of Taxable Government-Owned Properties" ("Guidelines"), issued by the Board in Letter to Assessors 2000/037 (attached), states at page 4, the following regarding joint powers agencies:

¹ Government Code sections 6500 - 6599.

² Government Code section 6502 states in part that "two or more public agencies by agreement may jointly exercise any power common to the contracting parties."

³ Public Utilities Code section 2725 defines a mutual water company as "any private corporation or association organized for the purposes of delivering water to its stockholders and members at cost, including use of works for conserving, treating and reclaiming water."

⁴ Government Code section 6525 states that "Notwithstanding any other provision of this chapter, a mutual water company may enter into a joint powers agreement with any public agency for the purpose of jointly exercising any power common to the contracting parties."

Local governments may also form a "joint powers agency" pursuant to the Joint Exercise of Powers Act, which is a different method of ownership than described above. Such a joint powers agency is a local government within the meaning of article XIII, section 3, subdivision (b) of the California Constitution. As determined by the Board in the matter of the application for reassessment of *Central California Power Agency No. 1 v. County of Sonoma*, ARA No. 93-006, the boundaries of a joint powers agency under Government Code section 6500 et seq. are the combined pre-established boundaries of each of the members of the agency. Therefore, all real property acquired by the joint powers agency that is outside the pre-established boundaries of each of the members, and that was taxable when acquired, is subject to section 11 assessment. Conversely, all real property within the boundaries of each of the members of the agency is not subject to assessment under section 11.

In ARA No. 93-006, the Board of Equalization ruled that the boundaries of a joint powers agency, for government immunity purposes, do not exceed the combined pre-established boundaries of its constituent members who are exempt from taxation. In ARA No. 93-006, a copy of which is enclosed, the Board held that:

Assuming a joint powers agency is a local government per Section 6500, real property owned by a joint powers agency is exempt from taxation per Article XIII, Section 3 of the California Constitution, **unless** subject to the provisions of Section 11, subdivision (a). Section 11, subdivision (a) states that "Lands owned by a local government that are outside its boundaries, including rights to use or divert water from surface or underground sources and any other interests in land, are taxable if . . . they . . . were taxable when acquired by the local government." [Emphases in original.]

In discussing possible reasons for this conclusion, the Board in ARA No. 93-006 stated that:

The automatic merger concept . . . subverts Section 11, subdivision (a) by allowing tax-exempt status to any property acquired by a joint powers agency even though each of the members, apart from the agency, would be taxable if they individually acquired the property. . . . **[T]here is no authority for granting to a joint powers agency any greater exemption from taxation than would be applicable to its constituent members.**

. . . By statutory definition and historical application, a joint powers agreement allows local governments to perform jointly, acts which each of them could have independently exercised or performed. The powers inherent to each member and the territories incorporated within each individual member are not enlarged upon by a local government's participation in a joint exercise of powers agreement. . . . [Emphasis added.]

Thus, the creation or formation of a joint powers agency does not, for example, take property otherwise taxable to City A or City B pursuant to article XIII, section 11, subdivision (a) and make such property exempt from taxation. If two local governments, City A and City B

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either (1) formed the joint powers agency and purchased property outside of the boundaries of both City A and City B, or (2) formed the joint powers agency to develop property owned by City A located outside of City A's boundaries, under ARA No. 93-006, the property purchased would be taxable in either situation, pursuant to article XIII, section 11, subdivision (a). The property purchased in both instances is located outside of the boundaries of both City A and City B and is therefore not exempt from taxation. Property owned by a local government is exempt from taxation if such property is located within the boundaries of that local government because a local government is itself exempt from taxation. The mere creation of a joint powers agency alone does not change otherwise taxable property within its boundaries into exempt property.

Here, one public entity, City, and a mutual water company, Water Company, are the sole members of a joint powers agency. The property in question was privately-owned by Developer and thus taxable until October 2000, when it was transferred to PUD. Thus, as discussed above, the mere creation of a joint powers agency will not transmute the taxable character of the property in question, as the land is neither owned by the public entity member of the agency nor within the boundaries of the public entity member of the agency.

The views expressed in this letter are advisory in nature only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ Anthony Epolite

Anthony Epolite
Tax Counsel

ASE:eb

Prop/prec/govnprop/01/03ase

Attachments: LTA No. 2000/037
ARA No. 93-006

cc: Honorable Thomas P. Kidwell
Madera County Assessor

Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Charlie Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70
Mr. Benjamin Tang, MIC:64