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June 24, 2002

Honorable Gregory J. Oliver  
Tuolumne County Counsel  
Tuolumne County Administration Center  
2 South Green Street  
Sonora, CA 95370

JAMES E. SPEED  
Executive Director

Attn:  
Deputy County Counsel

**Re: *Taxation of Native American Business Personal Property***

Dear Mr. Oliver:

This is in response to your May 8, 2002, letter to Ms. Kristine Cazadd regarding whether Tuolumne County may tax and how much it may tax Native American business personal property, where the principal place of business is on the reservation but the property is primarily used or leased off the reservation. A specific factual situation, your questions, and our answers to your questions follow. In sum, it appears that the property has situs on the reservation in Tuolumne County and would only be assessable in Tuolumne County because (1) under Article XIII, section 14 of the California Constitution, all property taxed by local government shall be assessed in the county in which it is situated; (2) the property has situs on the reservation under either the second paragraph or the third paragraph of Property Tax Rule 205, subdivision (a), as the case may be in a given year; and (3) the reservation is located in and, therefore, is within Tuolumne County. Because the reservation is comprised of Indian lands held in trust by the federal government, such that the situs of the property is on tax-exempt federal land, however, in our opinion, the property is not assessable by the county assessor under the circumstances.

**Facts**

An enrolled member of the Tuolumne Me-Wuk Tribe resides on the Tribe's reservation which is within the geographic boundaries of Tuolumne County. This tribal member is the sole proprietor of a custom grading business, allegedly started in 1984, with its principal place of business being located within the external boundaries of the reservation. Since 1984, he has owned three pieces of heavy equipment which he leases out throughout the state of California,

along with his services,<sup>1</sup> to generate income. Purportedly, the equipment is leased for definite periods of time and is not leased out for more than a six month term at a time. However, in some tax years a piece of equipment may be leased numerous times off the reservation where the total amount of days the piece of equipment is off the reservation is over six months.

In 1990 and 1991, the accountant hired by the grading business filed business property statements with the County of Tuolumne for the three pieces of equipment. The statements disclosed the property being owned as far back as 1983. Other than those two property tax statements, the proprietor did not provide any prior or further written documentation to the assessor's office. The proprietor did not "pay" any assessments, escape assessments, or interest on those assessments until recently. In the fall of 2001, the County placed a lien on the proprietor's bank accounts for the unpaid taxes (approx. \$46,000.00). The proprietor voluntarily paid approximately \$6,500.00 and approximately \$7,000.00 was seized from one of his bank accounts. The remainder of the \$46,000.00 is outstanding. The proprietor has obtained an attorney who filed a request for refund on the proprietor's behalf.

The attorney claims that pursuant to Title 18 California Code of Regulations section 204 the situs of the property is on the reservation. Therefore, he claims Tuolumne County cannot tax the property because it is located on the reservation and its use at job sites constitutes "temporary absences" which do not change the situs of the property under the regulation. The proprietor's business records for each piece of equipment, dating back to 1984, indicate that the equipment was used at numerous times in Tuolumne County each year as well as being used in other counties and on federal land. However, only in some cases was any piece of equipment in any one county for more than an aggregate of six months. In no case was a piece of equipment off the reservation for more than six months at one time, or for an indefinite period of time.

## **Background**

Critical to the proper assessment of moveable personal property such as equipment is situs of the property. Article XIII, Section 14 of the California Constitution provides in this regard:

Section 14. All property taxed by local government shall be assessed in the county, city and district in which it is situated.

Property Tax Rule 205, Moveable Property, provides in subdivision (a) in this regard:

(a) **General.** Movable property is all property which is intended to be, and is, moved from time to time from one location to another. Such property may be in-

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<sup>1</sup> Over the years we have distinguished between leases of properties and persons who use their properties in the performance of services. See Property Tax Annotation Nos. 205.0090 - C 4/15/88 and 205.0110 - C 2/16/83, copies enclosed. The Facts indicate that the proprietor "has owned three pieces of heavy equipment which he leases out..., along with his services." Thus, we regard these properties as properties subject to Property Tax Rule 205, Moveable Property, rather than Property Tax Rule 204, Leased Property.

transit, or leased, and under such circumstances its situs is to be determined by reference to section 203 or 204 of this chapter.

Movable property has situs where located on the lien date if it has been in the county for more than 6 of the 12 months immediately preceding the lien date and if it is to remain in or be returned to the county for any substantial period during the 12 months immediately succeeding the lien date. Property which has been in the county for less than 6 of the 12 months immediately preceding the lien date, but which is committed to use in the county for an indeterminate period or for more than six months, has situs there whether the use extends through or commences with the lien date.

Property which does not have situs where located on the lien date pursuant to the previous paragraph has situs at the location where it is normally returned between uses or, if there is no such location, at the principal place of business of the owner.

Article XIII, Section 14 and Property Tax Rule 205 have been construed by the Board in Assessors' Handbook Section 504, Assessment of Personal Property and Fixtures, Chapter 3: Situs of Personal Property, at pages 30-35, copy enclosed. Portions of the handbook section relevant to your inquiry are:

### **CHAPTER 3: SITUS OF PERSONAL PROPERTY**

"All property taxed by local government shall be assessed in the county, city, and district in which it is situated." Situs, the place where property is legally situated, is therefore one of the essential factors of a valid assessment....(AH 504, p. 30.)

#### **What is Taxable Situs: Permanent Versus Temporary Situs**

Article XIII, section 14, provides that a property's taxable situs is the location where the property is "situated." "Situated" connotes a more or less permanent location, or situs. Thus, taxation of property in the state must be based on the fact that it is to some extent kept or maintained in California ...

If property stays in one place, as does real property, this location is the permanent and taxable situs. However, when property is moved periodically, a taxable situs is established at a given location on the lien date. For example, property which is normally located in a taxing jurisdiction, moved on the lien date, and then immediately moved back does not avoid taxation at this situs. Although gone on the lien date, the property has not established permanent situs elsewhere. Therefore, its permanent situs and thus taxable situs, remains at the original location. (AH 504, p. 30.)

... Property is assessable only in the county, city, and district in which it is situated or has situs.... (AH 504, p. 31.)

... A permanent situs on the lien date is the basis for the assessable situs. (AH 504, p. 31.)

### **Determining Situs of Movable Property**

Property which is frequently moved, such as transportation equipment and construction equipment, is defined as *movable property* under Rule 205.

Movable property is all property which is intended to be, and is, moved from time to time from one location to another.

The situs of such property should be governed by the duration of its stay at any location as discussed generally in Rule 205, *Movable Property*, ... (AH 504, p. 31.)

### **GENERAL SITUS RULES (RULE 205)**

#### **Over Six Months Prior to the Lien Date**

Movable property has situs where located on the lien date if (1) it has been in the county for more than 6 of the 12 months immediately preceding the lien date and (2) the objective facts indicate it will remain in or return to the county for any substantial period during the 12 months immediately succeeding the lien date. (Rule 205.) (AH 504, pp. 31, 32.)

#### **Less Than Six Months Prior to the Lien Date**

Movable Property which has been in the county for less than 6 of the 12 months immediately preceding the lien date, but which is committed to use in the county for an indeterminate period of for more than 6 months, has situs there regardless of whether the use extends through or commences with the lien date. (Rule 205.) (AH 504, p. 32.)

#### **Movable Property In-Transit**

Movable property may be in-transit on the lien date, and this may affect the property's assessable situs. As explained later in this chapter, situs and even accessibility may be based on the destination of the property (whether in interstate, intrastate, or foreign commerce) and the terms of transit. (AH 504, p. 32.)

#### **Situs Other Than at Location**

Movable property that does not have permanent situs where it is located on the lien date has assessable situs at the location where it is normally returned between uses. If there is no such location, the situs is the principal place of business of the owner. (Rule 205) (AH 504, p. 32)

**Habitual Situs at More Than One Location in California ...** Property that has taxable situs in California on the lien date is assessable at only one location, based on its value as of that date, even though the property may have substantial presence at more than one location. Thus, if a

property is in county "A" for seven months and County "B" for five months, County "A" will assess the entire property and County "B" will not assess the property at all. No apportionment of the assessment is required. (AH 504, p. 33.)

### **Questions and Answers**

1. May the County of Tuolumne tax the proprietor's heavy equipment where the principal place of business is on the reservation, but the property is used<sup>2</sup> or leased off the reservation?

**Answer:** No.

Article XIII, section 14 of the California Constitution provides that all property taxed by local government shall be assessed in the county in which it is situated. Property Tax Rule 205, subdivision (a) interprets Article XIII, section 14, providing, among other things, that moveable property has situs where located on the lien date, if it has been in the county for more than 6 of the 12 months immediately preceding the lien date and if it is to remain in or be returned to the county for any substantial period during the 12 months immediately succeeding the lien date; property which has been in the county for less than 6 of the 12 months immediately preceding the lien date, but which is committed to use in the county for an indeterminate period or for more than six months, has situs there whether the use extends through or commences with the lien date; and property which does not have situs where located on the lien date pursuant to the previous sub-sentences has situs at the location where it is normally returned between uses or, if there is no such location, at the principal place of business of the owner. Rule 205, subdivision (a) is restated and expanded upon in portions of AH 504. (AH 504, pp. 30-35.)

From the facts provided, it appears that over the years, the property has had situs on the reservation in Tuolumne County<sup>3</sup> under one or more of the provisions for determining situs in Rule 205, subdivision (a) and as explained in Assessors' Handbook section 504. As property located within Tuolumne County, the property has situs on the Indian reservation in Tuolumne County; and as property that has taxable situs in California on the lien date, the property is assessable only at that one location, even though the property may have substantial presence at more than one location. (AH 504, p. 33.)

Because the Indian reservation is comprised of lands held in trust by the federal government, such that the situs of the property is on tax-exempt federal land,<sup>4</sup> in our opinion, the property is not assessable by the county assessor under the circumstances.

In your letter, you state that Tuolumne County should be able to tax the personal property of a Native American who resides or whose principal place of business is located on the reservation where the personal property is used off the reservation, if the personal property tax is

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<sup>2</sup> Ibid

<sup>3</sup> As to the reservation being within Tuolumne County for purposes of local assessment, see Answer to Question 2, *infra*.

<sup>4</sup> As to the reservation being regarded as tax-exempt federal land, see Answer to Question 2, *infra*.

tailored (apportioned) to reflect the amount of actual off-Indian country use, citing to the United States District Court, E. D. Washington case of Yakima Indian Nation v. Flores (1997) 955 F.Supp. 1229, 1257-1260. In our view, that case is distinguishable in that it involved the assessability of vehicles rather than personal property generally, it involved the construction of a specific treaty rather than a state constitutional provision, and it does not appear that Washington had a state constitutional provision and/or a statute or a property tax rule similar to those of Article XIII, section 14 of the California Constitution and Rule 205. Further, in our view, in order for Tuolumne County to be able to assess the personal property proportionally under the circumstances, the county would have to establish that Rule 205, subdivision (a) did not apply to moveable property located on an Indian reservation, or that Rule 205 was an invalid or unconstitutional interpretation of Article XIII, section 14.

2. Should an Indian reservation comprised of lands held in trust by the federal government be treated as another state, county, federal land, or a foreign county for the purposes of the California tax law and rules?

**Answer:** We have been of the view that Indian reservations in California comprised of lands held in trust by the federal government should be treated as federal lands located within California for property tax law purposes. This is because of the Federal Instrumentality Doctrine, as discussed in Agua Caliente Band of Mission Indians v. County of Riverside (1971) 442 F.2d 1184, copy enclosed. See also the enclosed copy of our April 14, 1981, letter upon which Property Tax Annotation Nos. 525.0005 and 525.0010 are based.

As in cases of federal lands located within California, Indian reservations in California comprised of lands held in trust by the federal government have been regarded as lands within the California county or counties in which they are situated. Thus, the Agua Caliente Band lands in Riverside County have been regarded as lands within Riverside County; the Yurok Indian Reservation located in Humboldt County and in Del Norte County has been regarded as lands within Humboldt and Del Norte Counties; and the Tuolumne Me-Wuk Reservation located in Tuolumne County would be lands within Tuolumne County.

As in cases of federal lands located within California also, Indian reservations in California comprised of lands held in trust by the federal government are lands with respect to which California taxable possessory interests apply. See Agua Caliente Band of Mission Indians v. County of Riverside, above. See also annotated property tax cases cited following Revenue and Taxation Code section 107 in the Board's Property Taxes Law Guide, Volume 1. In our view, this is a further indication that Federal lands located within California and Indian reservations in California comprised of lands held in trust by the federal government are exempt within the California counties in which they are located.

3. May the personal property establish a situs in Tuolumne County if it is used/leased at most a week at a time in various areas of the State and returns to the reservation after each use?

**Answer:** As indicated in the Answers to Questions 1 and 2, above, the property has established a situs on the reservation in Tuolumne County under the facts and Property Tax Rule 205 and thus, could not have another situs in Tuolumne or any other county. If you are hypothesizing that the property is located on the reservation but is used off the reservation a week-or-less at a time and returned to the reservation after each use, the property still would have situs on the reservation under the third paragraph of Rule 205, subdivision (a), which provides that property which does not have situs where located on the lien date pursuant to the second paragraph of subdivision (a), has situs at the location where it is normally returned between uses.

In your letter, you refer to the apportionment cases of Ice Capades v. County of Los Angeles, (1976) 128 Cal.Rptr. 717, and Sea-Land Service, Inc. v. County of Alameda, (1974) 117 Cal.Rptr. 448 as support for concluding that personal property may establish a situs in Tuolumne County under these circumstances. The cases are distinguishable, however, as they pertain to property in interstate commerce having more than one situs (the former) and to property in interstate and foreign commerce to which the principles of apportioned taxation applied (the latter). See pages 34-35 of AH 504 for a discussion of Ice Capades v. County of Los Angeles, supra, and relevant considerations for property in interstate commerce having more than one situs.

4. Does it matter how much time in the aggregate the personal property is used/leased within the State even though any one period of use may not be more than a week at a time?

**Answer:** No. See the Answer to Question 1 and 2, above.

5. What is the test to determine whether this proprietor has been deemed to be using the benefits and protections of the State of California such that the personal property establishes a non-domiciliary situs within the State?

**Answer:** Article XIII, section 14 and Rule 205 are controlling. See the Answers to Questions 1 and 2, above.

6. Can personal property establish a tax situs within the State of California as a whole, although it is being used/leased less than six months in any one County, thereby allowing Tuolumne County to tax it?

**Answer:** Yes. See, for example, the Answer to Question 12, infra, particularly that portion of the Answer discussing AH 504, Example 3.1 on page 35 thereof.

In this instance, however, the property already appears to have situs on the Indian reservation in Tuolumne County. Thus, the situs of the property is on tax-exempt federal land, such that the property is not assessable by the assessor. See the Answers to Questions 1 and 2, above.

7. In order for Tuolumne County to tax the personal property, must the personal property establish a separate tax situs within Tuolumne County even if a tax situs can be established within the State of California as a whole by the aggregate amount of time used/leased within the State?

**Answer:** See the Answers to Questions 5 and 6, above.

8. May Tuolumne County tax the personal property where the personal property being used/leased off the reservation is used/leased in several counties within the state (always returning to the reservation after each period of use) although it was not used/leased in the aggregate more than six months in any one county? (i.e. in Tuolumne County for a total of 20 days, Alameda County a total of 20 days, and Contra Costa County for 20 days, etc.)

**Answer:** See the Answers to Questions 5 and 6, above.

9. Is the reservation considered within the County of Tuolumne because it is geographically encompassed by Tuolumne County?

**Answer:** Yes. See Answer to Question 2, above.

10. Does it matter that the reservation is encompassed by Tuolumne County? Why/why not?

**Answer:** If the reservation were in a county other than Tuolumne County, the property would have a situs in that county, not Tuolumne County, for the same reasons discussed in the Answer to Question 1, above. The property would have no situs in Tuolumne County under the circumstances.

11. Can the property have dual situs of being both in Tuolumne County and on the reservation? (Thereby allowing a proportional tax under federal case law for the actual time off the reservation.)

**Answer:** No. See the Answers to Questions 1 and 2, above.

12. Do the State property tax rules, particularly Rules 204 and 205, apply to property located outside the State of California, but used/leased within the State of California.?

**Answer:** The California Supreme Court stated in Sea-Land Service, Inc. v. County of Alameda, *supra*, regarding Rule 205:



Section 205 of title 18 sets forth a rule for establishing the taxable situs of specific property which moves from place to place within this state. The rule is predicated upon the theory that unless the property has been within the taxing jurisdiction for at least 6 of the 12 months immediately preceding the lien date, the property has failed to acquire sufficient "contacts" with that jurisdiction to create a taxable situs.

However, the cited administrative code section is merely interpretative of existing law, and is neither a statutory mandate nor all-encompassing in its description....

Consistent therewith, as indicated in AH 504, and as discussed above, there are several sets of circumstances in which personal property can acquire situs within California under Rule 205 or Article XIII, section 14. Generally, Rule 205 determines the situs of moveable property within the State as between counties of the State, but its application may not always establish situs of personal property within a particular California county. Example 3.1 on page 35 of AH 504, however, states:

**EXAMPLE 3.1**  
**Out-of-State Construction Company**

An out of state construction company worked on a two-year gas pipeline project in California.

- The equipment did not leave California during project.
- The equipment used on the project moved into ABC County in December 1996.
- The equipment used on the project moved out of ABC County in March 1997.
- It was typical that the equipment moved in and out of a county in less than six months.

Did the Property Establish Situs in ABC County on the 1997 Lien Date, January 1?

Under Rule 205, the property established a taxable situs in California but did not establish a taxable situs in a specific county. (The property was not in transit; therefore Rule 203 does not apply.) The equipment moved frequently, but remained in California on the lien date and for a time period both before and after, although the equipment did not remain in any county long enough to meet the six months test required in Rule 205.

Situs in the appropriate county becomes dependent on Article XIII, section 14 of the California Constitution; property is taxable in the county, city, and district in which it is situated or has situs. Thus, the property established a taxable situs in ABC County, California on the 1997 lien date.

Thus, even though Rule 205 might not establish situs in a particular California county, Article XIII, section 14 might. Of course, personal property outside California and never acquiring situs in California, will never be assessable in California.

As to instances in which personal property may have taxable situs in both California and in other states, such as that of Ice Capades v. County of Los Angeles (1976) 128 Cal.Reptr. 717, and which involves federal law as well as state law and apportionment, such is addressed on pages 34-35 of AH 504.

As to Property Tax Rule 204, Situs of Leased or Rented Property, it is addressed on pages 36 and 37 of Assessors' Handbook section 504, copy enclosed, and does not apply to the facts here.

13. Does the Tribe's authority to impose a tax on personal property, although no tax is imposed by the Tribe, prohibit the State or County from imposing its personal property tax on the personal property in this case?

**Answer:** No. It is the property's situs on the reservation that prohibits county assessment and taxation under the circumstances (Answers to Questions 1 and 2, above), not any tribal authority to tax personal property, exercised or not. In instances in which property is assessable both by Indian tribes and by county assessors, we have been of the opinion that both may properly assess the property.

As to possible double taxation and prohibitions against such, it has been our position that double taxation occurs only when two taxes of the same character are imposed on the same property, for the same purpose, by the same taxing authority, within the same jurisdiction and during the same taxing period. See Property Tax Annotation No. 525.0025 - C 1/9/98, copy enclosed. Thus, in our view, assessment and taxation by Indian tribes and by the state or a local government is permissible in the proper circumstances.

14. Is a personal property tax owed to one County properly collected if it is collected by another County, or must the collecting County return any monies not owed to it to the taxpayer?

**Answer:** No. The California property tax scheme is designed, in part, to have county assessors assess properties in their respective counties, county auditors to extend the rolls, etc., and county tax collectors to collect county taxes. There are no provisions of which we are aware which authorize a county tax collector to collect property taxes for a county or counties other than his or her own. It is the State Controller, however, who advises county tax collectors, so you may wish to contact the State Controller's Office in this regard in order to obtain a definitive answer to this question.

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

Honorable Gregory J. Oliver  
June 24, 2002  
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Very truly yours,

*/s/ James K. McManigal, Jr.*

James K. McManigal, Jr.  
Tax Counsel IV

JKM:tr  
prop/prec/persprop/02/01jkm

Enclosures [Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures*]

cc: Ms. Kristine Cazadd  
Mr. David Gau, MIC:63  
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Ms. Jennifer Willis, MIC:70