STATE OF CALIFORNIA

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August 5, 2003

Re: Indian Property Exemption – Rancheria

Dear Ms. :

This is in response to your letter dated April 9, 2003, in which you request our opinion relating to the property taxation of property owned by the Rancheria (Rancheria) located at , , California. Rancheria is requesting a local government property tax exemption for the mentioned property, because as you state in your letter, it is operated as a federally and state recognized local governmental organization. As set forth below, we conclude that the Rancheria is not a local governmental organization that would qualify for property tax exemption under Article XIII, section 3(a) of the California Constitution.

Attached to your letter was a copy of a letter, with other documents, to the County Assessor's office regarding the question on this exemption. The following pertinent facts were taken from the documents submitted.

Facts

- Historically, the Rancheria has operated on this property its Tribal Government operations and Tribal Health Clinic Services.

- Letter dated June 28, 1995, from the United States (U. S.) Department of the Interior approving the Constitution of the Rancheria, as adopted on May 20, 1995, stated that the Rancheria is a federally recognized Tribal Government.

- Letter dated October 18, 1996, from the U. S. Department of Interior recognizing the Rancheria to be an Indian entity recognized and eligible to receive services from the U. S. Bureau of Indian Affairs as published in the Federal Register, Vol.60. No. 32, Thursday, February 16, 1995, Notices. Furthermore, the Rancheria enjoys federal tax exemption as applicable to non-profit organizations.

- Letter dated August 28, 1997, from the Internal Revenue Service, Department of the Treasury regarding general federal tax exemption for tribes and discusses qualifications of a

Indian tribal government treated as a state for federal tax purposes under the Internal Revenue Code (Code).

- Internal Revenue Bulletin No. 2002-42, dated October 21, 2002, listing Rancheria as an Indian Tribal Government recognized for exemption. The Bulletin states that the listed tribal governments are to be treated similarly to states for specified purposes under the Code.

Law and Analysis

The Indian Tribal Government Tax Status Act of 1982 added certain provisions to the Code that pertained to the taxable status of Indian tribal governments. Section 7871(a) of the Code and Section 305.7871-1 of the Income Tax Regulations provide that Indian tribal governments (or subdivisions thereof) will be treated as states for certain enumerated federal tax purposes. (Internal Revenue Bulletin No. 2002-42, dated October 21, 2002)

Section 7871(d) of the Code states that, for purposes of section 7871(a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a state only if the Secretary of the Treasury determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government. (Internal Revenue Bulletin No. 2002-42, dated October 21, 2002)

Based on the documents presented, it is undisputed that the Rancheria is on the list of recognized Indian tribal governments that are to be treated similarly to states for specified purposes under the Code.

Under Title 26, IRC §7871, Indian tribal governments are treated as states for *certain federal tax purposes including*

"(a)(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),
(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or
(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

(2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—
(A) chapter 31 (relating to tax on special fuels),
(B) chapter 32 (relating to manufacturers excise taxes),
(C) subchapter B of chapter 33 (relating to communications excise tax), or
(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

(3) for purposes of section 164 (relating to deduction for taxes);

(4) subject to subsection (c), for purposes of section 103 (relating to state and local bonds);
(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);
(6) for purposes of—
  (A) section 105(e) (relating to accident and health plans),
  (B) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities), and
  (C) section 454(b)(2) (relating to discount obligations); and
  (D) [Redesignated]
(7) for purposes of—
  (A) chapter 41 (relating to tax on excess expenditures to influence legislation), and
  (B) subchapter A of chapter 42 (relating to private foundations)."

Upon reviewing this statute, it is clear that an Indian tribal government shall be treated as a state only for *specific federal tax purposes*. Also, the Internal Revenue Service, Department of Treasury clarifies that inclusion on a published list does not necessarily establish that a tribe qualifies for a particular tax benefit. For example, when a tribal entity seeks exemption from excise taxes, the entity must be able to demonstrate that the underlying transaction involves the exercise of an essential governmental function of the Indian tribal government. (Internal Revenue Bulletin No. 2002-42, dated October 21, 2002) Thus, for any tax benefit, the tribe must still demonstrate it meets the necessary qualifications.

Based on the relevant law, we find no evidence that the federal government through its executive branch agencies, Internal Revenue Service, Department of the Treasury and the Department of Interior intended to treat Indian tribal governments as a state or local government with respect to state taxation. The mere fact that Rancheria, as an Indian tribal government, may be treated as a state for certain federal tax purposes, does not give rise to any state tax exemption for the property owned by Rancheria. The property does not qualify for a California property tax exemption and is not otherwise immune to such taxation. In order to qualify for exemption, the property would need to be owned by a qualifying nonprofit organization that is organized exclusively for religious, hospital, or charitable purposes and uses the property exclusively for those purposes. See Chapter 2 of the Assessors' Handbook 267, *Welfare, Church, and Religious Exemptions*, attached.

Immunity from State Taxation

It has long been established that states have no authority to tax Indian reservation lands, or Indian income from activities carried on within the boundaries of the reservation, sales to Indians on reservation lands, or the personal property owned by Indians on Indian lands held in trust by the federal government. *Mescalero Apache Tribe v. Jones*, (1973) 411 U.S. 145; *Moe v. Confederated, Salish and Kootenai Tribes*, (1976) 425 U.S. 463. Therefore, in order to have property tax immunity, the land in question would need to become reservation land or accepted as "trust land" by the federal government for the benefit of the tribe.

With regard to Indian lands outside reservations**,** in *Salt River Pima-Maricopa Indian Community v. Yavapai County, State of Arizona*, (9th Cir. 1995) 50 F.3rd 739, the Court of Appeals held that land owned by the Salt River Pima-Maricopa Indian Community, a recognized Indian tribe, was taxable under Arizona's property tax scheme because it was **not** reservation land, and title to the land was held in the name of the tribe, not held in trust by the United States. Stating that it is well established that states have the right to impose taxes on Indian property located outside the boundaries of reservations, the court quoted from *Mescalero Apache Tribe, supra*, p.148-49, "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State."

A copy of the grant deed dated May 8, 2002, indicates that the property was conveyed to " Rancheria, a federally recognized Indian Tribe" rather than the United States of America in Trust for the Rancheria of Indians of California. As a result, the property is neither currently part of a reservation nor has ever been part of a reservation. Also, the property is not "trust land" held by the federal government for the benefit of . Thus, the property is subject to state taxation. However, a tribe that seeks immunity from state taxation of their lands has several means of pursuit: (1) The federal government has provided a means in 25 U.S.C. §465 (1988), whereby Indians may convey land in trust to the government and thus remove land from the state tax rolls; or (2) Contact the Department of Interior to apply for classification of the land as a reservation. Once proof of immune status is established, the County Assessor's office may cancel the property tax assessments.

The views expressed in this letter are advisory 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.

Sincerely,

/s/ Shirley Johnson

Shirley Johnson
Tax Counsel

Enclosure: AH 267, Chapter 2
SJ:lg
Prec/IndianLands/03/03sj.doc

cc:
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