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November 24, 1998

Marshall Rudolph, County Counsel
Office of the County Counsel
Mono County
P.O. Box 3329
Mammoth Lakes, California 93546

Re: Indian Housing Authority Tax Exemption

Dear Mr. Rudolph:

This is in response to your memorandum addressed to Ms. Marianne Alonzo dated June 11, 1998. Please accept my apology if the lateness of my response has inconvenienced you in any way. Your memorandum questions whether or not property owned by the Valley Indian Housing Authority is exempt from property taxation. We do not have sufficient information regarding the Valley Indian Housing Authority to address this issue. In order to render an opinion with regard to the Valley Indian Housing Authority, we need additional information, including the following: (i) whether or not the property is located on an Indian reservation or on Indian country property; (ii) whether or not a welfare exemption has been obtained; (iii) whether or not the housing authority apartment units are leased at low or moderate rentals; and (iv) how the property was financed.

Nevertheless, as indicated below, the fact that property is owned by an Indian housing authority is not sufficient, in and of itself, to exempt the property from taxation; such property will be either immune or exempt from property taxation only if there is a specific reason for such immunity or exemption; such as, (i) the property is held by the federal government in trust for an Indian tribe, (ii) the property has been exempted under the welfare exemption, etc.

Section 3, subdivision (b) of article XIII of the California Constitution exempts from taxation property owned by local government. This exemption is implemented statutorily in section 202(a)(4) of the Code of Revenue and Taxation. As noted in the October 22, 1976 opinion of the Board legal staff which you enclosed with your memorandum, most housing authorities are owned by counties and cities. Accordingly, the exemption from property tax accorded such housing authorities is provided by the exemption for property owned by local government entities set forth in section 202(a)(4).

While Indian housing authorities may be similar in many respects to those housing authorities owned by public entities, they do not fall within the purview of section 202(a)(4). Thus, the tax exemption provided by such statute (and by section 3(b) of article XIII) is not available to Indian housing authorities. As a consequence, if off-reservation real property owned by the Valley Indian Housing Authority is, in fact, exempt or immune from property taxation, it will not be merely because of the fact that the ownership is in the hands of an Indian housing authority. Another basis for exemption or immunity will have to be proffered.

While land and improvements held by the federal government in trust for an Indian tribe are not subject to property taxation (SBE Annotation 525.0010 C 4/14/81), we are not aware of any reason why off-reservation or non-Indian country land and improvements held by an Indian housing authority might not – if not otherwise immune or exempt – be subject to property taxation. This assumes, of course, that the Indian housing authority property in question has not been exempted from property taxation under the welfare exemption. (Cal. Const. art. XIII, §4(b); Rev. & Tax. Code §§214-215.) As you state in your memorandum: “[E]ven if an ‘automatic’ state tax exemption isn’t available for Indian housing authorities, that doesn’t mean they can’t obtain a tax exemption – they just have to apply for (and qualify for) a welfare exemption.”

Finally, the 1976 Board legal staff memorandum references a “local cooperation agreement” between Mono county and the Valley IHA that “purports to exempt the authority from all real and personal property taxes.” As we have no information related to any such agreement, this opinion does not address the effect of such agreement, if any, on the property tax obligation of the Valley IHA.

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, and are not binding on any person or public entity.

Very truly yours,



Robert W. Lambert
Senior Tax Counsel

RWL:jd

h:/property/procedural/genetemp/1998/98015.rwl

cc: Mr. Richard Johnson, MIC:63
Mr. Rudy Bischof, MIC:64
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70
Ms. Mary Ann Alonzo

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