



(916) 445-3076

March 1, 1978

Mr. Y

Attn: Mr. Q

Dear Mr. Q :

You recently asked our opinion of the taxability, under Section 11 of Article XIII of the State Constitution, of a marina located at Lake Pardee. The owner of the land is East Bay Municipal Utility District and they are taxed on this land under Section 11. Your question was whether Section 11(f) of Article XIII permits taxation of the marina when the public owner is already taxed for the land.

Section 11(f) of Article XIII states in pertinent part:

The aggregate value of all the interests subject to taxation pursuant to Section 11(a), however, shall not exceed the value of all interests in the land less the taxable value of the interest of any local government ascertained as provided in Sections 11(a) to 11(e), inclusive of this article.

This section is merely attempting to restate Section 1.68 of Article XIII as it existed prior to the 1974 rewriting of Article XIII. Section 1.68 states in part:

...such value shall not exceed the aggregate value so ascertained of all interests in said lands reduced by the value of the interest in said lands owned by any county, city and county, or municipal corporation ascertained as provided in sections 1.60 to 1.67, inclusive, of this article.

Mr. Q

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The meaning of this language is that the value ascribed to the private lessee of a public owner of land subject to assessment under Section 11 cannot be greater than the total value of the highest and best use less the value taxed to the public owner. In the case you presented to me if the highest and best use of the property under appraisal is for marina purposes then the value for that purpose is to be reduced by the value that the public agency is paying taxes on. It is axiomatic in this situation that where the value of the highest and best use is the same as or less than the value that the public agency is paying taxes on, there can be no value remaining to the private lessee.

Another issue that comes up in this circumstance is whether the improvements owned by the private lessee are taxable. Section 1(a) states that improvements owned by the public entity are generally not taxable. However, Section 11(f) specifically mandates taxation of all interests in the land that is owned by the public entity. Since all interests include interests in improvements, I believe that the improvements owned by private lessees are taxable. Even in this case we are still guided by the proviso that the value of all interests shall be reduced by the amount of value paid on by the public agency.

Very truly yours,

Robert D. Milam
Tax Counsel

RDM:fp
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