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July 1, 1992

Honorable Robert Shellenberger  
San Joaquin County Assessor  
24 S. Hunter Street  
Stockton, CA 95202-3273

ATTN: David Leonard, Asst. Chief Valuation

Dear Mr. Shellenberger:

In response to your letter of April 16, 1992 we have contacted Mr. Robert E. Thurbon, counsel for the Lodi Unified School District for his position regarding the exempt status of the District's education support center. Mr. Thurbon now contends that the District's situation is identical to that of the State Franchise Tax Board as reported in the recent case of MAYHEW TECH CENTER v. Co. of Sacramento, 4 Cal. App. 4<sup>th</sup> 479 (March 10, 1992). There the Third Appellate District held that the State was the beneficial owner of the property and did not violate the constitutional debt limit provision. Our prior advice from the Assessment Standards Division dealt only with the fact that the Lodi Unified School District Capital Facilities Corporation was a distinct and different entity from the Lodi Unified School District and as owner of the property did not qualify for exemption.

In MAYHEW the court reviewed both the actual, physical use of the property and all of the documents that controlled the financing, construction, operation and ultimate disposition of the project. Those included: (1) the Site Acquisition Agreement; (2) the Trust Agreement; (3) the Development and Disbursement Agreement; (4) the Assignment Agreement; (5) the Agreement to Transfer Title, and (6) most importantly, the Lease Agreement. Primarily the court looked to internal consistency and the absence of conflicting provisions in those various agreements. By copy of this letter we are requesting that Mr. Thurbon provide you with copies of the corresponding documents used by the District and LUSDCFC in the construction and acquisition of the educational support center. More specifically we would ask Mr. Thurbon to point out to you the provisions in the District's documents that are essentially identical to the MAYHEW recitals. You and your counsel should verify that such is the case.

In our view beneficial ownership was established by the lessee's exclusive right to occupy and use the property coupled with automatic vesting of title in the lessee so long as the rental payments were timely made. Also the lease should provide for an equity interest in the lessee so that in the event of default any residual monies accrue to the lessee's account. In order to meet the requirements of the debt limitation it is essential for the lease to terminate upon failure to make a payment and there must be no legal obligation to make payments in future years.

Hon. Robert Shellenberger

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In situations such as this where a determination must be made as to whether or not local conditions are in conformance with an appellate decision is it appropriate that your office make that determination. Please call me directly if we can be of further assistance.

Very Truly Yours,

James M. Williams  
Senior Staff Counsel

JMW:jd  
rob.she

cc: Mr. Robert E. Thurbon  
Mr. John W. Hagerty  
Mr. Verne Walton  
Mr. Dennis Miller