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February 9, 2004

Mr. Raymond L. Jerland, Assessor  
Attn:  
County of Humboldt  
825 Fifth St., Rm. 300  
Eureka, CA 95501-1153

**Re: The Housing Authority – Indian Housing Qualification – Revenue and Taxation Code section 237**

Dear Mr. Jerland:

This is in response to your recent inquiry to Kristine Cazadd, Assistant Chief Counsel, requesting our written opinion concerning the applicability of the section 237 exemption for Indian-owned low-income rental housing to certain residential real property. As a result of your initial inquiry in December 2003, I spoke with \_\_\_\_\_ who represents the Housing Authority (“Housing Authority”) and reviewed various documents, correspondence, and emails between Mr. D \_\_\_\_\_, his clients, the Housing Authority, and the Humboldt County Assessor’s office. I also communicated with you and other knowledgeable persons at the Board about this matter. Mr. D \_\_\_\_\_ states that the Housing Authority, a non-profit tribally chartered corporation, is the owner of the subject real property, the land and the house thereon, that was recently assessed by the Humboldt County Assessor. He further states that the house is a low-income property that qualifies for the exemption. The Assessor has reviewed the documentation and concluded the exemption does not apply because the Housing Authority has not established that it is the owner of the property and the property is not a rental unit, as required for the exemption in section 237. Based on the documentation submitted to our office for review, some of which appeared to be contradictory, it is our opinion that the housing is not rental property nor is the land owned by the tribe or housing authority so as to qualify either for the exemption. Therefore, the land and house would be subject to property tax, absent any other applicable exemption.

**Facts Presented**

Mr. and Mrs. S \_\_\_\_\_ (“Mr. and Mrs. S”) have owned and resided on the subject property for many years. After their house burned down they entered into an agreement with the X \_\_\_\_\_ Housing Authority, a tribally designated housing entity of the \_\_\_\_\_ Tribe, to provide financing to build a new home on their land. Mr. D \_\_\_\_\_ asserts that the house and land are owned by the Housing Authority, the homebuyers are low-income, and the house must remain low-income. He has submitted several documents discussed in more detail below which he contends support the claim for exemption pursuant to section 237.

\* “Mutual Help Homeownership Opportunity Program- Mutual Help and Occupancy Agreement” (MHO) was executed October 26, 2000. It provides that the Ss who are designated as the Homebuyer and the Indian Housing Authority (IHA)] have entered into a “Annual

Contributions Contract” (ACC) with HUD to allow the homebuyer to “achieve” ownership of a home in return for performing certain obligations, primarily monthly payments for 25 years but also including maintenance and provision of information to verify low-income status. The MHO requires the homebuyer to make a contribution to the construction of the home and provides that the land may be contributed to satisfy the requirement. The MHO does not state whether the Ss contributed their land to the IHA. The MHO also sets forth homebuyer responsibilities for maintenance and utilities as well as restrictions on use of or alterations to the home. Article X “Purchase of Home”. permits the homebuyer to purchase the home, obtain financing, and provide guidelines for the IHA to determine the purchase price. Upon satisfaction of all conditions, the MHO provides that the IHA “shall convey title to the homebuyer.”

\* Quitclaim Deed which purports to transfer “all rights, title, and interest” in the parcel of fee land “together with al(sic) improvements” to X Housing Authority (“XHA”) and is executed on December 29, 2000. However, there is no evidence that the Quitclaim Deed was ever recorded at the Humboldt County Recorder’s office. Mr. D states the document was “recorded” at the tribal office and asserts this may be sufficient to establish tribal ownership of the property.

\* “Lease Agreement” (Lease) prepared by the “X Housing Authority” and dated December 29, 2000. The Lease between XHA and the Ss identifies Mrs. S as “Lessor” and the XHA as “Lessee.” It provides that “the object of this Lease is to Allow Lessor to participate in the...Mutual Help Home Project, through the XHA, Tribe and allow the Lessee legal access to said parcel...for a period of no less than 25 years. Lessee will have legal right to trespass onto parcel...in an attempt to inforce (sic) all aspects of the Agreement...” The lease also provides that the Lessor “agrees to pay the total annual sum assessed per year by the Tax Assessor’s office...” the Lease also contains various restrictions on the Lessee (no assignment, no adverse use) and the Lessor (must personally occupy premises and keep up repairs) and provides that at the expiration of the lease term the “lessee shall peacefully quit and surrender possession...”.

The question is whether these documents are sufficient to establish that the subject property, land and/or house, is subject to the low-income tribal housing exemption set forth in section 237.

### **Law and Analysis**

Article XIII, section 4(b) of the California Constitution authorizes the Legislature, in relevant part, to exempt from taxation property that is used exclusively for religious, hospital, or charitable purposes, and is owned or held in trust by a nonprofit entity. Pursuant to this constitutional authority, Revenue and Taxation Code section 237, subdivision (a)(1) generally provides that the exemption is available for that portion of property owned and operated by a tribe or its housing entity that is “continuously available to, or occupied by, lower income households....at **rents** that do not exceed those prescribed by Section 50053 of the Health and Safety Code.....[emphasis added].” In order to qualify for the exemption, subdivision (a)(2) provides that a tribe or housing entity must establish the following:

...(a)(2).....(A) At least 30 percent of the property’s housing units are either continuously available to, or occupied by, lower income households, as defined in Section 50079.5 of the Health and Safety Code or applicable federal, state, or

local financing agreements, **at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code**, or rents that do not exceed those prescribed by the terms of the applicable federal, state, or local financing agreements or financial assistance agreements.

(B) The housing entity is nonprofit.

(C) No part of the net earnings of the housing entity inure to the benefit of any private shareholder or individual. [emphasis added].

A tribe or housing authority seeking the exemption must provide documents to the assessor that establish that it meets the above-cited qualifications. [Subdivision (d), section 237]

Thus, the foregoing provisions of section 237 specify that the exemption applies only to low-income rental housing owned and operated by a tribe or its housing entity. According to the MHO, the Ss have entered into an agreement to purchase the property from the XHA. Therefore, on that basis alone, the property is not qualified under section 237 because it is not rented to the Ss.

Furthermore, with respect to the ownership of the property, the documents do not clearly establish that XHA holds full fee title. The MHO is a type of land sale contract in which the buyer holds the present beneficial interest and the seller holds only legal title to the property. Furthermore, the terms of the Lease are consistent with a present beneficial ownership interest in the Ss. The Lease identifies Mrs. S as the Lessor (and the XHA as the Lessee). The object of the Lease to allow the Lessor to participate in the MHO and, to carry out that purpose, the Lessor grants the Lessee the right to "trespass" on her land in order to enforce the terms of the MHO. In addition, the Lessor must grant permission before the Lessee can assign its interest, and the Lessor agrees to occupy the premises and the Lessor agrees to pay the property taxes.

Therefore, it is the opinion of the Legal Department that the subject property does not qualify for the low-income housing exemption under section 237 because the property is being purchased, not rented, and the XHA does not hold full fee title to the property.

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

Sincerely,

*/s/ Melanie M. Darling*

Melanie M. Darling  
Senior Tax Counsel

MD:eb

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cc: Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Kristine Cazadd, MIC:82