



STATE OF CALIFORNIA

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June 2, 1994

Honorable David W. Triplett
Stanislaus County Assessor
1100 H Street
P. O. Box 1068
Modesto, CA 95353-1068

Dear Mr. Triplett:

This is in response to your letter and attachments of March 16, 1992, regarding special taxes that were authorized by the Mello-Roos Community Facilities Act. I apologize for the delay in responding; other matters requiring our attention have resulted in an unfortunate backlog of correspondence. In addition, we wanted to review our position on Mello-Roos Community Facilities Districts before responding.

In your letter you presented an example of a Mello-Roos Community Facilities District formed by two school districts under a joint powers agreement. The Mello-Roos Community Facilities District collects a special tax from new developments to pay for the over-crowding and financial burden in the schools created by newly built homes. A tax rate is applied to the habitable square footage to calculate the special tax that can be paid in full with the issuance of the building permit or can be amortized over a 30-year period.

The information with your letter did not specify whether a lien is created on the parcels but it is clear that the special tax is not secured by the issuance of bonds. You have asked that we review our opinion of not adjusting the sales prices for the unpaid cash equivalent principal of the Mello-Roos bonds outstanding and establish criteria in which Mello-Roos Community Facilities Districts are analyzed on a case by case basis. After discussions with our legal staff and bond consultants, we feel that our opinion on Mello-Roos is sound and proper. In addition, it is our opinion that all payments required by a Mello-Roos Community Facilities District are special taxes, and no adjustment should be made to the sales price for them.

We have previously taken the position that an appraiser, when using the comparable sales approach in determining the value of a site to which improvement bonds are a lien, should include the unpaid cash equivalent principal of any bonds outstanding as a sale price adjustment. (See page 70 of Assessors' Handbook Section 501, *General Appraisal Manual*, August 1982 edition.) However, in letter to assessors 89/68 (September 19, 1989), we qualified this position regarding Mello-Roos bonds. In that letter we concluded that it is not proper to include the amount of Mello-Roos bonds in the value of land subject to such levies. One of the reasons for this conclusion is that although the assessment is secured by a lien against the property, the principal amount of the Mello-Roos bonds are not tied to specific parcels.

Another reason for adjusting the sale price for the improvement bonds is found in Property Tax Rule 4(b). This subdivision reads, in relevant part:

"When appraising an unencumbered-fee interest, (1) convert the sale price of a property encumbered with a debt to which the property remained subject to its unencumbered-fee price equivalent by adding to the sale price of the seller's equity the price for which it is estimated that such debt could have been sold under value-indicative conditions at the time the sale price was negotiated."
(Emphasis added.)

Facilities or services provided by Mello-Roos community facilities districts may be financed by a variety of methods, generally either bonds or annual levies. In order to be an adjustment to a sales price, either the Mello-Roos bonds must be considered debt or the annual levies must be considered payments for debt. By definition, all payments imposed by Mello-Roos Community Facilities Districts are special taxes, regardless of the financing method. Government Code Section 53340 (enacted by the Mello-Roos Community Facilities Act of 1982) reads, in part:

"All special taxes levied by a community facilities district shall be secured by the lien imposed pursuant to Section 3115.5 of the Streets and Highways Code. This lien shall be a continuing lien and shall secure each levy of special taxes."
(Emphasis added.)

Since the Government Code has labeled the Mello-Roos payment as a "special tax," we are bound by this term. The Mello-Roos payments, whether associated with a bond or an annual levy, are special taxes; they are not payment for debt. Therefore, there is no need to establish any criteria for judging whether a particular financing mechanism or model imposed by the Mello-Roos Community Facilities Act would be an adjustment to a sales price.

Honorable David W. Triplett:

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June 2, 1994

I trust this answer has been responsive to your inquiry. If you have any further questions, please call our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:kmc

(Prepared by Glenna Schultz)