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February 29, 2000

Honorable Michael V. Strong
Sutter County Assessor
212 Bridge Street, P.O. Box 1555
Yuba City, California 95992

Attention:

**Re: *Tri-County Schools Insurance Group*
*1999-2000 Public Schools Exemption Claim***

Dear Mr. Strong:

Your request to Peter Gaffney of our Exemptions Unit for our opinion as to whether the Tri-County Schools Insurance Group, a Joint Powers Authority, is qualified to receive the public school exemption for its property has been forwarded to me for a response. This entity leases office space located in the City of Yuba in Sutter County and owns only personal property.

The members of Tri-County Schools Insurance Group (hereinafter "Tri-County"), pursuant to a Joint Powers Agreement, include 7 County Offices of Education in the counties of Sutter, Yuba, Colusa, Glenn, Tehama, Plumas and Sierra and forty-five school districts located in these counties and also in Lassen, Modoc and Sierra counties. Tri-County, formed to provide self-funded insurance for its members, is authorized by the Government Code, sections 6500 et seq. and the Education Code, sections 39603 and 81603. As set forth below, in our view, Tri-County is not a public school and its property is not eligible for the public schools exemption; however, its personal property qualifies for exemption as property owned by a local government. (Art. XIII, § 3, subd. (b); Rev. & Tax. Code § 202, subd. (a)(4).)

APPLICABLE LAW

The California Constitution provides that all property is subject to tax unless otherwise provided by the state constitution or the laws of the United States. (California Constitution, Art. XIII, § 1) Thus, taxable property includes all property except property exempt or immune pursuant to the California Constitution or federal law. The general rule of taxability is subject to numerous exemptions that are largely set forth in Section 3 of Article XIII. Of relevance to the

situation presented here, are the exemptions authorized by subdivisions (b) and (d) of Section 3:

- (b) Property owned by a local government, except as provided in Section 11(a).
- (d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities. (Emphasis added.)

These constitutional exemptions are codified in the Revenue and Taxation Code, section 202, subs. (a)(3) and (a)(4) which provide:

- (a) The exemption of the following property is as specified in subdivisions (a), (b), (d), and (h) of Section 3 of Article XIII of the Constitution, except as otherwise provided in subdivision (a) of Section 11 thereof.

* * *

- (3) Property used exclusively for public schools, community colleges, state colleges, and state universities, including the University of California. (Emphasis added)
- (4) Property belonging to this state, a county, or a city . . .

Government Code section §§ 6500 et seq. (The Joint Exercise of Powers Act),¹ authorizes Joint Powers Agreements between two or more public agencies to establish a separate entity for the exercise of powers authorized by law. In that regard, section 6502 provides that pursuant to such agreement, public agencies may jointly exercise any power that they have individually. Section 6507 provides that the agency created by a joint powers agreement is a public entity separate from the parties to the agreement. Section 6508 enumerates powers of such public agency, which includes the powers specified in the Joint Powers Agreement and other powers, including, but not limited to the power to acquire, hold or dispose of property. (Emphasis added)

I. The Public Schools Exemption is not Applicable to Exempt the Property of Tri-County

As noted above, section 3, subd. (d) of the Constitution and section 202, subd. (a)(3) of the Revenue and Taxation Code provide exemption for property used exclusively for public schools. Exclusive use includes any use incidental to and reasonably necessary for the accomplishment of exempt purposes.² Under provisions of the Education Code, public schools

¹ Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code.

² *Cedars of Lebanon v. County of Los Angeles* (1952) 35 Cal.729, 734.

are required to purchase or self insure.³ An activity authorized by the Education Code implies that property used for the purpose of self-insurance would be exempt as incidental and reasonably necessary for the accomplishment of public schools' purposes. However, the exemption is available to exempt property used exclusively for public schools that is owned or leased by public school entities, such as school districts and county offices of education.⁴ Pursuant to Section 6507 of the Government Code, the agency created by a joint powers agreement is a public entity separate from the school districts and county offices of education that are parties to the Joint Powers Agreement. Accordingly, the Tri-County personal property is owned by Tri-County rather than its school district and county offices of education members. As a separate governmental agency, Tri-County is not a public school within the meaning of Article XIII, section 3, subd. (d) of the Constitution and section 202, subd. (a)(3) of the Revenue and Taxation Code. Thus, the public schools exemption does not apply to exempt its personal property.

II. The Personal Property of Tri-County is Exempt as Property Owned by a Local Government

As noted above, Article XIII, section (3), subd. (b) of the Constitution and section 202, subd. (a)(4) of the Revenue and Taxation Code provide exemption for property owned by a local government, except as provided in section 11, subd. (a) of Article XIII of the Constitution. (Emphasis added) While the term, "local government" is not specifically defined by statute or in the Constitution, it generally references a city, county, or other governing body at a level smaller than a state. (Blacks Law Dictionary, 5th Ed., p. 846) Under California law, the exemption for public property has been liberally construed to include other political subdivisions of the state.⁵ Agencies formed by local governments, such as redevelopment agencies and municipal utility districts, have been found to qualify as "local governments" for purposes of section 3, subd.(b) of Article XIII.⁶ Moreover, public school districts have been regarded as public entities within the meaning of the term, "local government" in section 3, subd. (b); therefore, not subject to sewer capacity fees found to be a special assessment.⁷

"The rationale behind a public entity's exemption from property taxes and special assessments is to prevent one tax-supported entity from siphoning tax money from another such entity; the end result of such a process could be unnecessary administrative costs and not actual gain in tax revenues."⁸

Consistent with the foregoing judicial precedent, the Board has considered Joint Powers Agencies formed by local governments to be "local governments" as well. (See attached Annotation 575.0050, 8/13/90 letter.)

³ Sections 35208, 72506 require insurance against certain risks; sections 35214 and 72506 permit school districts to purchase insurance or self insure.

⁴ *Ross v. City of Long Beach* (1944) 24 Cal.2d 258; see also *Oates v. County of Sacramento* (1978) 78 Cal.App.3d 745, exempting office spaced leased by county superintendent of schools as incidental to and reasonably necessary to the accomplishment of the purposes of the public school system.

⁵ *Sacramento Municipal Utility District v. Sonoma County* (1991) 235 Cal.App.3d 726, 732.

⁶ *Redevelopment Agency v. County of San Bernardino* (1978) 21 Cal.3d 255, 264, note 4.

⁷ *San Marcos Water District v. San Marcos Unified School District* (1986) 42 Cal.3d 154, 168.

⁸ *San Marcos Water District*, supra, page 161.

As noted above, Tri-County was established as a Joint Power Agency pursuant to Government Code section 6500 et seq., which authorizes public agencies to jointly exercise power as a separate public entity, and Education Code sections 39603 and 81603, which permit school districts to enter into a joint powers agreement pursuant to the Joint Powers Act to insure their property.

In accordance with the above stated provisions, the Amended Tri-County Joint Powers Agreement provides for the creation of an entity that is separate from the public educational entities that are members. (Amended Joint Powers Agreement, March 1995, Article I, section 1.1)

Further, the agreement provides broad authority to the Joint Power Authority “to exercise: (i) any power common to the public agencies which are parties to this agreement; (ii) any powers contained in the Joint Powers Act, or any successor statute; and, (iii) powers otherwise conferred by law; provided that the power is in furtherance of the purposes, functions and objectives of this Agreement.” (Amended Joint Powers Agreement, March 1995, Article 3, section 3.1)

Tri-County owns personal property, consistent with its authority in the agreement to exercise any powers in the Joint Powers Act. (Gov. Code § 6508) Pursuant to Section 6507 of the Government Code, Tri-County is a public entity/agency separate and distinct from the school districts and county offices of education that are parties to the Joint Powers Agreement. As a separate legal entity, the Tri-County personal property is owned by Tri-County, rather than its school district and county offices of education members. Since Tri-County, by definition, is a public agency, it comes within the meaning of the term, “local government” in section 3, subd. (b) of Article XIII. Accordingly, the personal property of Tri-County is exempt from property tax under Article XIII, section (3), subd. (b) of the Constitution as property owned by a local government.

III. Personal Property of Tri-County not Subject to Section 11, Subd.(a) of the California Constitution

As noted above, Article XIII, section (3), subd. (b) of the Constitution and section 202, subd. (a)(4) of the Revenue and Taxation Code provide exemption for property owned by a local government, except as provided in section 11, subd. (a) of Article XIII of the Constitution. That provision, which authorizes taxation of lands owned by a local government that are outside its boundaries, is not applicable here. Tri-County owns only personal property which is not subject to section 11, subd. (a) of Article III.

Our opinion is, of course, advisory and is not binding on your office or the assessor of any county. We defer the final conclusion to your office for an ultimate evaluation of all the facts. The views expressed in this letter represent the analysis of the legal staff of the Board based on the present law and facts set forth herein. Therefore, they are not binding on any person or entity.

Very truly yours,

Honorable Michael V. Strong
February 29, 2000
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/s/ Mary Ann Alonzo

Mary Ann Alonzo
Senior Tax Counsel

MAA:tr
prop/precndt/genexemp/00/06mas

Attachment

Cc: Mr. Dick Johnson, MIC: 63
Mr. David Gau, MIC: 64
Mr. Charles Knudsen, MIC: 64
Mr. Peter Gaffney, MIC: 64
Ms. Jennifer Willis, MIC:70