

700.0175

M e m o r a n d u m

To : Mr. Dan Cady
Local Tax Section

Date: September 28, 1992

From : John L. Waid
Tax Counsel

Subject: Town of Windsor and County of Sonoma
Newly-Incorporated City Taxes

I am responding to your memorandum to me of August 12, 1992. You requested our opinion as to the relationship between the county local tax ordinance and that enacted by the newly-incorporated Town of Windsor. You also asked if our opinion is applicable to similar disputes that may occur in counties other than Alameda, the locale of the City of Dublin case.

You describe the factual situation as follows:

"The Town of Windsor adopted Ordinance No. 92-04 and the required Agreement for State Administration of Local Sales and Use Tax ... on July 1, 1992 with an operative date of October 1, 1992. Windsor adopted a 1% tax rate in a county that has an inoperative section in their County Sales and Use Tax Ordinance should '... any city within the County increase the rate of its sale or use tax above the rate of ninety-five one-hundredths of one percent.'"

You attached to your letter copies of the ordinance of the Town of Windsor, the Town's agreement with the Board under Section 7270, Section 12-09 of the Sonoma County Ordinance that contains the language set forth above ("in terrorem clause"), and a copy of the Judgment and Statement of Decision in City of Dublin v. County of Alameda, Alameda County Superior Court No. 264302, typed opn. (April 4, 1984), which we discussed over the phone. You also attached two memoranda from Tax Counsel John Murray to then-Business Taxes Department Deputy director J. D. Dotson, dated April 19 and May 1, 1984, one from then -Chief of Field Operations Robert Nunes to Mr. Dotson dated May 1, 1984, a pattern letter from then-Local Tax Unit Supervisor David Craig dated July 12, 1984, and a letter from Tax Counsel John Abbott to then -Alameda County Administrator Mel Hing dated February 26, 1986. The correspondence discusses the effect of the City of Dublin decision and announces that the Board will follow the rule set forth therein in all 58 counties.

OPINION

As we discussed, a cardinal rule of statutory construction is that words in a statute or ordinance must be given their ordinary and plain meaning unless the context or apparent scope of the enactment show use in an arbitrary sense. (Barber v. Gonzales (1954) 347 U.S. 637, 641; People v. Eddy (1872) 43 Cal. 331, 336-337.) The plain and ordinary meaning of language attaching dire consequence to a city's increase of its rate is that the ordinance does not apply to the situation where a city is instituting a local tax. The Bradley-Burns law gives a city the right to set its sales and use tax rate at 1% or less. (§ 7202(a)(8)(A).) Thus, notwithstanding such county ordinances as the one above, newly-incorporated cities have the right to set their local tax rates at up to 1%. These in terrorem ordinances may only be effective against subsequent tax increases should the city initially set its rate at less than one per cent.

This was the holding in the City of Dublin case. It is only an unpublished superior court case and so may not be cited as precedent. However, the memorandum exchange you attached to yours indicates that the Board will apply this rule throughout the state.

On this same issue, you sent over a memorandum dated August 24, 1992, asking if the county needed to change its ordinance before the Board would administer the City of Windsor tax. Your memorandum was prompted by a letter dated August 21, 1992, from Town of Windsor Assistant Town Attorney Elizabeth H. Silver and Sonoma County Deputy County Counsel C. David Hurst. This letter was answered by Tax Counsel Donald L. Fillman on August 26, 1992, who indicated that the Board would administer the town's tax and that the county ordinance did not need to be revised.

JLW:es

cc: Mr. Don Fillman
Mr. Larry Micheli