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December 17, 1993

Ms. [H]
---, ---, --- & ---
XXX --- ---, Suite XXXX
Post Office Box XXXX
--- ---, California XXXXX-XXXX

Re: [M]
Sales and Use Tax Ordinance

Dear Ms. [H]:

I am writing this to respond to your letter to me of October 18, 1993, and to confirm our recent telephone conversation about the authority of the Board to enter into certain agreements with the [M] (Agency). As we discussed in our conversation, the Board cannot enter into the kind of agreements the Agency proposes.

I. FACTUAL BACKGROUND.

You describe the factual background of the Agency's problem as follows:

“[M], Esq., of our firm drafted the [Agency's Local Sales and Use Tax] Ordinance in 1987 on advice of representatives of the Board at that time that the Ordinance would be effective to give the City and the [Agency] the authority to transfer sales and use taxes from the City to the Agency upon the execution of agreements with the Board as required under the California Revenue and Taxation Code, even if execution was delayed for a number of years. In reliance upon the law and this understanding, future sales tax revenues to the Agency were pledged to bonded indebtedness of the Agency. Due to the recent passage of Assembly Bill 1290, the invalidation of the Ordinance will invalidate that pledge unless the City and the Agency are able to reach an agreement with the Board in time to adopt another, updated ordinance (or implement the prior ordinance) prior to

December 31st, authorizing the sales and use tax transfer. It is imperative that the Agency has the ability to make good on its pledge to bondholders.

“My question is this: could the City, Agency and Board enter into the statutory agreements in a manner which delays the actual operation of the transfer for an identified period of time or until the City directs transfer? Could the agreements reference a zero dollar amount, which amount could be amended in future years?”

“The City’s concept in transferring the sales tax authority is to provide backup security to bondholders; therefore, the City does not wish to transfer actual sales tax dollars at this time.”

II. OPINION

Our difficulty is that, under the Bradley Burns Uniform Local [“Local”] Sales and Use Tax Law, when the Board transmits local tax revenues to a redevelopment agency, it does not merely transfer the city’s local tax revenues to the agency. Instead, it administers and enforces a tax imposed by the agency itself under the authority of Revenue and Taxation Code Section 7202.6. (Unless otherwise stated, all statutory citations are to the Revenue and Taxation Code.) Under Section 7202.5, the redevelopment agency’s tax is taken as a credit against the local taxes due to the city derived from sales occurring within the project area. Thus, the local tax rate throughout the city stays at 1.25%.

Under Section 7204, local tax revenues must be transmitted to the conforming jurisdiction from whose tax they were derived. The Board cannot enter into agreements with Agency and City to - effectively - split the revenues derived from Agency’s tax between Agency and City. Under the local tax scheme, the Board contracts with each conforming agency to administer and enforce its tax and cannot contract to administer two taxes under one agreement. Thus the Board could not agree to collect the tax on behalf of one agency yet give the revenues to another. It can only agree to transmit the revenues to the agency imposing the tax.

As I indicated over the phone, however, when Agency does with the money after the revenue is transmitted is its business. We discussed the possibility of using Government Code Sections 55700-55707, under which Agency and City could enter into an agreement by which Agency could share its local tax revenues with City. This route is subject to some procedural pitfalls however. Your research may uncover other such avenues by which Agency could supply the needed backup security to which you referred.

As you note in your letter, the Legislature has enacted AB 1290 which, in pertinent part, repeals, effective January 1, 1994, Sections 7200.1 and 7202.6. However, the bill protects the receipt of revenues under a local tax ordinance adopted, and a pledge of revenues under an agreement entered into, prior to that date. (Stats. 1993, Ch. 942, §§ 37-38.)

Ms. [H]

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December 17, 1993
700.0230

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es