STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
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Executive Director

January 14, 1994

Mr. J--- P. P---
XXXX --- --- ---
---, California XXXXX

        Re: San Benito County District Tax
                Proposition 13 Issues

Dear Mr. P---:

The State Controller has forwarded your letter to him dated December 28, 1993, to the State Board of Equalization, the agency that administers the Sales and Use Tax Law, for a response. You ask why San Benito County, in order to impose a transactions and use tax, was required to obtain the approval of only a simple majority of the voters in the recent election rather than a two-thirds majority which you believe is required by Proposition 13.

OPINION

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (§§ 6051 et. seq. & 6201 et. seq.) and the Bradley-Burns Uniform Local Sales and Use Tax (§§ 7200-7212). In 1969, the Legislature enacted the Transactions and Use Tax Law. (§ 7251 et. seq., hereinafter "District Tax".) Pursuant to various enabling statutes, local jurisdictions may impose transactions (sales) and use taxes at rates of 0.25% or 0.5% of the gross receipts from the sales within the jurisdiction of tangible personal property sold at retail or of the sales price of property whose use, storage, or consumption with the jurisdiction is otherwise subject to tax. (§§ 7261(a) & 7262(a). Although counties and a few cities may impose such taxes, for the sake of convenience, we refer to all entities imposing such taxes as "districts."

As you know, the voters added Article XIIIA (Proposition 13) to the California Constitution in 1978. Section 4 permits counties, among other governmental entities, to impose "special taxes" with the approval of two thirds of the voters voting in an election on the issue. The Supreme Court defines a "special tax" as "one levied to fund a special governmental project or program." (<u>Rider v. County of San Diego</u> (1991) 1 Cal.4th 1, 15.) In 1986, the voters approved Proposition 62, which added Sections 53720 through 53730 to the Government Code. Section 53723 allows local governments to impose taxes for general purposes with the approval of a majority of the voters voting in an election on the issue. Section 53721 defines a "general tax" as one "imposed for general governmental purposes."

In the wake of Proposition 62 the Legislature enacted Revenue and Taxation Code Section 7285, which authorizes counties to impose district taxes for general purposes with the approval of a majority of the voters voting in an election on the issue. Its constitutionality has not been challenged. <u>Monterey Peninsula Taxpayers Assn. v. County of Monterey</u> (1992) 8 Cal.App.4th 1520 involved Section 7285.5 which authorizes counties to impose taxes for special purposes with the approval of a majority of the voters voting in an election on the subject. The Sixth District Court of Appeal held there that the district tax levied by a Monterey County taxing agency under the authority of Section 7285.5 was a "special tax" under <u>Rider</u> and so invalid because it did not receive a two-thirds-majority voter approval. That case has no bearing on San Benito County's tax.

My staff reviewed the taxing ordinance at issue prior to the election. It levied the tax for general county purposes and otherwise conformed to the requirements of the district tax law. Under Article III, Section 3.5, of the California Constitution, the Board is required to enforce a county tax ordinance unless an appellate court declares it violates the constitution. Since San Benito County's ordinance appeared to conform to the requirements of Section 7285 and that section has not been declared invalid, we must presume the ordinance to be valid and enforceable.

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

Sincerely,

Gary J. Jugum
Assistant Chief Counsel

GJJ/JLW:es