




Sigrid K. Asmundson




June 30, 2008

VIA E-MAIL

Judy Mason
Save Our Hospital


Re: *Legality of Special Tax for Proposed Hospital District*

Dear Ms. Mason:

Per your June 16, 2008 letter, you requested a legal opinion regarding: (1) whether the proposed special tax of \$175, to be assessed to each unique property owner located within the proposed hospital district ("Hospital Tax"), is legal; and (2) whether a property owner who is not registered to vote in the proposed hospital district can impede the implementation of the Hospital Tax. As your letter provides, a "unique property owner" is defined as an individual who owns property within the hospital district, regardless of the size of the parcel or the number of parcels owned by that property owner. It is our understanding that the Hospital Tax would be a flat-rate tax assessed once per annum to each unique property owner.

ANALYSIS

1. THE PROPOSED HOSPITAL TAX IS LEGAL

A special district, such as a hospital district formed pursuant to the Local Health Care District Law (codified as California Health and Safety Code section 32000 *et seq.*), cannot adopt a general tax; all tax measures adopted by a special district are deemed "special taxes." (Cal. Const. Art. XIII C, § 2, subd. (a) [enacted by Proposition 218].) To adopt a special tax, the hospital district must comply with the provisions of Articles XIII A and XIII D of the California Constitution, Government Code section 50075 *et seq.*, and Government Code section 53730.01.

Article XIII A, section 4 of the California Constitution provides that special districts, "by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such" special district. Furthermore, Proposition 218 enacted Article XIII D, Section 3 to prohibit the assessment of a tax upon "any parcel of property or upon any person as an incident of property ownership except... [a]ny special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A."

The Hospital Tax is not an ad valorem property tax, which is defined as a tax based on the full cash value of real property. (Cal. Const. Art. XIII A, § 1.) Instead, the Hospital Tax is a valid special tax pursuant to Article XIII D, section 3, so long as it is approved by a two-thirds vote of the electorate.

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Through Government Code section 50075 *et seq.*, the California Legislature adopted additional provisions to regulate special taxes authorized pursuant to Article XIII A of the California Constitution. Any special district, defined as "an agency of the state, formed pursuant to general law or a special act, for the performance of governmental or proprietary functions, with limited geographic boundaries," has the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution. (Gov. Code §§ 50075, 50075.5.) The proposed hospital district, to be formed pursuant to the Local Health Care District Law, qualifies as a special district in accordance with Government Code section 50075 *et seq.*

Furthermore, Government Code section 53730.01 authorizes a hospital district to propose a special tax for the purpose of operating any hospital owned solely by such hospital district:

A hospital district established pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code whose hospitals are wholly owned and are operated by the district shall have the authority to impose special taxes pursuant to Article XIII A of the California Constitution and Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 and consistent with Article 3.7 (commencing with Section 53720). The board of directors shall determine the basis and nature of any special tax and its manner of collection.

"Special taxes" as used in this section, means special taxes which apply uniformly to all taxpayers or all real property within the hospital district.

In accordance with Government Code section 53730.01, the Hospital Tax applies uniformly to all taxpayers paying property taxes within the proposed hospital district. The Hospital Tax complies with the requirements of Government Code section 53730.01 and is a valid special tax under Article XIII A, section 4 of the California Constitution.

2. MEANS FOR PROTESTING THE HOSPITAL TAX MEASURE BY PROPERTY OWNERS

Persons owning property located within the proposed hospital district may protest the imposition of the Hospital Tax in three ways: (i) at the public hearing, to be held prior to placement of the Hospital Tax measure on the ballot; (ii) by registering to vote and voting on the Hospital Tax measure; and (iii) by bringing an election challenge to the Hospital Tax measure either pre- or post-election.

First, pursuant to Government Code section 50077, a public agency must provide public notice and hearing prior to proposing, by ordinance or resolution, the adoption of a special tax. Because the hospital district is not yet incorporated, the entity proposing the initiative, whether it is the County or LAFCO, must notice and hold the public hearing. The public hearing must be noticed twice for two (2) consecutive weeks, at least fourteen (14) days prior to the public hearing and with at least five (5) days between each publication of the notice, in a newspaper of general circulation. (Gov. Code §§ 50022.3; 6066.) Any person may submit oral or written testimony regarding the Hospital Tax prior to or at the public hearing. Both registered voters located within the proposed hospital district as well as persons located or registered outside the proposed hospital district's boundaries may submit testimony at the public hearing. The legislative body of the entity proposing the Hospital Tax shall consider, but is not bound to, the testimony prior to adopting the ordinance or resolution proposing the Hospital Tax.

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Second, only registered electors within the proposed hospital district's boundaries are eligible to vote on the adoption of the Hospital Tax.¹ Any person owning or leasing property located within the proposed hospital district has the option to register to vote prior to the election in compliance with Division 2, Chapter 2 of the Elections Code (commencing with Elections Code section 2100). However, if a property owner fails or does not qualify to register to vote at the election at which the Hospital Tax measure is proposed, that property owner cannot protest the imposition of the Hospital Tax on the grounds that he or she was unable to vote on the measure. (*Neilson v. City of California City* (2005) 133 Cal.App.4th 1296.) In *Neilson v. City of California City*, the court determined that the definition of "qualified electors" authorized to vote in an election under California Constitution Article XIII A, section 4 is limited to "registered voters" of the jurisdiction. (*Id.* at p. 1313.) The court concluded that although certain voters were not subject to the tax that they voted on (non-property owners who were residents), and some of the persons against whom the tax was assessed could not vote (property owners who were non-residents), the parcel tax against all real property within the jurisdictional boundaries of the local agency was still valid. (*Id.* at pp. 1314-1315.) As such, the Hospital Tax is valid if approved by two-thirds of the registered voters of the proposed hospital district voting in the election, even if some property owners to whom the Hospital Tax will be assessed are non-residents ineligible to vote on the Hospital Tax.

Additionally, a tax may be imposed without reference to its particular benefits to specific individuals or property. (*Fenton v. City of Delano* (1984) 162 Cal.App.3d 400.) Individuals may be taxed even if they may not benefit from the special purpose for which the tax is assessed. Thus, the Hospital Tax is valid despite the fact that it may benefit residents of the proposed hospital district to a greater degree than property owners located outside the proposed hospital district's boundaries.

Third, a property owner may protest the imposition of the Hospital Tax by bringing an election challenge to the Hospital Tax measure either pre- or post-election. A property owner would most likely bring a substantive challenge to the Hospital Tax measure to declare such measure to be invalid on constitutional or statutory grounds. To challenge the validity of a special tax, an elector may file a writ of mandamus to prohibit the placement of the Hospital Tax measure on the ballot prior to the election or, subsequent to the election, file a writ of mandamus to declare the Hospital Tax invalid as a constitutional or statutory violation. (*Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013.) However, only an elector may challenge the Hospital Tax. (*Canales v. City of Alviso* (1970) 3 Cal.3d 118.) An elector is defined as someone who is a resident of the proposed hospital district and is eighteen (18) years of age or older at least fifteen (15) days prior to the election. (Elec. Code § 321.) As such, if a property owner is not qualified to be an elector at least fifteen days prior to the election, that property owner most likely does not have standing to challenge the constitutionality of the Hospital Tax measure.

If the Hospital Tax is challenged, a court will most likely only allow it to be challenged subsequent to the election. This is because courts are generally reluctant to grant pre-election challenges. By favoring post-election challenges, the courts need not adjudicate an issue until they are clearly required to do so. As such, if the measure passes, the court will be under less of a time constraint than if required to make a pre-election determination. If the measure fails, no judicial action is necessary. This


¹ "No local government or district may impose any special tax unless and until such special tax is submitted to the electorate of the local government or district and approved by a two-thirds vote of the voters voting in an election on the issue." (Gov. Code § 53722.)

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rule generally applies when a challenge to a ballot measure is based on the alleged unconstitutionality of the substance of the proposed initiative. (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1005, citing *Senate v. Jones* (1999) 21 Cal.4th 1142, 1153.) Only where the invalidity of the measure is clear are courts more willing to intervene to determine whether the measure should be placed on, or removed from, the ballot. (*deBottari v. Norco City Council* (1985) 171 Cal.App.3d 1204.) As established above, the Hospital Tax is valid under the California Constitution and applicable statutory law. There is no clear invalidity to the Hospital Tax and, as such, a court would most likely only allow the Hospital Tax to be challenged post-election, if at all.

Please do not hesitate to contact me if you have any additional concerns.

Sincerely,



Sigrid K. Asmundson
for BEST BEST & KRIEGER LLP