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OPINION	
of	No. 83-301
JOHN K. VAN DE KAMP Attorney General	JULY 26, 1983
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THE HONORABLE NICHOLAS C. PETRIS, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

In determining the yearly amount of the business inventory subvention payable to a redevelopment agency, is the actual tax rate or an assumed tax rate of $4 per $100 of assessed value to be used for the computation?

CONCLUSION

In determining the yearly amount of the business inventory subvention payable to a redevelopment agency, the actual tax rate is to be used for the computation.

ANALYSIS

Under the Community Redevelopment Law (Health and Saftey Code, §§ 33000-33738), the governing body of a community may prepare, adopt, and implement a redevelopment plan for the elimination of blighted areas within the community. (Redevelopment Agency v. Malaki (1963) 216 Cal.App.2d 480, 482; Redevelopment Agency v. Hayes (1954) 122 Cal.App.2d 777, 800-802; Jacobs & Levine, Redevelopment: Making Misused & Disused Land Available and Usable (1957) 8 Hastings L.J. 241, 250-253.)

A redevelopment project is normally funded by what is known as "tax increment financing." Bonds are issued by the redevelopment agency to cover the costs of redevelopment. The principal and interest on the bonds are paid from a portion of all property taxes collected in the project area. As the assessed valuation of taxable property

in the project area increases due to its redevelopment, the taxes levied on such property that normally would go to the appropriate taxing agency are divided between the taxing agency and the redevelopment agency. The taxing agency receives the same amount of money it would have received based upon the assessed valuation existing at the time the project was approved, while the additional money resulting from the rise in assessed valuation goes to the redevelopment agency for repayment of the project's indebtedness. (Cal. Const., art. XVI, § 16; Health & Saf. Code, § 33670; Redevelopment Agency v. Cooper (1968) 267 Cal.App.2d 70, 72-73; 27 Ops.Cal.Atty.Gen. 352, 353-354 (1965).)

While the passage of Proposition 13 (Cal. Const., art. XIII A, §§ 1-6) in June 1978 reduced the amount of tax increment revenues available to a redevelopment agency, it did not change the basic structure of financing redevelopment projects throughout the state. (Pasadena Redevelopment Agency v. Pooled Money Investment Bd. (1982) 136 Cal.App.3d 290, 292; Schuster & Recht, Tax Allocation Bonds in California After Proposition 13 (1983) 14 Pacific L.J. 159, 176-178.)

In 1979, as part of a broad program to revise state and local taxation after Proposition 13, the Legislature granted a 100 percent property tax exemption for business inventories. (Stats. 1979, ch. 1150; see Rev. & Tax. Code, § 219.) The Legislature thus eliminated one source of property tax revenues for local governments, including redevelopment agencies. To offset the loss, the Legislature devised a plan to reimburse local governments with "subventions" paid to them from the State General Fund. (Gov. Code, §§ 16100; 16110, subd. (a).)

The question presented for analysis concerns the method by which these subventions are to be allocated to redevelopment agencies as their share of the state funds. Specifically, we are asked whether the allocation is to be based upon the actual tax rate for a redevelopment project area or upon an assumed tax rate of $4 per $100 of assessed value. We conclude that the actual tax rate provides the correct calculation.

An examination of this issue requires interpretation of interrelated statutory provisions contained in the Government Code, the Revenue and Taxation Code, and the Health and Safety Code, along with constitutional provisions relating to property tax collection limitations and redevelopment agencies.

The starting point for our discussion is Government Code section 16113. Subdivision (c) of the statute provides:

"For the 1980-81 fiscal year, and fiscal years thereafter, the amount the state shall reimburse local governmental jurisdictions for revenue loss by reason of the exemption for business inventories provided for in Section 219 of the Revenue and Taxation Code, and for livestock as provided for in Section 5523 of that code, shall be computed as follows:

"(1) For the 1980-81 fiscal year, the sum of the reimbursements for all local governmental jurisdictions within a county shall equal twice the amount of money that would have been allocated for the 1979-80 fiscal year to the jurisdictions if the inventory exemption reimbursement had been predicated on the jurisdictions' share of the proceeds from a countywide property tax rate of four dollars ($4) per one hundred ($100) of assessed valuation including the amount these jurisdictions would have received if that amount had not been subtracted pursuant to the provisions of Section 16117, plus 170 percent of the livestock exemption reimbursement for the 1979-80 fiscal year, with the resulting total sum to be increased by a percentage equal to the State Reimbursement for Inventory Tax Factor.

"(2) For the 1981-82 fiscal year the sum of the reimbursements for all local governmental jurisdictions within a county shall be equal to the reimbursement computed for the prior fiscal year, multiplied by 1.0292.

"(3) For the 1982-83 fiscal year, the sum of the reimbursements for all local governmental jurisdictions within a county shall be equal to the reimbursement computed for the prior fiscal year.

"(4) For the 1983-84 fiscal year and each fiscal year thereafter, the sum of the reimbursements for all local governmental jurisdictions within a county shall be equal to the reimbursement computed for the prior fiscal year, multiplied by the lesser of the change in cost of living for the calendar year in which the fiscal year begins or the change in California per capita personal income for the calendar year preceding the

beginning of the fiscal year for which reimbursement is to be determined, the product multiplied by the change in population of the local jurisdiction for the calendar year preceding the beginning of the fiscal year for which reimbursement is to be determined.

"'Change in California per capita personal income,' 'change in cost of living,' and 'change in population' shall have the meaning provided in Division 9 (commencing with Section 7900) of Title 1." (Italics added.)

Hence, the amount of money that the state reimburses local governments under the business inventory subvention program is based upon the assumed tax rate of $4 per $100 of assessed value. 1/

Government Code section 16113, subdivision (c), however, does not control the manner in which the state monies allocated to each county are in turn allocated to the various governmental entities within each county. It is subdivision (d) of the statute that governs the local distribution of the funds:

"With respect to the 1980-81 fiscal year and each fiscal year thereafter, each county auditor shall file a claim with the Controller on or before October 31 of each fiscal year for reimbursement to local jurisdictions for the amount computed pursuant to subdivision (c).

"Proceeds received from the Controller pursuant to these claims shall be apportioned by the auditor to local governmental jurisdictions as property tax revenues pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code." (Italics added.)

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1. The "$4 per $100 of assessed value" computation is basically equivalent to the 1% limit of "full cash value" now required by Proposition 13 (Cal. Const., art. XIII, § 1, subd. (a)), since assessments equalled 25% of market value before the constitutional limitation was imposed. (See Rev. & Tax Code, § 135; 65 Ops.Cal.Atty.Gen. 136, 137-141 (1982); Schuster & Recht, supra, at p. 166.)

Accordingly, under the applicable provisions of Government Code section 16113, we look to the Revenue and Taxation Code to determine how the subventions are to be allocated to local governmental jurisdictions, including redevelopment agencies.

The key statute of "Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code" is Revenue and Taxation Code section 97. It states:

> "For the 1980-81 fiscal year and each fiscal year thereafter, property tax revenues shall be apportioned to each jurisdiction pursuant to this section and Section 97.5 by the county auditor, subject to allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, ..."

The reference to "subdivision (b) of Section 33670 of the Health and Safety Code" controls with specific regard to redevelopment agencies - it is part of the Community Redevelopment Law and implements the "tax increment financing" mechanism for redevelopment projects. The statute provides:

> "Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called 'taxing agencies') after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:
>
> "(a) That portion of the taxes which would be produced by the <u>rate upon which the tax is levied each year</u> by or for each of the taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to the effective date of such ordinance, shall be allocated to and when collected shall be paid to the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or

agencies which did not include the territory in a redevelopment project on the effective date of such ordinance but to which such territory has been annexed or otherwise included after such effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the assessed valuation of the taxable property in the project on the effective date); and

"(b) That portion of the levied taxes each year in excess of such amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by such redevelopment agency to finance or refinance, in whole or in part such redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid to the respective taxing agencies. When such loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid.

". . . ." (Italics added.)

Consequently, Government Code section 16113 refers to Revenue and Taxation Code sections 95-100, which in turn refer to Health and Safety Code section 33670, for determining the business inventory subvention allocation for redevelopment agencies. Health and Safety Code section 33670 makes no mention of an assumed tax rate of $4 per $100 of assessed valuation but rather uses the actual tax rate set each year for the computation of the amount of the tax revenues to be allocated. It follows, then, that this same tax rate is to be used for the business inventory subvention program.

The fact that the amount of subventions paid by the state to each county for the business inventory subvention program is based upon an assumed tax rate of $4 per $100 of assessed valuation does not change our conclusion. The Legislature has simply used a convenient, uniform figure for determining its obligation to the counties. It has chosen a different formula for distribution within each county that reflects the usual treatment of subventions as property tax revenues. (See 56 Ops.Cal.Atty.Gen. 464, 467-472 (1973).) 2/

In answer to the question presented, therefore, we conclude that in determining the yearly amount of the business inventory subvention payable to a redevelopment agency, the actual tax rate is to be used for the computation.

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2. The basic effect of our conclusion is to give redevelopment agencies "off the top" a greater share of business inventory subventions due primarily to the actual tax rate reflecting an additional debt service percentage. (See Cal. Const., art. XIII A, § 1, subd. (b).) Because of the peculiar factors involved in the calculation (see Schuster & Recht, supra, at pp. 166-169), it would be difficult to assign any particular legislative intent regarding the formulas chosen.