



## Legislation Text

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**File #:** 10-0364, **Version:** 7

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Consider Serrano Associates, LLC claim for refund of Mello-Roos taxes. (Est. Time: 20 Min.)(Cont'd 8/24/10, Item 37)

Background: On July 20, 2010 the Board took the following action:

A motion was made by Supervisor Sweeney, seconded by Supervisor Knight, as follows:

- 1) Adjourn into Closed Session;
- 2) Schedule a Closed Session for Tuesday, July 27, 2010;
- 3) Continue this matter to August 10, 2010.

Background: On June 22, 2010 the Board took the following action:

This matter was continued to July 20, 2010 upon approval of the consent calendar.

Background: On April 13, 2010 the Board took the following action:

A motion was made by Supervisor Sweeney, seconded by Supervisor Santiago, as follows:

- 1) Rescind the decision made on February 23, 2010, Item 27 regarding this matter;
- 2) Set a hearing for June 22, 2010 at 2:00 p.m. to hear this matter;
- 3) Request that the taxpayer provide documents to the Clerk of the Board at least ten days prior to the hearing date; and
- 4) Direct County Counsel to work with the applicant's counsel in reference to hiring Sam Sperry as bond counsel for the parties in this matter.

On February 23, 2010, the hearing to consider Serrano Associates, LLC request for refund of Mello-Roos taxes - Revenue and Taxation Code Section 5096 was set to be heard after several prior continuances at the request of the claimant. At that time, the Board moved to direct the Chief Administrative Officer (CAO) to hire an outside auditor that was acceptable to County staff and claimant, to direct such auditor to provide a full transactional analysis of the Mello-Roos fund with an analysis of such transactions compliance with the Indenture documents on the basis that the issues to be resolved were technical calculations, and upon receipt of such analysis, the Chief Administrative Officer to transmit such analysis to bond counsel for an opinion. That motion passed resulting in the hearing being continued with agreement from the claimant, pending the results of the audit and bond counsel input as set forth in the motion.

The Chief Administrative Officer discussed with staff the issues that have been raised in the Request for Refund - Revenue and Taxation Code Section 5096, as well as examined the potential role of an independent auditor, and the roles/responsibilities of the claimant making a claim under the Indenture documents. The claim for refund of Mello-Roos taxes pursuant to Revenue and Taxation Code Section 5096 for the tax years 2000/2001 through 2008/2009 is based upon allegations that the yearly calculation of annual costs was overestimated resulting in increased special taxes upon the undeveloped portions of the Serrano project. County Counsel and the Auditor/Controller have recommended denial on the claim based upon several grounds including that the calculation of the reserve for delinquencies has been made in accordance with the Indenture documents and is not in error, and on the basis of statute of limitations time-bar.

The issues raised by the claimant in this process almost exclusively deal with issues of interpretation of and/or application of the Indenture documents rather than technical calculations for which an independent auditor review might prove helpful. Under the Mello-Roos Rate and Method of Apportionment of Special Tax (the "RMA"), interpretations for the purposes of clarifying any alleged vagueness or ambiguity as it relates to the rate, or method of apportionment, rest with the Board and would not be made by an independent auditor. Likewise the issue of whether the statute of limitations period bars the claim for one or more years is a legal issue, not an issue which an independent auditor would provide input on.

The taxpayer (claimant) has the burden to show evidence of an actionable mistake or calculation error to support their request for refund. In doing so they may retain an auditor to assist them in presenting their case. The appropriate role of an "independent" auditor would be after the taxpayer's presentation, and only if necessary to review the taxpayer's evidence and provide input to the County. Moreover, that auditor or counsel would be more appropriately chosen by the County and not have ties to the claimant or the Mello-Roos. Here although the claimant did not formally transmit suggestions for the selection of an auditor or bond counsel to the CAO directly, a draft letter from the claimant was transmitted to the auditor suggesting a specific firm that currently represents the claimant and suggesting bond counsel that has previously commented on the substance of the matter to the claimant. Neither of these suggestions was appropriate.

The parties have had several meetings between their representatives, financial experts, and counsel to discuss the issues that have been raised and have exchanged documentation on the Mello-Roos itself. Although those efforts did not resolve the matter, the issues are well known to both parties. The appropriate next step is to have the taxpayer, if they still believe an error has occurred, to proceed to the Board and present specific evidence to support a claim of errors. If necessary, County Counsel may then hire bond counsel or other counsel with the Board's concurrence to evaluate the evidence presented or issues raised by the claimant.

Upon reconsideration by the Board of their original action, the Chief Administrative Officer recommends that the Board direct the Board Clerk to reset the hearing on the claim for refund, and notify the claimant of their obligation to provide evidence of a mistake/clerical error in the calculation of their special tax at that hearing.