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(916) 445-4588

December 13, 1981

Mr. Ernest R. Eaton
Chief Appraiser
Plumas County Assessor's Office
P.O. Box 1016
Quincy, CA 95971

Dear Ernie:

Recently a problem has arisen concerning the taxability of privately owned land that is leased to a local fire district for 99 years.

Since the property is leased rather than owned by the local government entity, the property is not exempt from property taxation under Article XIII, Section 3 (b) of the California Constitution.

Notwithstanding the fact the 99 year lease does not make the fire district the owner of the property, such a lease does constitute a change in ownership under Section 61(c) of the Revenue and Taxation Code. Accordingly, this will require that the property be reappraised when this change occurs.

Very Truly yours,

Glenn L. Rigby
Assistant Chief Counsel

GLR:fr

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section



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November 9, 1992

The Honorable R. Gordon Young, Assessor
County of San Bernardino
Attn: Mr. , Assistant Assessor
Hall of Records
172 W. 3rd St.
San Bernardino, CA 92415-0310

In Re: Lease to a Tax Exempt Governmental Agency.

Dear Mr. :

This is in response to your October 28, 1992, letter to Mr. Les Sorensen wherein you requested our opinion as to whether as the result of a leasehold interest in private airport property acquired under a long term lease of 35 years or more, the property would be exempt from taxation under the provisions of Revenue and Taxation Code Sections 202 and 5081 et seq.

For purposes of our analysis, you stated that the Airport, a corporation composed of property owners surrounding the airport, is proposing to lease to a special district for a term of more than 35 years the privately-owned airport property. The rationale behind this transfer is that if the creation of a long-term lease should constitute a change in ownership whereby the special district rather than the corporation becomes the present beneficial owner, then the property would be exempt from taxation, resulting in a savings to the district. For the reasons hereinafter explained, we have consistently taken the position that the creation of a leasehold interest in taxable real property for a term of 35 years or more does not create or transfer "ownership" of the property for tax exemption purposes.

As you are aware, most exemptions from property tax are found in Article XIII of the California Constitution and in the Revenue and Taxation Code Sections 202-233. When Proposition 13, Article XIII A of the Constitution, was enacted, the exemptions

remained in effect. Thus, real property that was partially or wholly exempt under Article XIII prior to Proposition 13 remains so, unless and until the voters legislate otherwise through another constitutional amendment. As such, Proposition 13 does not directly affect any of the property tax exemptions.

Sections 5081 et seq. are statutory provisions permitting the cancellation of taxes on properties acquired by exempt state, county or local governmental entities, including special districts. Under R & T Code §202(4), the governmental entity acquiring such property must be the "owner" of the property for exemption purposes. The "owner" of the property must hold the value of the entire fee. (See City of Desert Hot Springs v. County of Riverside (1979) 91 Cal. App.3d 441.) This standard is not the same as the change in ownership concepts under Proposition 13. For change in ownership purposes under Section 61(c)(1), "ownership" includes possession of a leasehold interest in property for a term of 35 years or more. In City of Desert Hot Springs v. County of Riverside, Id., page 449, the court clearly distinguished the difference by explaining,

It is also well established that when there is a lease to a tax-exempt governmental agency, of land owned by a private owner, the owner is not entitled to have the agency's possessory interest segregated from the owner's reversionary interest, but the owner is properly assessed with the entire value of the property.

Citing another case with a similar set of circumstances to the proposal here, the court noted,

In Rothman v. County of Los Angeles, supra, 193 Cal. App.2d 552, the county had possession under a long term lease from a private owner-lessor. The court...held that the taxes were properly assessed to the owner of the entire fee.

Based on the foregoing, we again conclude that leasehold interests are not "ownership" interests for exemption purposes. Consequently, the proposed lease of the Airport property for a term of 35 or more years to a special district would not vest "ownership" of the entire fee in the district for purposes of tax exemption under Sections 202 and 5081.

November 9, 1992

The views expressed in this letter are, of course, advisory only and are not binding on your office or on the assessor of any county. Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Very truly yours,

/s/ Kris Cazadd

Kristine Cazadd
Tax Counsel

cc: Mr. E. L. Sorensen, Jr.
Mr. John Hagerty
Mr. Verne Walton

Airport.exm



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January 10, 1994

Mr. Daniel M. Hallissy
Chief, Standards Division
Contra Costa County Assessor's Office
834 Court Street
Martinez, CA 94553-1795

Dear Dan:

This is in response to your letter of August 16, 1993 requesting our views regarding the decision in *Mayhew Tech Center, Phase II v. County of Sacramento* (1992) 4 Cal.App.4th 497. I regret that workload commitments have prevented a more timely response.

Your letter indicates that there are a number of Contra Costa County facilities which are leased by the County from either a Public Facilities Corporation or from a private individual under circumstances which are similar to those described in the *Mayhew Tech Center* case. As examples, your letter provided two facility leases, one with a Public Facilities Corporation and another with a private individual. In both cases, you state that the leases provide that title shall either vest or be granted to the county upon termination of the lease. In both cases, you indicate that the county has the beneficial interest in the property.

Your letter asks whether the property involving the private individual may qualify for the welfare exemption under Revenue and Taxation Code section 231, in light of the *Mayhew Tech Center* case. You also ask whether the property would be eligible for "non-tax status rather than tax exempt status" if the county is the beneficial owner?

While I have not attempted to exhaustively review the leases you submitted, it does appear that they are quite similar to the arrangements described in the *Mayhew Tech Center* case.

The lease with the Public Facilities Corporation provides, in section 8.06, page 29, that upon termination or expiration of the lease title to the project and the demised premises shall vest in the county and the corporation shall execute such conveyances, deeds, etc. as may be necessary

to effect such vesting. The lease also recognizes that, at least in certain circumstances, the county has an equity interest in the property. This is reflected in section 7.01, page 24, which provides that in the case of a taking of the property by eminent domain, any award made shall be applied first to payment of the required rental payments and after all of the required payments are made, the balance shall be paid to the county. Similar provisions are found in the facility lease involving the private individual. See section 20, page 20-21, dealing with vesting of title upon termination of the lease and section 12, page 16-17, dealing with eminent domain.

For your reference, I have included a copy of the *Mayhew Tech Center* decision. This decision deals with the acquisition by the State of California of a new facility for the Franchise Tax Board in Sacramento. Under the terms of the lease-purchase agreement, the state was required to make specified rental payments over the life of the lease. The state was responsible for all maintenance and repair of the property and any insurance proceeds were available to the state for those purposes. The state was responsible for utilities and services provided on the property and agreed to pay any taxes and assessments levied on it. The title to the property vested in the state automatically at the end of the lease term if the state had made all required rental payments.

The court concluded at pages 504-507 that the property was exempt from property taxation pursuant to section 3 of Article XIII of the California Constitution, because it was property owned by the state. Recognizing that a title clause standing alone is not conclusive of ownership for tax purposes, the court concluded that the state held the essential indicia of ownership and thus, was the equitable owner of the property. In support of its conclusion that the state held the essential indicia of ownership, the court pointed to the facts that the state held the exclusive right to occupy and use the facility and that the lease provided for automatic vesting of title in the state at the expiration of the lease if all rental payments were made. Further, under the terms of the agreement any equity in the property belonged to the state, since even in the event of default, the state would receive the funds remaining after sale of the property and payment of the lienholders. Thus, the state was the beneficial owner, both in practical and legal sense, since it had possession and use of the property to the complete exclusion of all others, subject only to the state's own default and the remedies which could result.

In short, the court found that the true owner of the property was the state, even though legal title resided in the lessor. Since the property was beneficially owned by the state, it was properly treated as a state-owned property for purposes of the constitutional exemption extended by section 3 of Article XIII.

Since section 3 of Article XIII exempts both property owned by the state and property owned by a local government (section 3, subdivisions (a) and (b)), it is reasonable to conclude that the court would have reached the same conclusion had the County of Sacramento, rather than the State of California, been the beneficial owner of the property. Thus, where the property is beneficially owned under a lease-purchase agreement, by either the state or a local

government, the property is exempt from property taxation (subject, of course, to the provisions of section 11 of Article XIII.)

The determination of beneficial ownership is a question of fact which depends upon the terms of each agreement. It is the assessor's responsibility to make the initial determination of beneficial ownership in any given case. If the assessor determines that, under the particular agreement, the government lessee holds the essential indicia of ownership, then the assessor would be justified under the holding of the *Mayhew Tech Center* decision in treating the property as exempt from property taxation. If the government lessee is the actual owner of the property, then it would appear that the property is exempt regardless of whether legal title to that property is held by a public facilities corporation or a private individual. Since the property is owned by the lessee, rather than the lessor, the nature of the lessee would be immaterial for purposes of determining qualification for the exemption under section 3.

Although I have not attempted to directly address the two questions you presented, I believe I have responded to the essential issue which your questions raised. If, in fact, Contra Costa County is the beneficial owner of the property leased from the private individual, that property is exempt and there is no need to consider whether it would qualify for the welfare exemption under Revenue and Taxation Code section 231. The same holds true for property leased from the Public Facilities Corporation.

I trust that the following adequately addresses your concerns. I have taken the liberty of returning to you the two sample leases that were included with your request.

The views expressed in this letter are, of course, advisory in nature. With respect to any particular facilities arrangement, you may wish to consult with your county counsel on the issue of whether the terms of the arrangement vest in the county the essential indicia of ownership.

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

Richard H. Ochsner
Assistant Chief Counsel

RHO:ba
Enclosures

cc: Mr. John Hagerty - MIC:63
Mr. Verne Walton - MIC:64

Mr. Daniel M. Hallissy

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January 10, 1994

Ms. Jennifer Willis - MIC:70
Mr. Ken McManigal
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