State of California

490.0045

Board of Equalization

Memorandum

To : Mr. Verne Walton

Date September 17, 1987

From : Eric F. Eisenlauer

Subject: City of Palm Springs Redevelopment Agency Letter (May 21, 1987)

This is in response to your memorandum to Mr. Richard Ochsner dated August 12, 1987 in which you request that we review the above-referenced letter from [redacted].

The letter describes the following arrangement regarding the development of a convention center for the City of Palm Springs (hereinafter referred to as "City"):

> The underlying land for the convention center, the adjacent headquarters hotel, and a second hotel site is owned by members of the Agua Caliente Band of Mission Indians and, therefore, is assumed to be tax exempt for purposes of this discussion. In order to share the financial benefits of the hotels and relative financial shortcomings of the convention center from a lessor's standpoint, the Indians required a master lease covering the three sites.
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> The master lease is with the developer of the headquarters hotel, SENCA Palm Springs, Inc. which we assume is not an organization exempt from taxation. The term of the lease is 74 years, starting January 1, 1985, and ending December 31, 2059. There is an option to extend the lease for an additional 25 years. The lease rate includes a minimum rent based on land value against a percentage of hotel, food and beverage sale and commercial sublease revenue.... The convention center is generally excluded from the percentage rental since its operations do not include many of the items listed above. The convention center and two hotels are on three separate assessment parcels.
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> The convention center building is being developed and will be owned by City's Public Facilities Corporation, a legal entity created by the City Council. The Public Facilities Corporation has the ability to enter into the long-term financial arrangements necessary to sell bonds to build the center, which could not be done directly by City, itself.

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Precedent

There is a sublease between SENCA and the Public Facilities Corporation for the convention center site which passes through the terms of the master lease.

The convention center will be operated by City. To provide for this arrangement, there is a sub-sub-lease between the Public Facilities Corporation and City which also passes through the terms of the master lease.

You indicate that a member of your staff is prepared to respond to Mr. that based upon the foregoing facts the site on which the convention center is now being built is assessable as a possessory interest to the developer, SENCA, and that the convention center itself is not taxable since it is owned in fee by City's Public Facilities Corporation (City, itself).

We don't agree that the ownership of the convention center improvement by City's wholly owned corporation is attributable to City thus making the improvement tax exempt. Although there are no California cases deciding this issue for purposes of property tax exemption, it is well established that a corporation is an entity which is legally distinct from its shareholders and that the latter own neither the corporate property nor the corporate earnings. Miller v. McColgan (1941) 17 Cal.2d 432, 436. The Board took this position in 1980 in denying the petition for reassessment of San Diego and Arizona Eastern Railway Co. which contended that the corporate entity should be disregarded for purposes of applying section 3(b) of article XIII of the California Constitution.

Also, if Public Facilities Corporation were deemed to be the City, itself, rather than an entity separate and distinct from City, it would be subject to the same debt limitations as City. Since the facts indicate that Public Facilities Corporation is not subject to such debt limitations, it follows that PUblic Facilities Corporation is a separate entity from City.

It is, therefore, our view that the corporate entity formed by City must be treated as an entity separate and apart from City. Thus, property owned by the corporation cannot be deemed to be owned by City without legislation so providing. An example of such legislation is AB 892 (Peace), (see also Revenue and Taxation Code sections 201.1 and 201.2) which would provide that property which is devoted exclusively to public purposes and is owned by a nonprofit entity in which a chartered city with a population of over 750,000 has the sole ownership shall be deemed property owned by the chartered city. By its express terms, this legislation would not apply to City because its population is less than 750,000. However, it does indicate the

necessity of legislation to bring property which is owned by an entity wholly owned by a city within the exemption provided by article XIII section 3(b).

While there is no such statutory provision which expressly applies to City now in effect, Revenue and Taxation Code section 231 may be applicable. That section exempts from taxation "[p]roperty which is owned by a nonprofit corporation and leased to, and used exclusively by, government for its interest and benefit" if certain requirements are met. It is not clear from the information provided whether the requirements of section 231 are or will be met in this case. Unless it can be established that section 231 applies, we are of the opinion that the convention center improvement is taxable.

If section 231 is found to be applicable, a question arises whether the possessory interest in the convention center site is exempt under section 231. Section 231(c) provides that "[a]s used in this section, 'property' does not include any possessory interest of any person or organization not exempt from taxation." Since SENCA is the owner of the possessory interest in the convention center site and since SENCA is an organization not exempt from taxation, the possessory interest is not "property" of Public Facilities Corporation for purposes of section 231 and is, therefore, taxable in any event.

Further, although we agree that the possessory interest in the land underlying the convention center site is properly assessable to SENCA, it is also properly assessable to Public Facilities Corporation under Revenue and Taxation Code section 405. See Tilden v. Orange County (1949) 89 Cal.App.2d 586 which held that an assessment of a taxable possessory interest to a sublessee in possession is valid. See also LTA No. 86/12 dated January 28, 1986, wherein we took the position that a supplemental assessment resulting from a sublease of a possessory interest was properly assessable to the sublessee.

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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson

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State of California

Board of Equalization
Legal Division

Memorandum

Mr. Richard Johnson
MIC: 64

Date: May 16, 1996

From: Janet Saunders
Staff Counsel

Subject: Water Company

This is in response to your February 15, 1996 memorandum to Larry Augusta. You asked whether the Water Company was exempt from taxation based on its connection with the City of (City) and the Public Finance Authority (Authority). The answer is - no; there is no applicable exemption. The Water Company is a corporation, a legal entity separate from the City, the Redevelopment Agency of the City, and the Authority; thus, the tax exemption available to the City, the Redevelopment Agency of the City, and the Authority as local governments is not available to the Water Company.

FACTS

The City and the Redevelopment Agency of the City formed the Authority as a joint powers authority for the purpose of issuing bonds and accomplishing the transactions described herein. Authority then established a corporation, the Public Improvement Corporation, and that corporation purchased the Water Company on or around July 27, 1993.[1] The Public Improvement Corporation then changed its name to the Water Company. On March 22, 1994, Water Company converted from a for-profit California corporation to a nonprofit public benefit corporation and on September 28, 1994, it received tax exempt status under Internal Revenue Code § 501(c)(3).

LEGAL ANALYSIS

A change in ownership occurred on July 27, 1993 pursuant to the purchase and a change in control of the Water Company; thus, the property should be reassessed as of that

[1] This acquisition date is set forth on the form "Statement of Change in Control and Ownership of Legal Entities."

date and is subject to tax if it is not exempt. The next question is - is the property owned by the Water Company exempt from taxation?

The Water Company is controlled by Authority. Authority, a joint powers agency, was formed pursuant to Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code to exercise the powers authorized under Article 4 thereof, the Marks-Roos Local Bond Pooling Act of 1985, and is a considered a public agency pursuant to Government Code § 6500. There is a tax exemption for lands owned by local governments and the City, as a local government, and the Redevelopment Agency and the Authority, as public agencies, are exempt from paying property taxes for the lands they own within their boundaries. The California Constitution, Article XIII, section 3, subdivision (b) provides in pertinent part:

> [The following are exempt from property taxation:]
>
> * * *
>
> (b) Property owned by a local government, except as otherwise provided in Section 11(a). (Emphasis added.)[2]

While the term "local government" is not specifically defined by statute or in the Constitution, it is the caption of Article XI of the California Constitution; Article XI addresses the legal subdivisions of counties and cities. "The principal local governing entities, as provided for in the constitution and the Government Code, are the city and the county." 45 Cal Jur 3d, Municipalities § 2. The exemption for public property is liberally construed to include other political subdivisions of the State. Sacramento Municipal Utility District v. Sonoma County (1991) 235 Cal. App. 3d 726.

The next question is whether the Water Company is entitled to the same tax exemption which is available to the City, the Redevelopment Agency, and the Authority. Again, the answer is in the negative. Although the City, the Redevelopment Agency, and the Authority have control over the Water Company, the water company is a corporation and is a separate legal entity. The "separate entity" theory

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[2] Section 11(a) of Article XIII of the California Constitution excludes from exemption local government owned properties outside local government boundaries.

is a concept in our general law, and in property tax law in particular, that corporations, partnerships, joint ventures, associations, and other legal entities have identities apart from those of the owners. A corporation is distinct from other legal entities, notwithstanding that there may be a relationship between a particular corporation and another legal entity or entities. Thus, that Authority controls Water Company and that the City and the Redevelopment Agency control Authority is not a sufficient relationship to confer the tax exempt status of the City and the Redevelopment Agency or of the Authority on the corporation. In forming a corporation that is not a political subdivision of the State, the City and the Redevelopment Agency and the Authority have decided to operate through a separate legal entity; one consequence of such decision is that the corporation is not eligible for the local government tax exemption. Further, it is noted that Revenue and Taxation Code § 19 defines a "person" to include any corporation; a "person" is not a political subdivision of the State and is not eligible for the tax exemptions applicable to properties of local governments.

As to possible exemptions for the corporation itself, there are a limited number of statutory exemptions which provide for exemptions for properties of certain nonprofit entities formed by local governments and which are set forth in Revenue and Taxation Code §§ 201.1 through § 201.5.[3] However, the facts presented in this matter are not within any of these statutory exemptions.

There is also the welfare exemption in § 214 which provides that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if specific requirements are met. Whether the corporation meets all the requirements is unknown. It does meet the tax letter requirement of § 214.8 with its Internal Revenue Code § 501(c)(3) income tax exemption letter, but § 214.8 expressly provides that § 214.8:

> shall not be construed to enlarge the "welfare exemption" to apply to organizations qualified under Section 501(c)(3) of the Internal Revenue Code of 1954 but not otherwise qualified

[3] All statutory references are to the Revenue and Taxation Code unless otherwise specified.

for the "welfare exemption" under other provisions of this code.

Thus, unless and until the corporation claims the welfare exemption for its property, the availability of the exemption will be undetermined.

CONCLUSION

Because the Water Company is a corporation, a legal entity separate from the City, the Redevelopment Agency and the Authority, it is not a local government and is not eligible for a tax exemption on the basis of its being a local government.

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cc: Mr. James Speed - MIC:63
Mr. Gene Palmer - MIC:64
Ms. Colleen Dottarar - MIC:64
Ms. Jennifer Willis - MIC:70