Index under Art XIII Sec 11

(916) 445-6453

March 21, 1983

Mr. James Maples
Kern County Assessor
1415 Truxtun Avenue
Bakersfield, CA 93301

Attention: Mr. Jerry Mayfield
Senior Appraiser
Assessment Standards Division

Dear Mr. Mayfield:

Your letter of December 7, 1982 and attachments disclose the following facts with respect to which you request our opinion.

In 1979, the City of Bakersfield (City) acquired certain agricultural land located outside the City boundaries through eminent domain proceedings. The City subsequently leased the land for farming purposes until July 1981 at which time the City cancelled the lease. During that period, the City paid property taxes to Kern County in accordance with Section 11(a), Article XIII of the California Constitution. On November 18, 1981, the City entered into a Land Application Agreement and Lease with Busch Industrial Products Corporation (BIPC) with respect to the land which is located adjacent to the City's Wastewater Treatment Plant No. 3 (WTP3).

Under the terms of the Agreement and Lease, BIPC will dispose of not more than an average of 650,000 gallons per day of its industrial effluent and apply it directly to the leased land as a soil nutrient for the growing of turf, grasses, and similar crops not intended for human consumption. Under this arrangement, the industrial effluent of BIPC will not be processed through WTP3 which, because of the expense of processing the effluent, is an economic benefit to the City. Accordingly, the City will pay an effluent disposal charge to BIPC of $100,000.00 annually until 1992. From 1992, the City will pay $86,000.00 annually through December 31, 2002 at which time the original term of the Agreement and Lease

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terminates. Provision is made for a ten year extension with different terms. During the original term, BIPC is obligated to pay $1.00 annual rent to the City. The City is obligated to provide to BIPC treated effluent from WTP3 in certain quantities for irrigation purposes. At present, alfalfa is being grown on the land.

With respect to the foregoing facts, you ask the following questions:

1. Can a possessory interest exist upon a taxable publicly owned property, as described above, that is subject to the provisions of Section 11(a) of Article XIII of the State Constitution within the meaning(s) of Section 11(e), (f) of Article XIII of the State Constitution?

Answer: Yes. Property Tax Rule 21(b) provides in part that:

> "'Taxable possessory interest' means a possessory interest in ~~a~~ taxable publicly owned real property subject to the provisions of Sections 3(a), (b), and 11, Article XIII of the Constitution."

Sections 11(e) and (f) of Article XIII provides:

> "(e) No tax, charge, assessment, or levy of any character, other than those taxes authorized by Sections 11(a) to 11(d), inclusive of this Article, shall be imposed upon one local government by another local government that is based or calculated upon the consumption or use of water outside the boundaries of the government imposing it.
>
> "(f) Any taxable interest of any character, other than a lease for agricultural purposes and an interest of a local government, in any land owned by a local government that is subject to taxation pursuant to Section 11(a) of this Article shall be taxed in the same manner as other taxable interests. The aggregate value of all the interests subject to taxation pursuant to Section 11(a), however, shall

> not exceed the value of all interests in the land less the taxable value of the interest of any local government ascertained as provided in Sections 11(a) to 11(e), inclusive, of this Article."

From the foregoing, it is clear that a taxable possessory interest can exist here unless the lease to BIPC is characterized as a lease for agricultural purposes.

2. If a possessory interest can exist (and does), would the production of turfgrass fall within the scope of the meaning of the phrase, "...other than a lease for agricultural purposes and an interest of a local government,..." as stated in Section 11(f) of Article XIII of the State Constitution?

Answer: Section 11(f) of Article XIII was formerly Section 1.68. It was rewritten in 1974 and retained the substance of former Section 1.68. (See Task Force Report, page 22.) Section 1.68 was added to Article XIII by California voters in 1968. I can find nothing in the legislative background of these amendments to indicate what was intended by use of the words "agricultural purposes" in Section 11(f). I can only assume, therefore, that the words were intended to have their ordinary meaning. City of Pasadena v. County of Los Angeles, 182 Cal. 171, 175.

The question then is whether growing turfgrass falls within the ordinary meaning of "agricultural purposes". In Nunes Turfgrass, Inc. v. County of Kern, 111 Cal. App. 3d 855, the court held that turfgrass is similar to nursery stock and falls outside the growing crop exemption. "Turf" is also categorized as nursery stock by the Agricultural Code (Ag. Code Section 53313).

In Hagenburger v. City of Los Angeles (1942) 51 Cal. App. 2d 161, the court held in a zoning ordinance case where certain property was zoned for "farming" that the growing of nursery stock was within the meaning of the word "farming" as used in the ordinance.

The court equated "farming" with "agriculture" on page 164:

> "Webster defines 'farming' as the act or business of cultivating the land; the business of tilling the soil; to produce crops or animals on a farm. He defines

> a farm as a plot or tract of land devoted to the raising of domestic or other animals; as a chicken farm; a fox farm; a tract of land devoted to agricultural purposes. 'Agriculture' he defines as the art or science of the production of plants and animals useful to man or beast; it includes gardening or horticulture, fruit growing, and storage and marketing. The terms farming, husbandry and tillage are said to be synonymous of or equivalent of the term agriculture." (Emphasis added.)

From the foregoing, it can logically be argued that since turf is nursery stock, and since the growing of nursery stock has been held to be "farming" and since farming is synonymous with "agriculture", it follows that a lease for the growing of turf is a lease for agricultural purposes. This conclusion is supported by Agricultural Code Section 23 which provides:

> "Inasmuch as the planned production of trees, vines, rose bushes, ornamental plants and other horticultural crops is distinguishable from the production of other products of the soil in relation to the time elapsing before maturity, plants which are being produced by nurseries shall be considered to be 'growing agricultural crops' for the purpose of any laws which pertain to the agricultural industry of this state."

Moreover, in addition to turf, the lease in this case provides for the growing of grasses and similar crops. Currently, the land is planted to alfalfa which nobody would seriously contend is not an agricultural pursuit notwithstanding the fact that alfalfa, like turf, has been held not within the "growing crop" exemption. Miller v. County of Kern, 150 Cal. 797. Accordingly, it is my opinion that the lease to BIPC is not other than a lease for agricultural purposes.

3. Upon review and analysis of all of the foregoing, does the current lease agreement constitute a taxable possessory interest upon the city-owned property?

Answer: Since I have concluded in 2, above, that the lease to BIPC is not other than a lease for agricultural purposes, BIPC's leasehold is not a taxable possessory interest under Section 11(f) of Article XIII.

4. Does the classification of turf grass have an effect on the validity of a possessory interest assessment in light of the Nunes Turfgrass, Inc. v. County of Kern decision?

Answer: As indicated above, Nunes held that turf grass is similar to nursery stock and falls outside the growing crop exemption. As such, it is personal property of the lessee. See Story v. Christin, (1939) 14 Cal. 2d 592. As I concluded earlier, however, I don't believe that a lease which permits the growing of turf, grasses, and similar crops is "other than a lease for agricultural purposes".

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

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