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Executive Director

April 2, 1998

Honorable Gary L. Orso
Riverside County Assessor
P.O. Box 12004
Riverside, CA 92502-2204

Attn: Ms. Cathy Colt

Re: Air Museum

Dear Ms. Colt:

I am writing in response to our recent telephone conversation in which you requested our opinion with respect to the following facts:

1. An air museum is operated by a non-exempt owner.
2. The air museum is leasing space at a United States Air Force base under circumstances that satisfy the requirements for a "possessory interest" under section 107 of the Revenue and Taxation Code.

Under the above facts, the question that arises is as follows: Whether or not the air museum has a taxable possessory interest in the leased property?

As set forth in Property Tax Rule 21: "Excluded from the meaning of 'taxable possessory interest' is any possessory interest in real estate located within an area to which the United States has exclusive jurisdiction concerning taxation. Such areas are commonly referred to as federal enclaves." Thus, while possessory interests held by lessees or other users of federal property are generally taxable, those possessory interests that are held by lessees or other users in property within a federal enclave are not. A federal enclave is property over which the federal government holds exclusive jurisdiction.

Article I, section 8, clause 17 of the United States Constitution provides that Congress is empowered to "exercise exclusive Legislation in all Cases whatsoever . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Ansenals, Dock-Yards, and other needful Buildings." (See

McFarlin v. Benny Y. (1980) 101 Cal.App.3d 178. 180. ¹ This provision has been applied to invalidate taxes imposed upon property located in federal enclaves. (*Surplus Trading Co. v. Cook* (1930) 281 U.S. 647; *U.S. v. Mississippi Tax Commission* (1973) 415 U.S. 363.)

As it is located on an Air Force base, the instant property leased to the air museum may be located within a federal enclave, over which, as indicated above, the federal government has exclusive jurisdiction. The issue of whether not the Air Force base is, in fact, within an area of exclusive federal jurisdiction so as to proscribe any state of local property taxation turns on the date that the federal government acquired the land upon which the base was constructed. Generally speaking, cessation of property from California to the federal government for military bases did not reserve to the State the power of taxation prior to 1939. In that year, the predecessor of section 126(e) of the Government Code was enacted, which reserves to the State the power of taxation as to any later transfer. Unless such reservation is made at the time of ceding the land to the United States, the jurisdiction of the federal government is exclusive and a tax cannot be asserted against any possessory interest without express congressional authorization. (U.S. Const., art 1, §8, cl.17.) An example of such authorization is illustrated in *Offut Housing Corp. v. Sarpy County* (1956) 357 U.S. 253; see also *DeLuz Homes. Inc. v. County of San Diego* (1955) 45 Cal.2d 546.

In making a determination of whether or not federal government has exclusive jurisdiction over the instant Air Force base, your first inquiry should be to determine when the property upon which the base was construed was first ceded to the United States. This information can be obtained from the State Lands Commission. If the property was ceded after 1939 with the limitation of section 126(e) of the Government Code was reserving the power of local taxation, any possessory interest held by the air museum on such property would be taxable possessory interest. If, on the other hand, the land was ceded prior to 1939, then, in the absence of express congressional authorization, any possessory interest held by the air museum on the base would not be taxable; instead it would be immune from local property taxation.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Please call me if you have any questions.

Very Truly Yours,

Robert W. Lambert
Senior Tax Counsel

RWL:jd

cc: Mr. Dick Johnson, MIC: 63
Mr. Rudy Bishop, MIC: 64
Ms. Jennifer Willis, MIC: 70

¹ In 1940, the Buck Act “waived exclusive territorial jurisdiction over federal enclaves as an impediment to state sales or use taxes.” (*C.R. Fedrick Inc. v. SBE* (1988) 204 Cal.App.3d 252.258.) No such waiver has been enacted as to property taxes on possessory interests on federal enclaves.