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February 24, 1989

Mr. Adolfo Porras, Chief Appraiser
 County of San Bernardino
 Office of Assessor
 172 West 3rd Street
 San Bernardino, CA 92415-0310

Dear Mr. Porras:

Re: Possessory Interest in Needles Desert Community Hospital

This is in response to your letter dated January 11, 1989. You ask if the operator of the city-owned Needles Desert Community Hospital has a taxable possessory interest in that city-owned property.

A taxable possessory interest (PI) is a possessory interest in nontaxable publicly-owned real property. (Cal. Admin. Code, Title 18, § 21(b); U.S. v. County of Fresno, (1975) 50 Cal.App.3d 633, p. 638.) A PI in government property arises when the user has sufficient rights or interest in the use, possession and enjoyment of the property to elevate that interest to property rights subject to assessment. Each case is decided on a case-by-case basis (Pacific Grove-Asilomar Operating Corp. v. County of Monterey, 43 Cal.App.3d 675, p. 692), but the general guiding rule in deciding whether a PI becomes taxable is to weigh the factors of exclusiveness, independence, durability and private benefit of the possessory rights against relative impermanence, subjection to control and public participation. (Wells National Services Corp. v. County of Santa Clara, (1976) 54 Cal.App.3d 579; Pacific Grove-Asilomar Operating Corp. v. County of Monterey, *supra*; Mattson v. County of Contra Costa, (1968) 258 Cal.App.2d 205.)

*Not all occupancies or uses of tax-exempt government-owned lands or improvements by private individuals are taxable as possessory interests. To give rise to a taxable possessory interest, the right of possession or occupancy must be more than a naked possession or use; it must carry with it either by

express agreement or tacit understanding of the parties, the degree of exclusiveness necessary to give the occupier or user something more than a right in common with others, or in the case of employment, something more than the means for performing his employer's purpose, so that it can be said, realistically, that the occupancy or use substantially subserves an independent, private interest of the user or occupier." (U.S. of America v. County of Fresno, (1975) 50 Cal.App.3d 633, p. 638.)

The pivotal question here is whether Samaritan Health Service (SHS), the operator of the hospital, is an agent of the city or whether it is an independent operator. An agent or representative is liable for the taxes assessed him only in his representative capacity, and property exempt in the hands of a principal remains exempt in the hands of the agent. A principal and agent relationship between government and the operator is established by evidence that a management agreement between the parties sets forth sufficient specific controls by the principal (government) such that the agent is said to not have independent usufructuary use of the property (Pacific Grove-Asilomar Operating Corp. v. County of Monterey, 43 Cal.App.3d 675). If the operator has usufructuary use of the property, as evidenced by sufficient operational independence, then the operator can be said to have a taxable possessory interest in the property.

I have examined the operating agreement you sent and have concluded that SHS has sufficient independence in its use of the property to elevate such use to a taxable possessory interest. For example, the operator is given the power to manage and operate the hospital (agreement, paragraph 1.1) according to standards set by the American Hospital Association (agreement, paragraph 2.5B) and prudent standards for professional, competent health care (agreement, paragraph 2.5D); establish the structure of rates and charges for the use of the hospital so that the hospital is operated on a sound fiscal basis (agreement, paragraph 2.5E); hire and fire all employees of the hospital (agreement, paragraph 2.5F); furnish or appoint an administrator for the hospital (agreement, paragraph 2.5G); establish and maintain rules, regulations, schedules and procedures in the operation of the hospital (agreement, paragraph 2.5I); pay certain described monies to the city for the operator's use of the hospital and hospital equipment (agreement, paragraph 2.0); receive monies from the city to meet the hospital's on-going general operating expenses (agreement, paragraph 2.0C); receive money for administrative expenses from the hospital's operating revenues (agreement, paragraph 2.2); share in the annual positive net operating income generated by the hospital operation (agreement,

paragraph 2.3); pay to the city the balance of the net operating income remaining after receipts by the operator (agreement, paragraph 2.4); maintain the premises in the same order, repair, maintenance and condition as exists at the time of the agreement (agreement, paragraph 2.8); pay all necessary operating utilities used upon the facilities (agreement, paragraph 2.7); make repairs, alterations, additions, or improvements to the real property where the value or cost does not exceed \$12,500 (agreement, paragraph 3.2); keep books and records of the operation of the hospital (agreement, paragraph 3.4); determine the need for replacement of budgeted capital assets used in and about the hospital (agreement, paragraph 3.5); pay all ad valorem taxes and assessments lawfully levied on the hospital property (agreement, paragraph 3.6); maintain adequate and complete medical records for all hospital patients (agreement, paragraph 4.3); make the final decision concerning who may or may not be appointed to the medical staff of the hospital (agreement, paragraph 4.4), just to name the major elements indicating the operator's independence.

The agreement between the operator, SHS, and the city, gives the operator sufficient independence of use of the property to raise the operator's possession to a taxable possessory interest. The agreement does not demonstrate the city to have retained sufficient control of the operator to cause the operator to be an agent of the city (in which event, the operator would enjoy the exempt status of the city).

I have also reviewed the letter by the operator's attorney to Mr. Tom O'Donnell dated December 22, 1988. The operator's attorney is mistaken in the belief that the hospital property is exempt from taxation under the various California constitutional and code sections cited. The SHS property interest in the hospital is not exempt under article XIII, section 3 of the California Constitution as public property, governmental bonds, libraries, museums, schools, church property, cemeteries, crops, immature trees, etc.; because the taxable interest here is a possessory interest and not any of the property enumerated by the operator's attorney. The property is not exempt under Revenue and Taxation Code section 202 as a crop, library, museum, educational facility or public property; because the taxable interest here is a possessory interest and not one of the enumerated properties. The property is not exempt under the welfare exemption set forth in Revenue and Taxation Code section 214, because there is no evidence that the operator has filed and qualified for such an exemption with the local assessor and the State Board of Equalization. We advance no opinion at this time whether the operator may or may not qualify for property tax exemption under section 214.

Adolfo Porras

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February 24, 1989

Our examination of the facts presented does not reveal any exemption from the taxation of the operator's possessory interest in its use of the city-owned hospital.

Very truly yours,



Robert R. Keeling
Tax Counsel

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cc: Mr. R. Gordon Young
San Bernardino County Assessor