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STATE OF CALIFORNIA

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November 17, 1992

Hon. R. J. Sanford  
Ventura County Assessor  
Government Center  
800 South Victoria Avenue  
Ventura, CA 93009

Re: Ventura Port District Lease

Dear Mr. Sanford:

This is in response to your letter of August 18, 1992 in which you request our advice with respect to the following facts and transactions described in your letter. The Ventura Port District (Lessor), the nontaxable public fee owner of the Ventura Harbor Marina, leased the property to a newly created Ventura Port District Public Facilities Corporation (Lessee) for a period of 50 years. We assume for purposes of this opinion that Lessee is wholly owned by Lessor.

The Articles of Incorporation of Lessee as amended in August 1992 provide in part:

II

This Corporation is a non-profit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes. The public purposes for which the Corporation is organized include the following: The promotion of social welfare by rendering financial assistance to the Ventura Port District, a California Port District ("District"), by enabling the District to borrow funds to pay off District indebtedness on public improvements.

III

This Corporation is organized and operated exclusively for the purposes within the meaning of Section 501(c)(4) of the Internal Revenue Code, and Section 23701 (f) of the Revenue and

Taxation Code of California. This Corporation shall never engage in any business or activity other than that necessary or convenient for or incidental to the carrying out of the purpose set forth in Article II hereof.

The Lease contains the following recitals:

"2.1 Lessor is the owner of certain land and water area within the City of San Buenaventura, County of Ventura, which Lessor is developing, improving and operating as a harbor.

"2.2 Lessee is a California public benefit corporation, formed for the purpose of leasing, financing, and operating portions of Ventura Harbor known as Parcels 3A, 3B, 3C and 5.

"2.3 Improvements were constructed on the Premises by Ocean Services Corporation, a prior lessee. The ground leases to Ocean Services Corporation have been terminated, and Lessor has succeeded to Ocean Services Corporation's interest in the Premises, including the improvements.

"2.4 Certain of the improvements, referred to herein as the 'EDA Project,' were constructed with the proceeds of a grant from the United States Department of Commerce, Economic Development Administration (EDA), and are subject to the terms and conditions of that grant, including the condition that any leasing or financing of the EDA Project requires the consent of the Assistant Secretary of the EDA.

"2.5 The Premises are subject to certain existing leases and subleases, including in particular a ground lease dated December 20, 1989 to Great Western Bank. Concurrently with the execution of this Lease, Lessor is assigning its interest in these leases and subleases to Lessee, with the intention that they be treated as approved subleases under this Ground Lease. All references to subleases and sublessees in this Lease shall include the existing leases and subleases thereunder that (i) are different and/or inconsistent with those contained in this Lease for the benefit of Lessee, and/or (ii) grant the lessees and sublessees thereunder additional rights not granted to Lessee hereunder (collectively, the 'Additional Rights'). To the extent the existing leases and subleases contain any Additional Rights, Lessor hereby grants Lessee the Additional Rights solely for the purpose of permitting

Lessee to be deemed to have the right to grant such Additional Rights to the lessees and sublessees under the existing leases and subleases.

Based on the foregoing, you ask the following questions:

1. Does the lease to Public Facilities Corporation constitute a change in ownership?

Revenue and Taxation Code\* section 61, subdivision (b) provides that except as otherwise provided in section 62, change in ownership, as defined in section 60, includes the creation, renewal, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term. See also Property Tax Rule 462(e).

Section 107 provides in relevant part that "Possessory interests" means the following:

"(a) Possession of, claim to, or right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person.

"(b) Taxable improvements on tax-exempt land."

Property Tax Rule 21 is the Board's interpretation of section 107 and provides in relevant part:

"(a) 'Possessory interest' means an interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of land and/or improvements unaccompanied by the ownership of a fee simple or life estate in the property. Such an interest may exist as the result of:

"(1) A grant of a leasehold estate, an easement, a profit a prendre, or any other legal or equitable interest of less than freehold, regardless of how the interest is identified in the document by which it was created, provided the grant confers a right of possession or exclusive use which is independent, durable, and exclusive of rights held by others in the property;

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\* All statutory References are to the Revenue and Taxation Code unless otherwise stated.

"(2) Actual possession by one intending to use the

"(2) Actual possession by one intending to use the property to the exclusion of any other interfering use, irrespective of any semblance of actual title or right.

"(b) 'Taxable possessory interest' means a possessory interest in nontaxable publicly owned real property, as such property is defined in section 104 of the Revenue and Taxation Code, and in taxable publicly owned real property subject to the provisions of sections 3(a), (b) and 11, Article XIII of the Constitution.

The premises leased by the Lessor to the Lessee in this case were subject to certain outstanding existing leases and subleases. Although the Lessor assigned its interest in such leases and subleases to the Lessee, the latter did not obtain possession or the present right to possession of those portions of the premises which were subject to the existing leases and subleases. The Lessee simply obtained the non-possessory rights of Lessor. The possessory rights remained in the existing lessees and sublessees. Thus, there was no creation, renewal, sublease, or assignment of any possessory interest with respect to that portion of the premises subject to existing leases and subleases as a result of the Lease between Lessor and Lessee and the assignment from Lessor to Lessee.

With respect to that portion of the premises which was not subject to existing leases and subleases, however, i.e., any portion of the premises to which the Lessor had possession or the immediate right to possession, a taxable possessory interest was created as a result of the Lease granting Lessee a present right of possession in land and/or improvements.

As indicated above, however, section 61 provides that the creation of a taxable possessory interest is a change in ownership "Except as otherwise provided in Section 62".

Section 62 excludes from change in ownership "(a)...(2) Any transfer between...legal entities...which results solely in a change in the method of holding title to the real property and in which the proportional ownership interests...whether represented by stock...or otherwise...remain the same after the transfer...."

Here, Lessor, a legal entity, transferred possessory as well as nonpossessory rights in the Ventura Harbor Marina to Lessee, its wholly owned public benefit corporation. Since this transfer resulted solely in a change in the method of holding the interests transferred and since the proportional ownership

interests of the Lessor remained the same after the transfer, the transfer is excluded from change in ownership under section 62 (a)(2) in our view.

That does not mean, however, that the possessory interest created as a result of the lease between Lessor and Lessee is exempt from property tax. That possessory interest is taxable property notwithstanding the fact that its creation was not a change in ownership. It, therefore, must be assessed at its base year value adjusted for inflation or market value, whichever is less in accordance with section 51. Similarly, to the extent that the Lessee receives a remainder interest in the property, i.e., the right to possession after the termination of possession of those sublessees currently in possession, such remainder is assessable to Lessee pursuant to section 51 because such property is no longer tax exempt.

The net result of the Lease, therefore, is that no change in ownership occurred, but the exempt portion of the property diminished because the value of Lessor's reversion diminished as a result of the lease and assignments by Lessor.

2. If the lease to the Corporation is a change in ownership and the Marina gets reappraised, is a new base year value established as of the date of the change in ownership?

See answer to No. 1 above.

3. Does the Corporation qualify for the Welfare Exemption under section 231 of the Revenue and Taxation Code?

The exemption provided under section 231 applies only to "(a) Property which is owned by a nonprofit corporation and leased to, and used exclusively by, government for its interest and benefit..." and then only if:

"(1) All of the provisions of Section 214 are complied with, except paragraph (6) of subdivision (a). For purposes of paragraph (6) of subdivision (a) of Section 214, irrevocable dedication to charitable purpose shall be deemed to exist if the lease provides that the property shall be transferred in fee to the entity of government leasing the same upon the sooner of either the liquidation, dissolution, or abandonment of the owner or at the time the last rental payment is made under the provisions of the lease.

"(2) All of the provisions of Section 254.5 relating to owners are complied with, commencing during calendar year 1969.

"(3) All of the provisions of Section 214.01 are complied with by March 15, 1970."

First, there is no indication here that any property owned by the Lessee is leased to the Lessor at all or that any such property is used exclusively by Lessor for its interest and benefit. Further, we are aware of no facts which indicate that the provisions of section 231(a)(1), (2), or (3) set forth above have been complied with. Accordingly section 231 does not appear to be applicable.

Moreover, the welfare exemption under section 214 does not appear to be applicable here because there is no indication that any possessory interest of Lessee is or would be "used exclusively for religious, hospital, scientific, or charitable purposes". See also section 214.8 (requiring qualification under section 23701d or 501(c)(3) of the Internal Revenue Code) and City of Los Angeles v. Los Angeles County (1971) 19 Cal.App.3d 968, 972 (City's operation of a harbor department is not charitable).

4. Does the Assessor continue to assess the individual lessees (boat slip tenants, restaurant operations, etc.) for possessory interests, or does the lease to the Corporation extinguish the individual possessory interests and create one large possessory interest against the Corporation?

As indicated above, the Lease does not extinguish the individual possessory interests and create one large possessory interest against the Lessee. The Assessor may continue to assess the individual lessees for possessory interests pursuant to section 405 and Tilden v. Orange County, 89 Cal.App.2d 586.

Very truly yours,



Eric F. Eisenlauer  
Senior Tax Counsel

EFE:ba

cc: Mr. John W. Hagerty

Mr. Verne Walton

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