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January 13, 1989

Mr. Chuck Brough  
County of Madera  
Office of the Assessor  
County Government Center  
209 W. Yosemite Avenue  
Madera, CA 93637

Dear Mr. Brough:

Re: Question of Possessory Interest  
In Property Owned by the City of Madera

This is in response to your letter received by us on December 27, 1988. You ask whether B Industries of California, Inc. has a possessory interest in property owned by the City of Madera. As the result of an Agreement between the City and B: wherein B ("Contractor") agreed to the collection of garbage, rubbish, garden refuse, and all other waste material within the City of Madera.

Review of the Agreement discloses that it does not give the Contractor any use of real property owned by the City. To the Contrary, Section 6 of the Agreement requires the Contractor to furnish all equipment, tools, property, etc., necessary for the performance of the Agreement, and Section 8 thereof states that no property, facilities, or sites owned by the City of Madera shall be available for the disposal of any such material.

A taxable possessory interest ("PI") is a possessory interest in nontaxable publicly owned real property. (Cal. Code of Reg. title 18, § 21(b).) A PI in such 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 a proprietary right subject to assessment. Each case is decided on a case-by-case basis, but the general guiding rule in deciding whether a possessory interest becomes taxable is to weight the factors of exclusiveness, independence, durability and private benefit of the possessory rights against relative impermanence, subjection to control and public participation. Not all occupancies or uses of tax-exempt government-owned lands or improvements by private individuals are taxable as possessory interests. To give rise

Chuck Brough

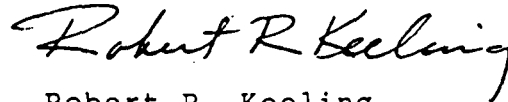
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to a PI, the right of possession or occupancy must be more than a naked possession or use; it must carry with it either by express agreement or tacit understanding of the parties, the degree of exclusiveness necessary to give the occupier or user something 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. See also in this regard, Assessors' Handbook AH 517, The Appraisal of Possessory Interests.

As indicated, the Agreement merely provides for the collection of waste material. Absent the Contractor's use of any real property owned by the City, there is no PI created as the result of the Agreement.

Very truly yours,



Robert R. Keeling  
Tax Counsel

RRK:cb  
1780D

cc: Mr. Richard H. Ochsner  
Mr. Robert H. Gustafson  
Mr. Verne Walton