



Memorandum

To: Mr. Verne Walton -- MIC:64

Date: February 28, 1994

From: Eric Eisenlauer

Subject: Letter From San Francisco Dated February 24, 1993

This is in response to your memo of January 12, 1994 to Mr. Richard Ochsner in which you requested our review of your draft response to the above-referenced letter. The draft addresses the following situation:

A lease of public land is executed for a sixty-year term. The lessee develops a large public attraction complex on this land and upon completion, subleases the restaurants and retail space in the complex. Five years later a sublease for one of the retail spaces is entered into for 10 years (this ten years reflects the anticipated term of possession) and there is a remaining term on the master lease of 55 years.

The basic issue is the term of possession to use for the valuation of the subleased portion required as a result of a change in ownership under Revenue and Taxation Code section 61, subdivision (b). We agree with your conclusion and the rationale for it. Your conclusion states:

In conclusion, the correct interpretation of subdivision (b) of Section 61, as applied here, is that the possessory interest subject to change in ownership upon sublease is the interest in the master lessee, including the master lessee's right to sublease the property. Under subdivision (b) of Section 61, when the master lessee enters into a sublease of his interest, *for any term*, the master lessee's possessory interest is reappraised.

Further, since here the master lease confers a possessory interest with a remaining term of 55 years, the sublease results in a change in ownership of the full 55 year possessory interest. The fact

that the sublease is for only 10 years is of no importance, since subdivision (b) of Section 61 requires a reappraisal of the possessory interest upon a sublease "for any term." (We assume here that, for valuation purposes, the lease term coincides with the reasonably anticipated term of possession.)

We would suggest, however, that you make it clear that although the proper term of possession to use for valuation purposes is 55 years, the "full" possessory interest is not being reappraised but only the geographical portion of the possessory interest which is being subleased.

Erin F Eisenbauer

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cc: Mr. John Hagerty -- MIC:63

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