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Memorandum

To : Mr. Verne Walton

Date: April 20, 1993

From : Eric Eisenlauer

Subject: Letter from Riverside County Dated May 4, 1992

This is in response to your memorandum to Mr. Richard Ochsner of December 24, 1992 requesting our advice regarding the questions raised in the above-referenced letter.

Those questions generally concern leases of unimproved property between a public facilities corporation (PFC) and a school or other municipal non-assessable district (District) and fall into the following three broad categories:

1. District leases to PFC for any term.
2. District leases to PFC which then leases the property back to District.
3. PFC acquires the property and then leases to District for a term in excess of 35 years.

For purposes of this discussion, we will assume that the District has the sole ownership interest in the PFC. Given that assumption, it is our position that leases or other transfers of real property between the District and the PFC are not changes in ownership under Revenue and Taxation Code section 60, 62(b), or 61(c). In our view, such transfers result "solely in a change in the method of holding title to the real property and in which proportional ownership interests...remain the same after the transfer" and thus are excluded from change in ownership under section 62(a)(2). That does not mean, however, that property owned by the PFC, whether possessory interests or fee-owned property, is exempt under Article XIII, section 3(b) of the California Constitution. For

¹All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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purposes of that exemption, we are of the view that such property should be treated as owned by the PFC and not by the District except when there is statutory authority to the contrary, e.g., sections 201.1 - 201.4.

In view of the foregoing, our responses to the three questions stated above are as follows:

1. The lease of property to the PFC by the District creates a taxable possessory interest assessable to the PFC but, as discussed above, would not constitute a change in ownership.

2. Here, the possessory interest is created as in No. 1 above and the PFC then subleases to the District. These are essentially the facts involved in City of Desert Hot Springs v. County of Riverside (1979) 91 Cal.App.3d 441. In that case, the Court of Appeal held that the lease back to the lessor would not affect the lessee's possessory interest, because after the sublease, the lessee would still have "constructive possession" which is defined in Property Tax Rule 21 (c)(2) as "a right to possession and no person occupies the property in opposition to such right." The Court of Appeal held that the possession by the sublessee under the sublease is not in opposition to the lessee's right under the lease but rather pursuant to and subordinate to such right. (City of Desert Hot Springs v. County of Riverside, supra, 91 Cal.App.3d 441 at 453.)

The result, therefore, would be the same as in No. 1 above.

3. If the PFC acquires the property in fee from a third person, there would be a change in ownership under section 60. If the PFC acquires the property from the District, it would be excluded from change in ownership under section 62(a)(2) as discussed above. When the PFC leases the property to the District for a term in excess of 35 years, such transfer would be excluded from change in ownership for the same reason, Section 62(a)(2). However, no part of the property should be treated as exempt under Article XIII, section 3(b) of the California Constitution as property owned by the District. It is well settled that when there is a lease of land to a tax-exempt public entity by a private owner, the owner is properly assessed on the entire value of the property. (City of Palo Alto v. County of Santa Clara (1970) 5 Cal.App.3d 918; Rothman v. City of Los Angeles (1961) 193 Cal.App.2d 522; Ohrbach's Inc. v. County of Los Angeles (1961) 190 Cal.App.2d 575.) There is an exception to this rule, however, where property is leased to a school district and used exclusively for public

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school purposes. (Ross v. City of Long Beach (1944) 24 Cal.2d 258.) Also, where the provisions of section 214 are complied with, the property may be exempt under section 231.

Absent such exceptions to the general rule, however, all interests in the property should be assessed to the PFC.

Eric F Eisenbauer

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cc: Mr. John Hagerty

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