



STATE BOARD OF EQUALIZATION

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August 11, 1987

Mr. James J. Dal Bon
Marin County Assessor
Administration Building
Civic Center, P. O. Box C
San Rafael, CA 94913

Attention: Ms. Sonja Jestadt
Exemption Clerk

Dear Mr. :

This is in response to your June 18, 1987, letter to wherein you forwarded copies of documents entitled "Equipment Lease" between Marin Conservation Corps and Golden Gate Funding Incorporated and also the Corps' supplemental claim for the welfare exemption for the 1983-84 fiscal year pertaining to the personal property which was the subject of such leases", and you asked whether the "Equipment Lease(s)" are leases or conditional sales contracts for purposes of the welfare exemption.

As indicated in the September 7, 1979, Letter to Assessors No. 79/155, Guidelines to Differentiate Between a Lease and a Conditional Sales Contract, copy enclosed, relevant considerations are as follows:

"A lease is generally defined as a contract under which a person secures the temporary use and control of the property. A conditional sales contract can be defined as a contract that provides use and control to a buyer with the seller retaining title as security for payment. The buyer or lessee is the beneficial owner of the property.

"According to the Uniform Commercial Code, in determining whether an instrument is a lease or a sales contract, the contract form is not as important as the intent of the parties. The intent, in turn, is derived from the substance of the contract....

E. W. A.

"Following are some areas that will help you determine the intent of the parties to the contract:

"(1) Lease Period

"Is the lease period approximately the same as the anticipated life of the property? Is the lease for a fixed period of say three years with only a nominal optional payment required to transfer title? Either of these conditions would be indicative of a sales contract. Conversely, if the lease is cancelable on a monthly or annual basis; or, if the optional payment clause is at market value, then a lease is indicated.

"(2) Rent

"Are the contractual rental payments equal to or greater than the current purchase price? In this event a conditional sales contract is indicated.

"(3) Accounting Treatment by Lessor

"Is the lessor treating the property as a depreciating asset or as an account receivable? Treatment by the lessor as a depreciating asset is a strong indication of a bona fide lease.

"(4) Ownership Terms

"Does the contract contain specific provisions retaining ownership with the lessor? This, of course, is a strong indication of a lease.

"With any given contract some of the contract terms may be indicative of a lease, while others may point towards a sales contract. Your determination should be based upon the indications of a preponderance of the terms.

"Terms specifying liability for risk of damage or loss and payment of insurance, taxes, and other expenses are mere matters of contract between the parties and do not establish ownership interests in either party."

Against this background then, the "Equipment Lease(s)" provide, among other things, that:

"1. GOLDEN GATE FUNDING INCORPORATED ('Lessor'), hereby leases to Marin Conservation Corps ('Lessee'), and Lessee hereby leases from Lessor, the personal property (the

'Equipment') described in Schedule A attached hereto, and in any subsequent schedule(s) which may hereafter be made a part hereof by execution by Lessor and Lessee and attached hereto (the 'Equipment Schedules'), all upon the terms and conditions set forth herein. The Equipment shall at all times be and remain the sole and exclusive property of Lessor. Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease.

"2. Term and Rent. The term of this Lease and the rent payable with respect to each item of Equipment shall be as set forth for such item in the applicable Equipment Schedule.

* * *

"4. Assignment, Loan, Obligation to Pay Rent Unconditional. Lessor may assign all or a portion of its right, title and interest in, to and under this Lease and/or grant a security interest in such right, title and interest and the Equipment to a lender ('Lender'). Lessee hereby (i) consents to such assignment and/or grant,... Upon any such assignment or grant, all references herein to Lessor shall include Lender, whether or not specific reference is otherwise made to such Lender.

"This Lease is a net lease and Lessee acknowledges and agrees that Lessee's obligation to pay all rent and other sums payable hereunder....

* * *

"13. Designation of Ownership. If at any time during the term hereof Lessor supplies Lessee with labels, plates or other markings stating that the Equipment is owned by Lessor or is subject to any interest of Lender, Lessee shall affix and keep the same upon a prominent place on the Equipment. Lessee agrees to execute and file Uniform Commercial Code financing statements and any and all other instruments necessary to perfect Lessor's or Lender's interest in this Lease, the payments due hereunder and the Equipment. Lessor may file a copy of this Lease as a financing statement.

* * *

"15. Surrender of Equipment. Upon the expiration or earlier termination of this Lease with respect to any item of Equipment, Lessee shall...return the same to Lessor in

good repair, condition and working order, ordinary wear and tear resulting from property use thereof alone excepted, at the location of the Equipment.

"16. Lessee's Options. If Lessee is not in default under this Lease it may exercise, with respect to any item of Equipment, one or more of the options, if any, set forth with respect to such item in the applicable Equipment Schedule.

* * *

And the Equipment Schedule(s) provide, among other things, that:

"* * *

"A. Equipment Leased:

"* * *

"B. Installation/Rent Commencement Date.

"The term of the Lease for the Equipment listed hereon shall begin on the first day of the month following the latest date of installation of any item thereof (the 'Commencement Date') and shall terminate 24 months after the Commencement Date....

"C. Rent.

"As rent for each item of Equipment, Lessee shall pay Lessor the sum of (i) the Monthly Rent per month, payable in advance on the Commencement Date and on the first day of each month thereafter during the term of the Lease,...

* * *

"E. Lessee's Options.

"If Lessee is not in default under the Lease it may exercise one or more of the following options upon notice to Lessor as indicated:

"(1) Renewal. Lessee shall have the right to renew the Lease with respect to any item of Equipment for a term to be agreed upon commencing upon the expiration of the basic term specified herein by paying Fair Market Value Rental (as hereinafter defined) of such item, provided, that, Lessee gives Lessor written notice of Lessee's intent to exercise such right not less than 90 days prior to the end of such term.

"(2) Purchase Option.¹ Lessee shall have the right to purchase any item of Equipment at the end of the basic term specified herein at a cash price equal to Fair Market Value and upon such additional terms and conditions as are acceptable to Lessor, provided, that, Lessee gives Lessor written notice of Lessee's intent to exercise such right not less than 90 days prior to the end of such term.

* * *

Our view, which is the same as yours, is that the "Equipment Lease(s)" are leases, not conditional sales contracts. In addition to being denominated leases, stating specifically that equipment leased thereunder shall at all times remain the sole and exclusive property of the lessor, and the Corps shall have no right, title or interest therein (Lease paragraph 1), stating specifically that the lessees are net leases (Lease paragraph 4), and allowing the Corps temporary use and control of the leased equipment (use for 24 months, according to Schedule paragraph 3, and surrender of equipment upon expiration of leases to lessor, according to Lease paragraph 15):

(1) Lease Period

The lease periods, 24 months, are surely less than the anticipated lives of the equipment, computer, Xerox and telephone equipment (Schedule paragraph B); at the end of the lease periods, the Corps has the option of renewing the lease(s) or purchasing any item(s) of equipment (Schedule paragraph E); and any purchases of equipment are to be at fair market value (Schedule paragraph E).

(2) Rent

Rental payments are less than the purchase prices of any item(s) of equipment (Schedule paragraph C and Schedule paragraph E).

(3) Accounting Treatment by Lessor

Given the statement that leased equipment shall at all times remain the property of the lessor (Lease

¹As to purchase options, see the October 7, 1980, Letter to Assessors No. 80/147.

Mr. James J. Dal Bon

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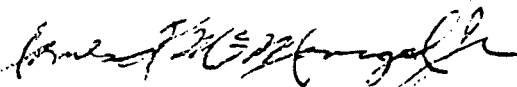
paragraph 1), presumably, the lessor would have treated the items of equipment as depreciating assets in its books and records.

(4) Ownership Terms

As indicated, the leased equipment remains the property of the lessor (Lease paragraph 1); and if the lessor supplies the Corps with indicia stating that the leased equipment is owned by it, the Corps is to affix and keep same upon the equipment (Lease paragraph 13).

Accordingly, we are advising Mr. Minor to consider the "Equipment Lease(s)" as leases, not conditional sales contracts, for welfare exemption purposes.

Very truly yours,


James K. McManigal, Jr.
Tax Counsel

JKM/rz

Enclosure

cc: Mr. William Minor