490.0065 **Stock Ownership.** Even though a local government owns 100 percent of the stock of a corporation, property owned by the corporation is not eligible for exemption as property owned by a local government. A corporation is an entity legally distinct from its shareholders, who do not own the corporate property. C 12/11/96. (M99-1)

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
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Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

December 11, 1996

Mr.

Dear

I am writing in reply to your letter of November 26, 1996 requesting an opinion regarding property tax exemption for property owned by a corporation in which the City of Tulare owns one hundred percent of the stock. Specifically, you are requesting an opinion as to whether the property owned by the corporation is eligible for property tax exemption as property owned by a local government. I have reviewed your letter and the accompanying materials which included the following: a letter dated October 16, 1996 from Kenneth Swearingen of the Tulare County Assessor's Office to Bill Wagenhalls, Director of Tulare City Parks & Community Services, a letter dated October 14, 1996 from Mr. Wagenhalls to Tulare County Assessor Gregory Hardcastle, Tulare City Council Resolutions No. 96-4231 and 96-4232 and attached exhibits and the Minutes of Regular Meeting City Council, City of Tulare.

The facts set forth in your letter are summarized as follows: A gift of one hundred percent of the stock in the Ritz Enterprises, Inc. was made to the City of Tulare, and the assets of the corporation, which you describe as a "youth entertainment facility", remained in the corporation. The city, through the City Parks and Community Services Department, now operates the youth entertainment facility as a city enterprise operation. The city funds the operations and collects any revenues earned by the corporation. The city also employs city personnel to perform maintenance and operational duties. The letter also sets forth the "special circumstances", such as the city's desire to sponsor youth activities and its goal to reduce juvenile delinquency and substance abuse, surrounding the city's acquisition of the stock.

As set forth below, we are of the opinion that the property owned by the corporation is owned by an entity separate and apart from the city and does not qualify for exemption as local government-owned property.

Legal Analysis

The California Constitution declares that, in general, all property located in the State is taxable. Article XIII, Section 1 of the Constitution provides in part that "[u]nless otherwise

provided by this Constitution or the laws of the United States. (a) All property is taxable and shall be assessed at the same percentage of fair market value . . ." The general rule of taxability is subject to numerous exemptions which are largely set forth in Section 3 of Article XIII. Of relevance to the situation presented here, subdivision (b) of Section 3 provides:

> Sec. 3. Exempt property. The following are exempt from property taxation:
>
> * * *
>
> (b) Property owned by a local government, except as provided in Section 11(a).
>
> Revenue and Taxation Code Section 202 implements Article XIII, Section 3, and Subdivision (a)(4) of Section 202 provides:
> The exemption of the following property is as specified in subdivisions (a), (b), (d) and (h) of Section 3 of Article XIII of the Constitution, except as is otherwise provided in subdivision (a) of Section 11 thereof:
>
> * * *
>
> (4) Property belonging to this state, a county, or a city . . .

Article XIII, Section 3(b) and Revenue and Taxation Code Section 202(a)(4) clearly state that only property owned by local governments is exempt from property taxation. There is no constitutional provision or statute which exempts property of a corporation, all of whose stock is owned by a city, from taxation as local government owned property. Unfortunately, the circumstances under which a city acquires stock in a corporation, operates a corporation, etc. are not relevant to the application of the constitutional and statutory provisions.

The Board of Equalization has long held the view that property of a corporation owned by a local government is not exempt from property tax as property owned by a local government. Although there are no California cases deciding this issue for property tax exemption purposes, it is well established that a corporation is an entity which is legally distinct from its shareholders and that the latter own neither the corporate property nor the corporate earnings. Miller v. McColgan (1941) 17 Cal.2d 432, 436. Consistent therewith, for example, the Board in 1980 denied the petition for reassessment of unitary property of San Diego and Arizona Eastern Railway Co., in which the petitioner contended that the corporate entity should be disregarded for purposes of applying section 3(b) of Article XIII of the California Constitution.

As you allude to in your letter, legislation has been enacted which specifically exempts properties owned by certain non-profit corporations, which corporations are solely owned by local governments. *See, e.g.,* Revenue and Taxation Code § 201.3 and § 201.4. Those statutes provide that property owned by the non-profit corporations shall be deemed to be property owned

by the local governments and, hence, such property is exempt from property taxation. However, the relevant statutes are entity-specific, and none apply to the situation here. Therefore, in the absence of any legal authority which would dictate a different result, based on the facts as presented in your letter, we conclude that the property is not eligible for exemption from property taxation as local government-owned property. Of course, if and when the property is acquired by the city, it can then be exempt as city-owned property under Article XIII, section 3(b) and section 202(a)(4).

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the Tulare County Assessor or the assessor of any county.

Our intention is to provide courteous, helpful, and timely responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Very truly yours,

Louis Ambrose
Tax Counsel

LA:ba
cc: Hon. Gregory Hardcastle, Tulare County Assessor/Clerk-Recorder
Mr. James Speed, MIC:63
Mr. Dick Johnson, MIC:64
Ms. Jennifer Willis, MIC:70
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