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August 13, 1990

Mr. Samuel Duca, Assessor
City and County of San Francisco
Room 101, City Hall
San Francisco, CA 94102

Re: LABORATORY

Dear Mr. Duca:

In your letter of June 14, 1990 you requested a current supportive statement on your opinion that Laboratory continues to be a public entity under Section 6507 of the Government Code and is, therefore, entitled to tax exempt status. I have reviewed our previous opinion, James J. Delaney's letter of April 10, 1970, and the joint powers agreement that established Laboratory. In my view exemption as a public entity is still warranted despite the fact the some objection was raised by our survey team in early 1982.

In his letter Mr. Delaney stated:

> Further, it would probably qualify as a public agency under section 1.65, Article XIII of the California Constitution and as a quasi-municipal corporation which should be considered subject to the nontaxable treatment afforded municipal corporations under Article XIII, section 1 of the Constitution.

He also noted that "the matter is not entirely free from doubt" but this did not alter his conclusion.

At the time of this opinion section 1.65 read:

> County, city and county, or municipal corporations as used in Section 1 and Sections 1.60 to 1.69, inclusive, of this article, shall be deemed to include any public district or public agency.

and section 1 provided that property belonging to any county, city and county, or municipal corporation within this state shall be exempt from taxation. As you are aware these sections were amended by the passage of Proposition 8 on the November 5, 1974 general election. As revised these provisions are now found consolidated in Article XIII, section 3(b) which simply

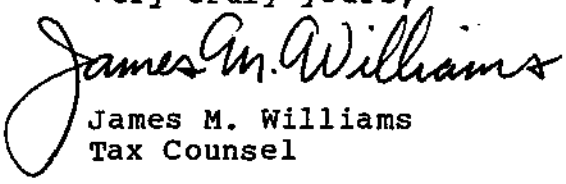
states that property owned by a local government is exempt from taxation.

Mr. Delaney's doubt was based on the fact that there is no specific exemption for property owned by another state or an agency of another state and therefore such property would be taxable under section 1 of the Constitution. Since includes two agencies of both the states of Utah and Nevada in addition to the four California agencies, there was a remote possibility that a court could hold that a portion of the property was out-of-state-owned and not exempt.

Recent interpretations of entity ownership by both the legislature and the court indicate that it is the nature of the entity that holds title to the property that decides its taxable outcome. (See Revenue and Taxation Code, section 64 and Pueblos Del Rio South v. City of San Diego, 209 Cal.App.3d 893). In providing for joint powers agreements the legislature has expressly empowered that one or more of the contracting agencies may be located outside this state, Government Code, section 6502. In Government Code, section 6500, it has defined "public agency" to include "any state department or agency, a county, county board of education, city, public corporation, or public district of this state or another state. Finally in sections 6503.5 and 6507 it is specified that a joint powers agency is a public entity separate from the parties to the agreement.

In this instance it is proper to conclude that Laboratory, a separate and distinct public entity created and operated pursuant to the laws of California, as titleholder and owner of the real property at Street, San Francisco, is exempt from property taxation under constitutional article XIII, section 3(b) cited above.

Very truly yours,



James M. Williams
Tax Counsel

JMW:jd
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cc: Ms. Esq.