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880.0042 **City-Owned Corporation.** A city-owned corporation is nevertheless a separate entity and must meet the organizational and property use requirements of Revenue and Taxation Code Section 214 in order for its property to be eligible for exemption. C 10/16/87.



STATE BOARD OF EQUALIZATION

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Executive Secretary

October 16, 1987

Dear:

Reference is made to your October 5, 1987, letter to (Redacted) concerning a specific property, "parcel (941-1401-14-5), which the city owns, (through Dublin Information Inc.)", and the availability of the welfare exemption from property taxation.

At issue is, among other things, whether the property was used for a qualifying purpose or purposes on the March 1 lien date. Per your letter, in part:

"[The property] has been and continues to be used by the City for Charitable purposes as needed. Recently, for example, the lot was used for public parking during the City festival. It has previously been used for that purpose and will undoubtedly be used that way in the future. The parcel is used as needed.

"Sports are not usually played on the field because the surrounding area is much more conducive to field activities. But it is not accurate to say that the parcel is unused."

According to Mr. Al Moy of the Alameda County Assessor's Office, however, the property was vacant and unused on the March 1, 1987, lien date; and on October 14, 1987, Mr. Moy by telephone confirmed that the property was vacant and unused on the lien date. Mr. Moy did say that the property has been used subsequent to the lien date, but use of property between March 2, 1987, and March 1, 1988, would be relevant for the March 1, 1988, lien date, not for the prior lien date.

Revenue and Taxation Code section 214 provides that property used exclusively for religious; hospital, scientific or charitable purposes owned and operated by corporations organized

and operated for religious, hospital, scientific or charitable purposes is exempt from taxation if certain requirements are met. In addition to a corporation being organized and operated for religious, hospital, scientific or charitable purposes, section 214(a)(3) requires that:

"The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose."

Property not used for the actual operation of an exempt activity is not eligible for the exemption, and property not in use, whether temporarily or permanently, is not eligible for the exemption. Per the Supreme Court in Cedars of Lebanon Hospital v. Los Angeles County, 35 Cal.2d 729, wherein the hospital contended, among other things, that buildings under construction on the lien date and intended for use in the housing of student nurses were within the welfare exemption:

"Such express limitation, making use the focal point of consideration, contemplates actual use as differentiated from an intention to use the property in a designated manner."

The Board-adopted Assessors' Handbook AH 267, Welfare Exemption, states in this regard at page 29:

"b. Use of Property

"The exemption is allowed only for property '...used in the actual operation of the exempt activity.' The use of the property for which exemption is claimed is the primary consideration when analyzing the status of an organization claiming exemption once it has been ascertained that the organizational requirements have been met. Even though an organization meets all of the requirements of Section 214, to receive the exemption the property for which exemption is sought must be used exclusively for exempt purposes. Any property owned by the organization and not used for exempt purposes is not exempt."

And at page 31:

"c. Exclusive Use of Property

"The property must be used exclusively for religious, hospital, or charitable purposes and be in such use on the lien date. The exemption would thus be inapplicable to an unused vacant lot and to an unused building or an unused portion of a building. See First Baptist Church v. County of Los Angeles, 113 Cal.App.2d 392, and Fredericka Home for the Aged v. County of San Diego, 35 Cal.2d 789..."

Accordingly, neither section 214, the courts, nor the Board permit/have found property not used for the actual operation of an exempt activity on the lien date eligible for the exemption.

A related section, Revenue and Taxation Code section 231, provides, in part, that property which is owned by a nonprofit corporation and leased to, and used exclusively by, government for its interest and benefit shall be exempt from taxation within the meaning of "charitable purposes" if all of the provisions of section 214 are complied with. Such includes the requirement of section 214(a) (3), discussed above.

Accordingly, unless Dublin Information Inc. can establish that the property was being used for the actual operation of an exempt activity or activities on the March 1, 1987, lien date, the original finding that the property was not eligible for the exemption because it was vacant and unused was correct. As the result of your letter, I understand that an amended finding indicating that the property was eligible for the exemption was mistakenly issued. Inasmuch as Mr. Moy has since confirmed that the property was vacant and unused on the lien date, I am requesting Mr. Palmer to reinstate the original finding of ineligibility.

Also at issue is whether property owned by a corporation incorporated by a local government is exempt from property taxation as property owned by the local government (article XIII, section 3(b) of the California Constitution). As I advised you, in our view, it is not, since the corporation is a legal entity separate and distinct from the local government which created it and which holds title to its own property in its own governmental name. For property of such corporations to be exempt from property taxation, it must be exempt under

October 16, 1987

section 214 or section 231 or by specific statute, such as Revenue and Taxation Code sections 201.1, 201.2 or 201.3 (recently enacted as Stats. 1987, ch. 1412) copy enclosed.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM/rz

Enclosure

cc: Mr. Donald L. Kroger
Alameda County Assessor
Mr. Al Moy
Mr. Gene Palmer