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March 17, 2014

Mr.
Chief Appraiser
Riverside County Assessor-Clerk-Recorder
P.O. Box 12004
Riverside, CA 92502-2204

Re: Corporation – Welfare Exemption
Assignment No.: 13-302

Dear Mr. _____ :

This is in response to your request for our opinion on the questions you posed in your September 5, 2013 email correspondence to the State Board, regarding whether property owned by the _____ Corporation (Corporation) may qualify for the welfare exemption as construction in progress pursuant to Revenue and Taxation Code¹ sections 214, 214.1 and 214.2. As you will recall, the State Board issued opinion letters dated September 13, 2007 and March 20, 2008 which concluded, among other things, that the subject property qualified as "facilities in the course of construction" within the meaning of section 214.1 and 214.2 as a result of the initial construction activities performed in February 1999, and that all four parcels of land were to be considered as part of a single integrated unit, since it appeared that they were functionally and economically integrated.

As you are aware, since the time of those letters, the owner of the property, _____, Inc. (D _____), assigned its rights and duties under the Amended and Restated Ground Lease IV (Lease), between itself and the County of Riverside, to Corporation. The assignment of the Lease was recorded with the Assessor on April 24, 2012. The obligations under the Lease included the requirement to construct and operate a skilled nursing facility on the subject parcel. Corporation's counsel stated in a May 24, 2013 letter that Corporation is a charitable organization that has held a valid Organizational Clearance Certificate since the 2011-2012 fiscal year.

Corporation's counsel has also provided additional information in correspondences dated February 7, 2014 and February 19, 2014, of which we understand the Riverside County Counsel received copies. As hereinafter discussed, we believe that according to the information provided to us, the subject property has not been "abandoned" for purposes of section 214.2, and for that reason, the exemption would still apply. To that end, we address the three questions you posed in your September 5, 2013 email correspondence below.

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

1. *Do you think your legal opinion still applies?*

We have not received any information that gives us reason to reconsider the September 13, 2007 and March 20, 2008 legal opinions (2007 Letter and 2008 Letter, respectively). However, we note that it has been six years since the 2008 letter. Therefore, we assume you are asking whether the property should still qualify for the exemption as construction in progress, even though much time has passed. As explained below in answer to your question number 2, it does not appear that construction has been abandoned. As such, the exemption would still apply.

2. *Should construction be considered to have commenced in 1999 when no permit had been issued at the time?*

Whether or not permits were issued prior to construction in 1999 is not a determinate factor as to when construction began. The 2007 letter states at page 10 that D conducted definite on-site physical activities on all four parcels in February 1999, which qualified as "facilities in the course of construction" within the meaning of Rev. and Tax. Code section 214.2, subdivision (b). It also states that D continued to work diligently to obtain the necessary approval and permits for the construction of the skilled nursing facility during the entire period at issue. (2007 Letter at p. 12.) The 2008 Letter also states at page 10 that there was no requirement for D to "somehow recommence" physical construction activities after the Amended and Restated Ground Leases were assigned back to D in 2003 after being temporarily assigned to wholly owned subsidiary LLCs, in order for the skilled nursing facility to continue to be considered "facilities in the course of construction."

The question, then, is whether the onsite activity has been abandoned since our March 2008 letter, because section 214.2(b) states that "onsite physical activity . . . having been commenced and not yet finished, *unless abandoned*, shall establish that a building or improvement is 'under construction' for the purposes of Section 5 of Article XIII of the California Constitution. Construction shall not be considered 'abandoned' if delayed due to reasonable causes and circumstances beyond the assessee's control, that occur notwithstanding the exercise of ordinary care and the absence of willful neglect." (Italics added.) Based on the activities described below, we do not believe construction has been abandoned, and as such, the exemption should still apply.

In correspondence dated February 6, 2014 (attached to the February 7, 2014 email, and on which the Riverside County Counsel was copied), the assessee provided a timeline of events and inspection reports regarding efforts made to move construction forward from 2008 to November 2012. Those documents show that on-site physical activity occurred during each of those years, such as installing underground pipelines, rough grading, excavation, and "site improvements" such as erosion control and slope drainage.

In the additional correspondence dated February 19, 2014 (which the Riverside County Counsel was also copied on), the assessee explained that it had been attempting to secure a loan from a private lender, which loan is then guaranteed by the United States Department of Housing and Urban Development (HUD). This procedure consists of two rounds of providing financing documentation—in the first round, the private lender prepares a loan package that it believes will be substantially acceptable to HUD; and in the second round, HUD gives final approval for its guarantee. In this case, the assessee commenced financing for the construction loan in

January 2010 with a certain private lender, at which time D obtained a grading permit and began actual grading activities on site. However, the assessee eventually determined that the private lender had limited experience with HUD-guarantee loans, such that it would be in D's best interests to find a more experienced lender. It subsequently began its financing with Capital Funding, LLC on September 12, 2011. This stage with Capital Funding lasted until November 30, 2012, at which time the loan package was deemed acceptable for submission to HUD.

Meanwhile, according to the assessee, D continued to perform "limited and minor off-site activity on the SNF [skilled nursing facility] Property as warranted by OSHPD [Office of Statewide Health Planning and Development] requirements," (Corporation's February 19, 2014 letter at p. 2), apparently as indicated on the timeline and inspection reports mentioned above. However, since HUD had not yet granted early commencement construction approval, "D took the cautious route of not engaging in any activity to ensure an unencumbered Policy for HUD's review, which is why activity ceased in early November of 2012." (*Ibid.*)

On May 22, 2013, Capital Funding notified Corporation that it was number eight in HUD's queue, and on February 3, 2014, HUD issued its approval for early commencement of construction. Currently, according to the assessee, Capital Funding and HUD are awaiting confirmation from the title company that the "final Policy" will be issued without any mechanics' lien exceptions. (Corporation's February 19, 2014 letter at p. 3.) Once written confirmation is provided by the title company, HUD will approve the recordation of the original bonds, construction contract, and plans and specifications with the County, at which time construction may commence. (*Ibid.*)

Although we have previously opined that delays due to a lack of funds by the claimant would not be considered reasonable, we believe that a delay in obtaining financing from HUD may be considered a reasonable delay, because awaiting a governmental entity's processes, while diligently ensuring that the project meets all of the governmental entity's requirements for funding approval, can constitute circumstances that are outside of the assessee's control.

Furthermore, section 214.2 requires an absence of willful neglect, and we have been presented with no evidence of willful neglect. However, if the assessor finds evidence of willful neglect or intentional delays in the governmental approval process, or other evidence of unreasonable delays involving circumstances within the assessee's control, then the property would not qualify as being "under construction" within the meaning of section 214.2 and the welfare exemption for that time period.

3. *Does the transfer of the lease (conditional sales contract) to Corporation show that D has, in effect, abandoned the new construction.*

As noted in our March 20, 2008 letter at page 10, sections 214.1 and 214.2 do not specify that property must be owned by the same legal entity during the entire course of construction in order for the underlying property to continue to qualify as property used exclusively for religious, hospital or charitable purposes. Rather, sections 214, 214.1 and 214.2 require that the facility itself be in the course of construction, owned and operated by eligible organizations that intend to use the property exclusively for religious, hospital, or charitable purposes. Therefore, it is the activity occurring on the property that is primarily at issue, not necessarily the continuity of ownership. In this case, it appears that D had an obligation to construct the skilled nursing

facility on the subject property for exempt purposes, and then assigned that obligation to continue the same activity, for the same exempt purposes, to Corporation. Therefore, as long as Corporation is organized and operated for exempt purposes and has actually continued, and not abandoned or intentionally delayed any efforts in moving the project forward for exempt purposes, we do not believe the construction was abandoned upon assignment of the lease. As discussed above, Corporation appears to have, in fact, continued that obligation upon its receipt of the lease assignment, which was recorded on April 24, 2012.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Sincerely,

/s/ Sonya S. Yim

Sonya S. Yim
Tax Counsel III (Specialist)

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cc: Mr.

Mr. Dean Kinnee	MIC:64
Mr. Benjamin Tang	MIC:64
Mr. David Gau	MIC:63
Mr. Todd Gilman	MIC:70