



Memorandum

Mr. Kevin Smith

Date : December 11, 1990

From : Ken McManigal

Subject: Welfare Exemption - Section 214(f)

This is in response to your November 7, 1990, memorandum wherein you asked under what circumstances, if any, does the following portion of the first sentence of section 214(f) include section 221d housing:

"(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v) or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption"(emphasis added.)

Initially, the former fifth paragraph of section 214, now section 214(f), provided that property used exclusively for housing and related facilities for elderly or handicapped families and financed by the federal government pursuant to section 202 of Public Law 86-372 (12 U.S.C. 1701q), as amended, or section 236 of Public Law 90-448 (12 U.S.C. 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations or corporations meeting all the requirements of section 214 were deemed to be within the exemption. But other property, including section 221 property, used exclusively for housing and related facilities for elderly or handicapped families was considered eligible by the Board and staff for the exemption if all of the requirements of section 214 were met. See my March 17, 1977, letter to Mr. Joseph L. Graves and Mr. John Knowles' November 10, 1972, letter to Mr. Grady Smith, copies attached. As indicated in the former, however, some charitable aspects in conjunction with the providing of the

housing had to be present to avoid the Martin Luther Homes v. Los Angeles County, 12 Cal. App.3d 205, result: property not exempt where occupants, in effect, got what they paid for and no gift element present.

In 1984, SB2109 copy also attached, was introduced by Senator Marks to provide that the financing of property used exclusively for housing and related facilities for elderly or handicapped families was not limited to federal financing pursuant to section 202 and section 236:

"Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. 1701g), as amended, or Section 236 of Public Law 90-448 (12 U.S.C. 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption...."(proposed amendment)

The Senate Revenue and Taxation Committee's staff's analysis, copy attached, was to the same effect. The Department of Finance's analysis, copy attached, noted also that the Board's staff was not denying the exemption to properties used exclusively for housing and related facilities for elderly and handicapped families if the properties were not financed by the federal government. And Board staff questioned the need for such amendment (May 4, 1984, memorandum, copy attached).

SB2109 was subsequently amended in other respects, and as Stats. 1984, Ch. 1102, copy attached, in effect January 1, 1985, added ", including but not limited to, ", added the second and third sentences to the fifth paragraph, and added the sixth and seventh paragraphs. As enacted, the intent of such amendments was to limit the exemption for such housing generally to low-and moderate-income elderly or handicapped families (March 5, 1985, Letter to Assessors No. 85/28, copy also attached) and to recognize by statute that property "including, but not limited to" section 202 and section 236 property used exclusively for housing and related facilities for elderly or handicapped families could be eligible for the exemption. There is nothing in our SB2109 Bill File to even suggest that "including, but not limited to" was intended to mean that all property used exclusively for housing and related facilities for elderly or handicapped families and financed by the federal government was to be, without more, eligible for the exemption. To the

contrary, the second sentence added to the fifth paragraph of section 214 specifically stated that "The amendment of this paragraph made at the 1983-84 Regular Session of the Legislature does not constitute a change in, but is declaratory, of, the existing law." Thus, as before, for non-section 202 or non-section 236 properties, all of the requirements of section 214 had to be met, and some charitable aspect in conjunction with the providing of the housing to elderly or handicapped families had to be present in order for the property to be eligible for the exemption.

Since 1984, the fifth, sixth, and seventh paragraphs of section 214 have become section 214(f) and been further amended. As your September 12, 1990, letter to Mr. Todd Kolba indicates:

"...To be eligible for the welfare exemption, California Revenue and Taxation Code Section 214(f) states, in part:

'Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Section 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Section 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption...'

* * *

'Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or which is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Section 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Section 1715v), or Section 236 of the Public Law 90-448 (12 U.S.C. Section 1715), shall not be entitled to exemption pursuant to this

subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families...."

Thus, as also indicated in your letter, property used exclusively for housing and related facilities for elderly or handicapped families and financed by the federal government pursuant to section 202, section 231, or section 236, and property used exclusively for housing and related facilities for elderly or handicapped families financed by the federal government pursuant to other sections and having a charitable aspect or aspects would be eligible for the exemption; but other property used exclusively for housing and related facilities for elderly or handicapped families would not be eligible for the exemption unless the property is used for low- and moderate-income elderly or handicapped families, the Supplemental Affidavit, Housing, is submitted, etc., and related low- and moderate-income requirements are met.

In sum, the Board's and staff's longstanding construction and application of the fifth paragraph of section 214/section 214(f), the 1984 legislative history of SB 2109, and section 214(f) itself support the conclusions set forth in your September 12, 1990, letter. Conversely, Mr. Kolba has provided no authority for his contention that all property used exclusively for housing and related facilities for elderly or handicapped families and financed by the federal government is, without more, eligible for the exemption, and neither are we aware of any such authority.


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Attachments

cc: Mr. John Hagerty
Mr. Verne Walton
Mr. Jim Barga