

State of California

Board of Equalization
Legal Department - MIC:82
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To: Ms. Lisa Thompson
Manger, Property Taxes
County Assessed Properties Division (MIC:64)

Date: April 7, 2015

From: Richard Moon
Tax Counsel IV
Tax and Fee Programs Division (MIC:82)

Subject: *Welfare Exemption – Charter Schools
Assignment No. 15-047*

This is in response to your request for our review of the backup letter to Property Tax Annotation¹ (Annotation) 690.0003 (the Backup Letter) dated November 18, 1999. Specifically, you ask whether, based on its conclusion that “[Revenue and Taxation Code²] section 214 is not applicable to public schools,” charter schools operated by a nonprofit public benefit corporation³ are eligible only for section 202, the public schools exemption but not for section 214, the welfare exemption. For the reasons explained below, charter schools are eligible for the public schools exemption on property it uses for public school purposes and may also be eligible for the welfare exemption on property owned and operated for an exempt purpose. Because the Backup Letter is ambiguous in this regard we recommend that it be deleted as a backup letter to Annotation 690.0003.

Annotation 690.0003 states:

Charter Schools. Property used exclusively for public school/charter school purposes by a charter school incorporated as a nonprofit public benefit corporation will be eligible for the [public schools] exemption as of January 1, 1999, assuming that the agreement with the school district is valid and in effect. C 7/15/1998; C 11/18/1999.

We first note that the legal principle for which the Backup Letter was annotated is not its conclusion that “section 214 is not applicable to public schools.” Instead, the annotation states that charter schools are eligible for the public schools exemption as of January 1, 1999. Within that context, the Backup Letter’s conclusion that “section 214 is not applicable to public schools” is correct since a public school receiving the public schools exemption has no need to also apply

¹ Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization’s Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

² All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

³ For ease of reference in this memorandum, “charter schools” refers to charter schools that are owned by a nonprofit public benefit corporations, and nonprofit public benefit corporations may be referred to simply as “nonprofit corporations.”

for the welfare exemption on property it uses for public school purposes. It is incorrect however, to infer from this statement that section 214 is not applicable to public schools under any circumstance. The Backup Letter does not address this question.

Although the Backup Letter does not address the question of whether charter school property may ever qualify for the welfare exemption, we believe the plain language of section 214, subdivision (a) allows charter school property used for an exempt purpose to qualify for the welfare exemption. Section 214, subdivision (a) provides an exemption for:

Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation

There is nothing in the plain language of section 214, subdivision (a) that would prohibit a nonprofit corporation from qualifying for exemption under its provision simply because it operates a charter school. It requires only that property is used for an exempt purpose (religious, hospital, scientific, or charitable purposes), and is owned and operated by a qualifying organization (community chests, funds, foundations or corporations) that is organized and operated for an exempt purpose.

Subdivision (b) of section 214 provides that:

Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, corporations, which property and funds, foundations or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

This provision describes a specific purpose (i.e., school purpose of less than collegiate grade) that qualifies as an exempt purpose under section 214, subdivision (a). It also reiterates the “owned and operated” requirement and the necessity of meeting all the requirements of subdivision (a). Again, a charter school need not rely on this provision to exempt property used for public school purposes since, as the Backup Letter explains, such property is exempt under the public schools exemption. Furthermore, the fact that property used for public school purposes is receiving an exemption under section 202 instead of section 214, subdivision (b) does not mean property owned by a public school is ineligible for exemption under section 214, subdivision (a). Thus, even if the Backup Letter is correct in stating that section 214, subdivision (b) is only for schools which are not public schools, property used for an exempt purpose may qualify, as explained above, for the welfare exemption under section 214, subdivision (a) even if it is owned by a charter school.

Importantly, nothing in sections 202 or 214 or California Constitution article XIII, section 3, subdivision (d), section 4, subdivision (b), and section 5, the constitutional provisions on which section 202 and 214 are based, suggest that a charter school operated as a nonprofit corporation may not qualify for the welfare exemption because it also qualifies for the public schools exemption. Further, we are aware of no judicial decision that mandates such a result. We are also unaware of any prior legal opinions that suggest such a result. To the contrary, prior

published guidance indicates that organizations may qualify for more than one exemption on its property. For example, Assessors' Handbook section 267, *Welfare, Church and Religious Exemptions* (Oct. 2004), Part II, p. 5-6 explains that in certain circumstances a church claiming the church exemption must also file for the welfare exemption. Furthermore, Annotation 880.0245⁴ provides the following:

Public School Use. Property owned by the California School Boards Association, a California nonprofit corporation, and used for the benefit of school board members as school board members may be eligible for the welfare exemption *even though it may also qualify for the public schools exemption.* C 2/28/1990. (Emphasis added.)

Therefore, if all of the requirements set forth in section 214, subdivisions (a)(1) through (a)(7) are met, a charter school operated as a nonprofit corporation may qualify for the welfare exemption. Property used by a charter school for public school purposes, as the Backup Letter states, should be exempt under the public schools exemption. Property used for another exempt purpose may qualify for the welfare exemption.

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cc: Mr. Dean Kinnee (MIC:64)
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Mr. Todd Gilman (MIC:70)

⁴ We also note that the backup letter to this annotation could be read to conclude that charter schools are also eligible for exemption on property used for charter school purposes under section 214, subdivision (b).