



STATE BOARD OF EQUALIZATION

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February 28, 1990

Mr. Alan B. Flory
Yolo County Assessor
625 Court Street, Room 104
Woodland, CA 95695

Dear Mr. Flory:

This is in response to your January 9, 1990 letter to Mr. James Barga wherein you forwarded a December 28, 1989 letter with enclosures from Ms. Dorie Harmon, Assistant Executive Director, Business Services, California School Boards Association (CSBA), and you requested an opinion on the taxability of CSBA's property. Among the enclosures were the following:

1. A September 5, 1968 letter from Ms. Irene Hickman to CSBA stating that a 1968-69 tax statement was cancelled because CSBA is a government code section 20009.1 organization.
2. An April 5, 1982 letter from Mr. Robert Walters to CSBA stating that CSBA's tax exempt status is apparently pursuant to Article XIII, section 3 of the California Constitution and Revenue and Taxation Code section 202(a)(3), not pursuant to section 20009.1.
3. An April 23, 1987 letter from Mr. Nelson Krouse to CSBA stating that Sacramento County has determined that CSBA is tax exempt under the laws governing Public Schools.
4. A December 8, 1989 amended Welfare Exemption Finding Sheet for the 1989-90 fiscal year: Not Been Met/I.D., N.T.L. and C.N.A.

As you know, Article XIII, section 3 of the California Constitution provides that the following are exempt from property taxation:

- "(a) Property owned by the State.
- "(b) Property owned by a local government, . . .

* * *

"(d) . . . and property used exclusively for public schools, community colleges, state colleges, and state universities."

Section 202(a)(3) of the Revenue and Taxation Code is to the same effect as Article XIII, section 3(d).

Article XIII, section 4(b) of the California Constitution provides that the Legislature may exempt from property taxation in whole or in part property used exclusively for religious, hospital, or charitable purposes and owned by corporations (1) that are organized and operating for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual. Thus, Revenue and Taxation Code section 214 and following, which provide for the welfare exemption, permit property used exclusively for religious or charitable purposes owned and operated by a qualifying organization organized and operated for religious or charitable purpose to be exempt from property taxation if certain requirements are met. An organization must be organized and operated for religious and/or charitable purposes, and it cannot be organized or operated for profit (section 214(a)(1)). No part of its net earnings can inure to the benefit of any private shareholder or individual (section 214(a)(2)). And its property must be irrevocably dedicated to religious and/or charitable purposes, and upon its liquidation, dissolution or abandonment, its property must inure to the benefit of a fund, foundation, or corporation organized and operated for an exempt purpose or purposes (section 214(a)(6)). Property is deemed irrevocably dedicated to religious and/or charitable purposes only if a statement of irrevocable dedication to only those purposes is found in the articles of incorporation of a corporation, etc. (section 214.01).

Section 214.8 provides that, with certain exceptions, the exemption shall not be granted to any organization unless it is qualified as an exempt organization under either section 23701d of the Revenue and Taxation Code or section 501(c)(3) of the Internal Revenue Code. Thus, a Franchise Tax Board letter to the effect that the organization is exempt from State income tax under section 23701d or an Internal Revenue Service letter to the effect that the organization is exempt from Federal income tax under section 501(c)(3) would meet the requirement of the section.

When organizational requirements are met, the organization must then establish that its property is actually used for an exempt activity or activities. Thus, an organization's property must be used for the actual operation of religious and/or charitable activities, and must not exceed an amount of property reasonably necessary to the accomplishment of religious and/or charitable

purposes (section 214(a)(3)), its property must not be used so as to benefit anyone through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession (section 214(a)(4)), and its property must not be used for fraternal, lodge, or social club purposes (section 214(a)(5)).

Review of our CSBA welfare exemption file discloses that CSBA is a California nonprofit corporation organized pursuant to the general nonprofit corporation law of California. Thus, it is not the State and not a local government, and Article XIII, sections 3(a) and (b) are not applicable. Neither is it a public school or a public school district, but it is an association of school boards of public school districts, the governing boards of such districts:

"Every school district shall be under the control of a board of school trustees or a board of education." (Education Code section 35010(a).)

Section 35010(b) then provides that the governing board of each school district shall prescribe and enforce rules not inconsistent with law, or with the rules prescribed by the State Board of Education, for its own government.

The phrase "property used exclusively for public schools" was construed by the California Supreme Court in Ross v. City of Long Beach (1944) 24 Cal.2d 258. In that case, plaintiffs had leased both real property and a building thereon to the Long Beach City High School District for use exclusively as and for a public school, and they brought an action to recover taxes levied upon the property and paid by them under protest. As the property had been used exclusively for public school purposes, it was held exempt from taxation on that ground. The court pointed out that the exemption of property used for public school purposes is not for the benefit of the private owner who may rent his property for said purposes, but for the advantage of the school district which may be compelled to rent property rather than to buy land and erect buildings thereon to be used for the maintenance of its schools (pp. 262 and 263).

The phrase was again construed by the District Court of Appeal in Yttrup Homes v. Sacramento County (1977) 73 Cal. App. 3d 279. In that case plaintiffs had leased administrative offices to the Chancellor of the State Community Colleges and administrative offices and a warehouse to the Los Rios Community College District, and they brought an action to recover taxes levied upon the properties. The court regarded the properties as having been used for and by public schools, concluded that all leased structures were connected with the everyday and regular

administrative processes of the State Community College System or the Los Rios Community College District, and held that the properties were used exclusively for public schools and exempt. Important to the court were the purposes for which the properties were used and the purpose for the exemption (p. 283).

In both of these cases in which it was determined that the public schools exemption was available, either a public school district, a community college district, or the State Community College System, all governmental entities, was the leasee/user of the property. However, while no case has held that a corporation incorporated under the general nonprofit corporation law of California is comparable to a school district, etc., and can avail itself of the public schools exemption, we are of the opinion that such a corporation can avail itself of the public schools exemption if its property is used exclusively for public schools within the meaning of Article XIII, section 3(d) and section 202(a)(3). This is because the exemption is for "property used exclusively for public schools," not for property used for public school districts, etc.

In this instance, CSBA is an association of school boards of public school districts. As such school boards are using their respective properties exclusively for public schools, presumably, the school boards together as members of CSBA and CSBA are using CSBA's property exclusively for public schools also. In this regard we note that CSBA's activities, such as advocacy on behalf of school boards, conferences with school boards, training of school boards, preparation and implementation of sample policies for school boards, and administration of financial programs, appear to be public school activities, such that it could be concluded that CSBA's property is used exclusively for public schools within the meaning of said Article XIII, section 3(d) and section 202(a)(3). Of course, as the public schools exemption is administered solely by county assessors, such is a determination to be made by you.

As to the availability of the welfare exemption, as indicated in our December 8, 1989 amended finding for the 1989-90 fiscal year, CSBA and its property have been found ineligible for the welfare exemption because:

I.D. Articles of incorporation have no provision for the irrevocable dedication of the property and the dissolution clause is unacceptable.

N.T.L. No tax letter under section 23701d or Internal Revenue Code section 501(c)(3).

C.N.A. Charitable aspect not apparent.

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CSBA's articles of incorporation could be amended to provide for the irrevocable dedication of its property and to include an acceptable dissolution clause. Similarly, CSBA could apply for a section 23701d or a section 501(c)(3) tax letter which, if received, would satisfy the tax letter requirement. As to CSBA's purposes and activities, as properties used exclusively for private school purposes of less than collegiate grade or exclusively for purposes of both schools of and less than collegiate grade is eligible for the welfare exemption, and as properties of organizations established to and assisting the operations and activities of public schools have been found eligible for the welfare exemption, CSBA's property could be eligible for the welfare exemption if its purposes and activities are determined to be charitable purposes and activities and if its property is used exclusively therefor. As you may recall, our December 8, 1989 amended finding requested corrections/additional information in these regards.

Finally, while CSBA may be a Government Code section 20009.1 organization for retirement law purposes, such is not relevant or determinative for property tax purposes since under Article XIII, section 1 of the California Constitution, unless otherwise provided by the Constitution or laws of the United States, all property is taxable; and pertinent Article XIII exemption sections have been discussed above.

Out intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM:mw
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cc: Ms. Dorie Harmon
Mr. John Hagerty
Mr. Verne Walton
Mr. James Barga