

(916) 323-7715

January 7, 1982

This is in response to your December 4, 1981, letter wherein you state that the _____ intends to purchase a conservation easement over a property in _____ as Ring Mountain, and you ask what effect this would have on property taxes levied against the property

Initially, as I discussed with _____, Revenue and Taxation Code Section 214 (welfare exemption) provides that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by organizations organized and operated for such a purpose or purposes is exempt from property taxation if certain requirements are met. As indicated, ownership as well as use is determinative, as further evidenced by Section 261 of the Code which provides that as a prerequisite to the allowance of the welfare exemption, the interest of the claimant in the property must be of record on the lien date in the office of the recorder of the county in which the property is located.

Since the proposed Grant of Conservation Easement which you forwarded indicates that the _____ are to retain legal title to the property, the property would not be eligible for the welfare exemption.*

You then ask if the conservation easement will be regarded for assessment purposes as a separately assessable real property interest.

* Of course, for property to be eligible for the exemption, all the requirements therefor must be met, not just the ownership requirement.

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Revenue and Taxation Code Section 60 provides that "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. And Property Tax Rule 462(a) provides that:

"(1) There shall be a reappraisal of real property as of the date of a change in ownership of that property. The reappraisal will establish a new base year full value and will be enrolled on the lien date following the change in ownership.

"(2) A 'change in ownership' in real property occurs when there is a transfer of a present interest in the property, and a transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a 'change in ownership' shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant...or any other means...."

Given the scope of the conservation easement granted (Paragraph 1 of Grant--all rights and interest in the property except legal title, etc.), and the exclusiveness thereof (Therefore Clause and Paragraph 2 of Grant - exclusive easement in perpetuity running with and burdening title to the property), it is our opinion that the creation of this conservation easement prior to March 1, 1982, would constitute a change in ownership as defined in Section 60 and Rule 462(a), and that such easement should be regarded for assessment purposes as a separately assessable real property interest. As such, a base year value for the conservation easement would be determined for the 1982-83 base year.

You also ask how the taking of the conservation easement will affect the assessment of the underlying fee.

As indicated, the conservation easement should be regarded as a separately assessable real property interest. Since the value of real property is diminished to the extent

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that certain exclusive easements, leases, etc., are granted to others, upon the granting of this conservation easement to the the assessment of the underlying fee would, no doubt, be reduced for the 1982-83 fiscal year.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

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August 19, 2003

RE: *Transfer of Property Interests to Tax-Exempt Organization*

Dear Mr. _____ :

This letter is in reply to your correspondence addressed to the Board of Equalization's Property Taxes Department dated September 25, 2002. In your letter you asked us to review a set of facts to determine whether the events described therein would enable real property located in the State of California to qualify for a property tax exemption.

During our initial research into your request, we determined that the some of the issues presented in your letter were similar, in relevant part, to the situation presented by the East Bay Municipal Utility District's purchase of a conservation easement in Calaveras County. Since that transaction was the subject of an Application for Review, Change of Assessment, Equalization, or Adjustment before the Board of Equalization, we necessarily postponed our response pending the Board's decision in that matter. With the Board's recent resolution of that matter, we now respond to your inquiry.

For the reasons explained herein it is our opinion that the grant of a tenancy-in-common interest to a federally-recognized tax-exempt organization would not qualify the real property described in your letter for any property tax exemptions. However, if the owners of the real property donate a conservation easement created pursuant to Civil Code section 815 et. seq., to a government entity or a qualified non-profit organization—and the donee accepts that donation—the property may qualify for a reduction in taxable value.

Background and Facts

Your letter provided the following facts for purposes of our analysis:

1. The real property in question is a non-exempt single family dwelling located in the State of California.

2. Said dwelling is owned in fee simple absolute by a husband and wife (hereafter "Donors"), who hold it in joint tenancy and who use it as their principal residence.
3. You propose that the Donors will donate a portion of their real property to a federally-recognized tax-exempt environmental organization (e.g., Sierra Club, Ducks Unlimited, etc.) (hereafter "Conservation Organization") whose chartered activities include habitat conservation.
4. Donors would grant to the Conservation Organization an undivided, tenancy-in-common interest in the property.
5. As a result of the donation, the Conservation Organization would receive the following rights to its portion of the real property:
 - (a) Right to use the property to further its chartered habitat conservation activities.
 - (b) Right to encumber its share of the real property with a mortgage and use those funds derived from the mortgage to further its habitat conservation activities.
6. Donors would place the following conditions on their donation:
 - (a) Conservation Organization may not sell or otherwise transfer its interests in the real property while either of the Donors occupies the property, or until the Donors exercise their discretion to dispose of the property.
 - (b) Conservation Organization may not use the property for purposes outside its chartered habitat conservation activities.
 - (c) Conservation Organization may not permit other tax-exempt organizations to use the property.
7. Donors would agree to make the following covenants regarding their use of the property:
 - (a) To use their best efforts to preserve the existing natural habitat of the entire property as long as they occupy it; and,
 - (b) To refrain from using the property for any activity contrary to the chartered activities of the Conservation Organization.

Analysis

1. Does the portion of the property donated to the tax-exempt environmental organization qualify for exemption from property tax?

No. To qualify for an exemption property must be used exclusively for religious, hospital, charitable or scientific purposes, and be owned and operated by qualifying non-profit organizations.

Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, April 2002 (hereafter AH 267), describes the property tax exemption available to qualified non-profit entities on page 1:

Under section 4(b) of article XIII of the California Constitution, the Legislature has the authority to exempt property (1) used exclusively for religious, hospital, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption from property taxation, popularly known as the welfare exemption, was first adopted by voters as a constitutional amendment on November 7, 1944 . . .

When the Legislature enacted section 214 of the Revenue and Taxation Code to implement the Constitutional provision in 1945, a fourth purpose, scientific, was added to the three mentioned in the Constitution. Section 214 parallels and expands upon the Constitutional provision that *property used exclusively for the stated purposes (religious, hospital, scientific, or charitable), owned by qualifying nonprofit organizations is exempt from taxation if certain requirements are met*. An organization's primary purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. A qualifying organization's property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities.

Section 214 is the primary welfare exemption statute in a statutory scheme that consists of more than 20 additional provisions. Over the years, the scope of the welfare exemption has been expanded both by legislation and numerous judicial decisions construing the language of section 214 and related legislation.

The Constitution and statutes impose a number of requirements which must be met before property is eligible for exemption . . . [Emphasis added]¹

¹ AH 267, page 1. Full text of this section of the Assessors' Handbook is available on the Board of Equalization's Web site: <http://www.boe.ca.gov/proptaxes/pdf/ah267.pdf>

Real property must meet several requirements codified in subdivision (a) of section 214 of the Revenue and Taxation Code to be eligible for a welfare exemption. Of those requirements, the following are relevant to this analysis:

1. That the property be *used exclusively* for religious, hospital, scientific, or charitable purposes;
2. That the property be *owned and operated* by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes;
3. That the owner is not organized or operated for profit; and,
4. That no part of the net earnings inures to the benefit of any private shareholder or individual.

Exclusive Use

One essential element listed above is the requirement that the property be “used exclusively” by qualifying organizations for qualifying purposes and activities. Subdivision (a) of section 214 provides that the property of qualifying non-profit organizations must be used exclusively for a religious, hospital, charitable or scientific purposes in order to qualify for the exemption. Exemptions are allowed only for property *actually used* for an exempt activity and the amount of property must not exceed what is reasonably necessary to accomplish the exempt purpose (subdivision (a)(3) of section 214). Unused or vacant property is not qualified for exemption.

As applied to the facts supplied in your letter, the Conservation Organization's stated purpose—assuming that it is related to the preservation, protection, and enhancement of California's environment—is a use within the charitable purposes aspect of section 214. However, there are additional requirements that must be met in order for the property to qualify for the welfare exemption.

Your letter also indicated that the Donors would retain the right to use the property as their residence, and the right to use the property for activities that do not run contrary to any of the chartered purposes of the Conservation Organization. By retaining those rights, including the right to use the property as their residence, the Donors' proposed uses of the property are not qualifying exempt purposes, as required by section 214. It is our opinion, that under the facts presented in your letter, the property would not and could not satisfy all the requirements in subdivision (a) of section 214 as long as the Donors have an ownership interest and the right to use the property.

Owned and Operated

Subdivision (a) of section 214 also requires that the property be both owned and operated by qualifying organizations. It does not, however, require that the owner and operator of the property be the same legal entity. *Christ the Good Shepherd Lutheran Church v. Mathiesen* (1978) 81 Cal. App. 3d 355. Nonetheless, if there are multiple owners or operators (users) of the property, each entity must meet all of the requirements for exemption (*Christ the Good Shepherd Lutheran Church v. Mathiesen, supra.*; subdivision (a) of section 214).

The Donors, in this case, are private individuals, not a non-profit organization. They propose to co-own the entire property as a tenant in common with the Conservation Organization. It is our opinion that the co-ownership of the property by the Donors—private individuals—fails to satisfy the requirement that the property be both owned and operated by qualifying exempt organizations (subdivisions (a)(1) and (a)(3) of section 214). Moreover, the Donors' co-ownership of the entire property would disqualify the entire property from receiving an exemption.

Donors' Property Would Not Qualify for Exemption under Section 214.02

Section 214.02 provides, in relevant part, that:

[p]roperty that is used exclusively for the preservation of native plants or animals . . . *is open to the general public* subject to the reasonable restrictions concerning the needs of the land, and is owned and operated by a scientific or charitable fund, foundation or corporation, the primary interest of which is to preserve those natural areas, and that meets all the requirements of section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the Constitution of the State of California and Section 214. [Emphasis added.]

In addition to our opinion above—that the Donors' continued use of the property would render the property ineligible for an exemption pursuant to section 214—your proposed transaction would prohibit other tax-exempt entities from using the property, and we assume, the property would not be open to the general public as required by section 214.02. Thus, the provisions of section 214.02, requiring that the property be open to the public, subject to reasonable restrictions concerning the needs of the land, will not and cannot be met.

In conclusion, the Donors' proposal to transfer a tenancy-in-common interest in their real property to the Conservation Organization will not enable the Donors to obtain a property tax exemption on that property pursuant to sections 214 and 214.02.

2. Does the size of the portion of the property donated to the tax-exempt environmental organization have any impact on whether the donated property qualifies for exemption from property tax?

No. As stated above, real property must be owned and operated by qualified entities and be exclusively used for those entity's qualified activities to qualify for a property tax exemption.

For so long as the Donors use and/or control the use of the real property the size of the portion of the property donated to the tax-exempt organization will have no impact on whether the donated property qualifies for the property tax exemption available under section 214.

3. Does the portion of property donated to the tax-exempt environmental organization need to be physically specified to qualify for exemption from property tax?

No. Any non-qualifying concurrent uses of real property will disqualify such property from receiving a property tax exemption.

In our answer to question No. 1 above we describe how Revenue and Taxation Code section 214 places ownership and use restrictions and on those properties receiving an exemption. Non-qualifying uses will prevent the property from receiving an exemption, without regard to whether a portion of that property has been physically specified. Consequently, if the Donors retain any rights to use the property, i.e., as their residence—even if the donated portion property is specifically identified—that retained right to use would render the property ineligible for an exemption.

4. Would donors' membership in the tax-exempt environmental organization have any impact upon whether the donated portion of property qualifies for exemption from property tax?

No. Donors' membership in any organization would have no impact on the determination whether or not their property qualifies for the welfare exemption.

To receive a property tax exemption, the Donors' property must meet the ownership and use requirements of Revenue and Taxation Code section 214. For the reasons explained in our answer to question No. 1 above, Donors' property would not qualify for such an exemption. Their membership in the Conservation Organization would not affect that determination.

5. If the portion of property donated to the tax-exempt environmental organization does not qualify for exemption from property tax, what change in circumstances or conditions (e.g., form of ownership, type of tax-exempt organization, time period, zoning, etc.) or other method of donation would result in its qualifying for exemption?

No method of donation will enable the Donors to obtain a property tax exemption while they maintain private ownership, use, or control over the property. However, donating a conservation easement to a government entity or a qualified non-profit organization, pursuant to Civil Code section 815 et. seq., may qualify the property for a reduction in assessed value.

Private landowners, as a general rule, cannot ordinarily obtain an exemption or reduce the value of their own property for property tax purposes. Without meeting the ownership and exclusive use requirements of section 214, even non-profit entities are not eligible for a property tax exemption in California. Thus, no method of donation will enable the Donors to obtain a property tax exemption while they maintain ownership, use, or control over the property.

Donations of conservation easements, however, are one of the few exceptions to this general rule. Subdivision (a) of section 402.1 provides, in part, that “[i]n the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected.” Subdivision (a)(8) lists conservation easements as one of those enforceable restrictions that assessors' offices must consider when determining the assessed values of land:

A recorded conservation, trail, or scenic easement, as described in Section 815.1 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

Upon acceptance by the public agency or non-profit corporation, a conservation easement described in section 815 et. seq. of the Civil Code will permanently preserve the open-space and undeveloped nature of the Donors' property. In addition, donating a conservation easement will maintain the Donors' rights to use the property and exclude others from the property, if those rights are reserved under the grant of the easement

Granting a conservation easement, however, does not result in a property tax exemption of the Donors' property; the value of those rights transferred under a conservation easement remain a part of the Donors' factored base year values. Instead, subdivision (d) of section 402.1 prohibits assessors' offices from considering sales of otherwise comparable land not similarly restricted when applying the comparable sales approach to value—unless the restrictions have a demonstrably minimal effect upon value. Thus, the assessor must consider the effect that the conservation easement has on the value of the Donors' property when appraising that property for property tax purposes. Any potential decline in value resulting from the donation must be reflected in the Donors' assessment.

Conclusion

Transferring a tenancy-in-common interest to a Conservation Organization will not enable the Donors to obtain a property tax exemption since they plan to retain both an ownership interest and the right to use and operate the real property as their home. For so long as the Donors use and/or control the use of the real property the size of the portion of the property donated to the tax-exempt organization will have no impact on whether the donated tenancy-in-common interest qualifies for the property tax exemption available under section 214. Concurrent non-qualifying uses will prevent the property from receiving an exemption, without regard to whether a portion of that donated property has been specifically identified. Our opinions above apply whether or not the Donors are members of the Conservation Organization to which they plan to donate the property. No actions short of outright transfer of the property to a qualifying organization, which will use the property for qualifying purposes, will qualify the property for the welfare exemption. However, donating a conservation easement to a government entity or qualified non-profit organization may reduce the taxable of the Donors' property.

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

Sincerely,

/s/ Michael Lebeau

Michael Lebeau
Tax Counsel

MTL:lg

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