

Mr. Verne Walton

March 3, 1983

Lawrence A. Augusta

Request for Legal Review and Response: Iglesia Bautista Independiente (San Mateo County)

This is in response to your memorandum of January 13, 1983, requesting our opinion on whether Section 271 of the Revenue and Taxation Code applies to property leased by a church. You make reference to a conflict between paragraph (a)(1) and (a)(3) of Section 271. This issue was raised by Mr. James A. Bach, attorney for Iglesia Bautista Independiente in his letter to Bill Minor of December 14.

It has been our consistent position that Section 271 requires ownership of the property by the church, and the property in question would not be eligible for the church exemption for 1982-83. I see no conflict between paragraphs (a)(1) and (a)(3) of Section 271. Both paragraphs require ownership by the organization notwithstanding the issue raised about the meaning of the word "acquired."

Article XIII, Section 3(e) grants an exemption to property used exclusively for religious worship (the "church" exemption). Article XIII, Section 4(b) authorizes the Legislature to grant an exemption to property which is used exclusively for religious, hospital or charitable purposes and which is owned or held in trust by qualifying organizations (the "welfare" exemption). The Revenue and Taxation Code specifies procedures for claiming these exemptions.

Generally, the status of property for purposes of property taxation is determined as of the lien date. (Revenue and Taxation Code Section 405, Dodge v. Nevada National Bank, 109 F. 726, East Bay MUD v. Garrison, 191 Cal. 680.) Thus, property will be granted exemption for the forthcoming fiscal year if it meets the requirements for the exemption on the lien date. Section 271 provides an exception to this general rule. That section provides a procedure which permits a granting of the exemption when the property is acquired under three circumstances:

- (1) When the property is acquired after the lien date but before the first day of the fiscal year, and the organization is otherwise fully qualified;
- (2) When the property is acquired after the lien date but before the first day of the fiscal year, but the organization was not in existence on the lien date;
- (3) When the property is acquired after the beginning of the fiscal year whether or not the organization was in existence on the lien.

Thus, the variations go to when the property was acquired and whether the organization was in existence, not to whether the property was owned or leased. The entire pattern of Section 271 reflects a requirement that there be ownership by the organization. Each subparagraph refers back to what would have been the status of the property had it been owned by the organization on the lien date.

There is nothing in the section to suggest that it applies to leases. Throughout the section the words "acquired" and "owned" are used. If the Legislature had intended to include leases, they would have specifically referred to leases. See, for example, Sections 206.1, 206.2, 214.6, and 215.5. In fact, case law, while not strictly on point, would indicate that once the status of leased property is determined on the lien date, the fact that it is later leased to an exempt entity does not change its taxability. See Ohrbach's Inc. v. County of Los Angeles (1961) 190 Cal.App. 2d 575 and Rothman v. County of Los Angeles (1961) 193 Cal.App. 2d 522.

There is a further reason we believe the provisions of Section 271 require ownership. There has never been any dispute that property exempt under the welfare exemption, Article XIII, Section 4(b) and Section 214 of the Revenue and Taxation Code, must be owned in order for it to qualify for exemption. Since 271 applies equally to welfare exemption and church exemption property, it cannot possibly refer to property that is merely leased.

There is another issue raised by Mr. Bach's letter which I believe requires comment. He refers to the fact that the exemption would be denied and that there would be a \$250 late filing penalty. There is no \$250 late filing penalty if an exemption is denied. If an exemption were granted, the amount of the exemption would be reduced by 10% of the taxes not to exceed \$250 as a reimbursement to the county for the cost of processing a late form. However, there is no penalty in the case of the Iglesia Bautista Independiente.

Payment of the property taxes where an exemption is not available is a matter to be determined by the lessor and lessee at the time the lease is entered into. Section 206.2 of the Revenue and Taxation Code provides that where an exemption is granted, the benefits of the property tax exemption shall inure to the benefit of the church either through a reduction in the rental payment or refund of such payments. It is not applicable if no exemption is granted.

LAA:jlh

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
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October 10, 1991

Honorable Bradley L. Jacobs
ORANGE COUNTY ASSESSOR
630 North Broadway
Post Office Box 149
Santa Ana, CA 92702

Attn: Mr. Michael Wyatt, Appraiser II
Quality Assurance

Dear Mr. Jacobs:

This is in response to your September 24, 1991, letter to Mr. Richard Ochsner wherein you inquired concerning Revenue and Taxation Code Section 271, Property acquired after lien date, and its applicability, if any, to leases/leases entered into after March 1:

1. On August 23, 1990, South Coast Christian Assembly ("Assembly") obtained the use of real property as a church through a three (3) year lease with no options.
2. On January 10, 1991, the Assembly filed with our office a 1990-91 church exemption claim form.
3. On February 19, 1991, our office notified the Assembly in writing denying its claim on the basis that the ownership requirements set forth in Section 271 had not been met since "the property was not acquired (owned) by the church, but leased."
4. For the 1991-92 fiscal year, the Assembly was granted the church exemption.

As hereinafter explained, we believe that Section 271 has no applicability to leased property, and that the property leased to/in the "hands" of the Assembly for August 1990 was not eligible for the church exemption for the 1990-91 fiscal year.

As you are aware, Section 271 provides, in part:

" (a) Provided that an appropriate application for exemption is filed on or before the first day of March of the calendar year next succeeding the calendar year in which the property was acquired, any tax or penalty or interest thereon

(1) Imposed upon property owned by any organization qualified for the college, cemetery, church, religious, exhibition, veterans' organization, or welfare exemption which is acquired by such organization during a given calendar year, after the lien date but prior to the first day of the fiscal year commencing within that calendar year, when the property is of a kind which would have been qualified for the college, cemetery, church, religious, exhibition, veterans' organization, or welfare exemption if it had been owned by the organization on the lien date, shall be canceled or refunded;

* * *

" (3) Imposed upon property acquired after the beginning of any fiscal year by an organization qualified for the college, cemetery, church, religious, exhibition, veterans' organization or welfare exemption and the property is of a kind which would have qualified for an exemption if it had been owned by the organization on the lien date, whether or not that organization was in existence on the line date, shall be canceled or refunded in the proportion that the number of days for which the property was so qualified during the fiscal year bears to 365.

* * *

As indicated in the March 3, 1983, memorandum from Mr. Lawrence A. Augusta to Mr. Verne Walton, it has been our longstanding interpretation of Section 271 that ownership of property is required, and that property leased by a church after the lien date is not entitled to partial exemption under Section 271. A copy of that memorandum is enclosed for your information and review. As you will note, we have not construed "property owned" and/or "property acquired", as used in Section 271, as encompassing "leasehold interests owned" and/or "leasehold interests acquired" for the reasons set forth therein.

As to the "argument" that "since the constitutional revision to Section 3(f) of Article XIII (of the California Constitution) has deleted the distinction made between fee ownership and leasehold interests, it is inappropriate for our (your) office to make a distinction now between fee title and leasehold interests under Section 271 to deny the Assembly the church exemption for 1990-91", there are at least the following reasons to reject it:

1. Since its enactment in 1971, Section 271 has required, as to late exemption claims, that property be acquired/owned; and "acquired/owned" has never been construed to encompass leasehold interests.
2. Article XIII, Section 3(f) did not change the requirements of Section 271. Neither did it change the definitions of "owned" or "acquired" as used therein.
3. Proposition 8 of the November 1974 Ballot, which added Article XIII, Section 3(f), did not also amend Section 271 in any way, even though statutes are often added, amended, or repealed as part of Ballot measures.
4. Upon the adoption of Article XIII, Section 3(f) in 1974 and over 17 subsequent years, the Legislature has not acted to amend Section 271 in any related respect,

including any change in the definitions of "owned" or "acquired" or change to encompass leasehold interests.

5. While the result of Article XIII, Section 3(f) was to make lien date leased properties used exclusively for religious worship eligible for the church exemption, for properties not used exclusively for religious worship on the lien date, in some instances, those in which the properties were acquired/owned, the properties could still be eligible for exemption under Section 271; while in other instances, those in which the properties were leased and not acquired/owned, Section 271 would not be applicable.
 6. Neither Article XIII, Section 3(f) nor any other article of the Constitution require the Legislature to enact late filing provisions for claiming exemption. Where the Legislature chooses to enact late filing provisions for claiming exemption, neither Article XIII, Section 3(f), nor any other article of the Constitution in any way limit or impact upon how the Legislature does so. The Legislature may designate the exemption or exemptions to which late filing provisions apply and the property or properties to which such provisions apply. Such classifications need only be reasonable under the equal protection clauses of the California and United States Constitutions.
 7. As the result of Article III, Section 3.5 of the California Constitution, an administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
 - "(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
 - (b) To declare a statute unconstitutional;
- * * *
8. No court has, to our knowledge, been called upon to consider the constitutionality of Section 271; and no appellate court has determined that Section 271 is unconstitutional.

A parallel situation exists as the result of Article XIII A of the California Constitution, adopted in June 1978, and exemption sections, including Section 271, in effect at that time and unchanged. For change in ownership purposes, "change in ownership" includes the creation of a leasehold interest in taxable real property for a term of 35 years or more (Section 61(c)(1)), but the person acquiring such an interest is not an owner of property for exemption purposes.

Finally, as to the contention that possessory interests, which are considered ownership interests for exemption purposes, and leasehold interests, which are not considered ownership interests for exemption purposes, are the same, no authority is cited therefor, and neither are we aware of any. Had Tri-Cities Children's Center, Inc. leased its property for a nongovernmental entity, there

would have been no owned possessory interest and the property would not have been exempt from property taxation (Section 214) unless the owner had also met all of the Section 214 requirements for the exemption.

Very truly yours,

James K. McManigal, Jr.
Senior Tax Counsel

JKM:ta
Enclosure

cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. James Barga
Mr. Bill Minor