

**STATE BOARD OF EQUALIZATION**

LEGAL DEPARTMENT (MIC:82)  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082  
TELEPHONE (916) 445-8485  
FAX (916) 323-3387  
[www.boe.ca.gov](http://www.boe.ca.gov)

CAROLE MIGDEN  
First District, San Francisco

BILL LEONARD  
Second District, Ontario

CLAUDE PARRISH  
Third District, Long Beach

JOHN CHIANG  
Fourth District, Los Angeles

STEVE WESTLY  
State Controller, Sacramento

RAMON J. HIRSIG  
Executive Director

July 30, 2004

**Re: Church Exemption – Religious School Operated on Leased Land  
Request No. 04-151**

Dear Mr. \_\_\_\_\_ :

This is in response to your letter dated September 18, 2003, addressed to Ms. Kristine Cazadd, Assistant Chief Counsel, which you faxed to her on September 19, 2003. As clarified during our telephone conversation on July 12, 2004, you request a legal opinion addressing solely the issue as to whether the 29-acre parcel of land leased by a non-profit corporation, exempt under Revenue and Taxation Code<sup>1</sup> section 23710d (“corporation”), qualifies for the church exemption under California Constitution, Article XIII, section 3, subdivision (f) and section 5. As explained below, we conclude that the leased property does not qualify for the church exemption because the property is not used exclusively for religious worship.

**Factual Background**

You provide the following factual background, as summarized:

The corporation operates a Roman Catholic school. The corporation leased a 29-acre parcel of land from a for-profit entity.

The corporation is currently constructing various buildings on the leased property for use by the school, such as the gymnasium, performing arts center, and sports fields. The school will hold Roman Catholic mass on a regular basis for its students in the gymnasium, performing arts center and outside plaza. The corporation is not building a separate chapel or facility for religious worship on the leased property.

The corporation owns the buildings under construction on the leased property. The corporation has applied for the welfare exemption under section 214 for such buildings.

You stated that you believe that the county will grant the corporation the welfare exemption for the buildings. You also stated that the leased property on which the buildings are being constructed does not qualify for the welfare exemption and the religious exemption under

<sup>1</sup> All section references are to the Revenue and Taxation Code unless otherwise specified.

section 207 because the land is owned by a for-profit entity. Thus, you ask whether the leased land qualifies for the church exemption.

### **Law and Analysis**

#### **Three Statutory Exemptions for Property Used for Religious Purposes**

There are three property tax exemptions for property used for religious purposes: (1) church exemption; (2) religious exemption; and (4) welfare exemption. As discussed below, the types of qualifying religious purposes covered under these exemptions differs in that the church exemption has the narrowest scope, allowing the exemption only for property exclusively used for religious worship. This is distinguished from the religious exemption which exempts property owned and operated by a church and used exclusively for religious worship and specified school purposes. Lastly, the welfare exemption applies to property used for religious purposes beyond the scope of religious worship and schools. Thus, the types of religious purposes that qualify for the welfare exemption are broader than the religious purposes that qualify for the church exemption and the religious exemption.

Additionally, as summarized below, both the religious exemption and the welfare exemption require that the property be owned by a church or a religious organization, respectively. If land is leased from a for-profit entity, the church exemption, which applies the narrowest type of use for religious purposes, is the only applicable exemption.

#### **Church Exemption**

The church exemption, provided by California Constitution Article XIII, section 3, subdivision (f) and section 5, as implemented by Revenue and Taxation Code section 206, applies to property used exclusively for religious worship. In order to qualify for the exemption, the property may be owned or leased by a church or religious organization. The only requirement that must be satisfied is that the primary use of the property is for religious worship, and that all other uses are incidental and necessary uses supportive of the primary religious worship use.

In *Fellowship of Humanity v. Alameda County* (1957) 153 Cal.App.2d 673, 693, the court defined the term “religious worship” as “any lawful means of formally observing the tenets of the cult”. In applying the church exemption, we have interpreted “formal observance” to be limited to: (1) traditional ceremonial functions such as regularly scheduled services with attendance and participation of the complete congregation; and (2) other ancillary services which are sacramental in nature such as baptisms, confirmations, Bar Mitzvahs, weddings, funerals and other comparable ceremonies although the presence of the entire congregation is not required. (Assessors’ Handbook 267, Welfare, Church and Religious Exemptions (AH 267), part II, p. 2-6.)

Examples of incidental and necessary uses include religious instructional sessions, choir practice sessions, church administration, church business meetings, and most activities of auxiliary organizations accountable to the local church authority. (Annotated Letter No. 230.0020.) These uses normally involve present or prospective members of the church congregation and support the primary religious use of the property for religious worship.

California Constitution Article XIII, section 3, subdivision (f) and section 5 provide that buildings actually used, and those in the course of construction intended to be used exclusively for religious worship are eligible for this exemption. The exemption is also available for the land on which the building is located to the extent that the land is necessary for the convenient use of the buildings.

#### Religious Exemption

The religious exemption provided by section 207 applies to property owned and operated by churches that use their property exclusively for religious worship and operate schools of less than collegiate grade. This exemption applies only when the religious organization/owner uses its property both for a “church” and a “school.”

#### Welfare Exemption

The welfare exemption provided by section 214, subdivision (a) applies to property used exclusively for religious purposes by a qualifying nonprofit entity, if the property is owned and operated by a qualifying nonprofit entity or entities. The definition of “religious purposes” as used for the welfare exemption is much broader than the definition of “religious worship” as used for the church exemption, discussed above. In *Serra Retreat v. Los Angeles County* (1950) 35 Cal.2d 755, 759, the California Supreme Court concluded that the religious purposes aspect of the welfare exemption was in addition to the church exemption for property used exclusively for religious worship, and thus, evidence of a broader concept. The court found that property used for retreat living accommodations for priests and lay brothers was eligible for the welfare exemption as property exclusively used for religious purposes even though the property was not used for religious worship. By applying this construction, courts have held that religious purposes as used in section 214 include church property used for the administration of several churches, church property used for retreats or summer camps, and property used to house missionaries on furlough. (See *House of Rest v. Los Angeles County* (1957) 151 Cal.App.2d 523.)

In the present case, the buildings currently under construction and the leased land are intended to be used for a school of less than collegiate grade with occasional use of some parts of the property for religious worship. Although the school intends to hold Roman Catholic mass for the students in the gymnasium, performing arts center and outside plaza the primary purpose of these portions of the property is not for religious worship but rather for various sports and student activities unrelated to religious worship. Therefore, the buildings and the land on which they are located do not qualify for the church exemption. However, the uses of the property do qualify for the religious exemption or welfare exemption, and the leased land would also qualify if it were owned by a qualifying nonprofit entity.

#### Leased Property

Both the owner (lessor) and the operator (lessee) of a property must be qualifying nonprofit organizations in order for the property to be eligible for exemption under Section 214, subd. (a). (*Christ the Good Shepherd Lutheran Church v. Mathiesen* (1978) 81 Cal.App.3d 355). In this case, the land on which the buildings at issue are located is leased from a for-profit entity. In other words, the lessor is not a qualifying nonprofit entity under section 214. For that reason, the land does not qualify for the welfare exemption. We note also, that the lease agreement has

not been submitted for our review and you have not offered any information indicating that the lease is something other than a “true lease,” e.g., a synthetic lease, a security instrument, or an agency transaction. If such was the case, it may be possible to conclude that the for-profit entity was not the true owner.

Very truly yours,

*/s/ Sophia Chung*

Sophia Chung  
Senior Tax Counsel

SC;jlh

Precdnt/GenExempt/04/12SC

cc: Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Mickie Stuckey, MIC:62  
Mr. Todd Gilman, MIC:70