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(916) 445-3076

October 17, 1980

Mr. Frank C. Seeley  
Riverside County Assessor  
P. O. Box 907  
Riverside, CA 92502

Dear Mr. Seeley:

Hope Lutheran Church – Exemption from Special Tax

This letter is in response to your question to Glenn Rigby of whether or not a special tax can be applied to church property. The City of Palm Desert has passed an ordinance pursuant to Government Code Section 53978 which levies a special ax for upgrading fire protection services. The Hope Lutheran Church wishes to be exempted from payment of the special tax and cites Walz v. Tax Commission of the City of New York, (1970) 397 U.S. 644, as possible precedent for disallowing the levy of a special tax on church property. Specifically, Hope Lutheran Church contends that the United States Supreme Court held in Walz that “if church property were taxable, disputes would arise over assessments, and the result would be ‘excessive government entanglement’ of church and state.”

Walz v. Tax Commission of the City of New York did not hold that church property cannot be taxed. The decision merely upheld the right of a state to grant a church exemption against the challenge that such an exemption was contrary to the Establishment Clause as state aid to religion. Further, the Court did not say that taxation of church property would result in excessive government entanglement of church and state. Responding to the contention that the effect of the exemption was an excessive government entanglement with religion, the Court stated that exemptions for religious organizations created only a minimal and remote involvement, far less than would be created by taxation of churches. The court noted that either taxation or exemption occasions some degree of state involvement with religion.

There is no requirement that states or local government exempt churches from paying taxes under the Free Exercise Clause of the United State Constitution or the California Constitution. Churches may be required to bear their fair share of a tax so long as the tax or fee is not exacted for the privilege of exercising their religion. Watchtower B. & T. Soc. V. County of L.A., (1947) 30 Cal. 2d 426.

Government Code Section 53978 authorizes a local agency to adopt a special tax to provide revenue for fire protection and prevention. The statute provides in pertinent part as follows:

“Any local agency which provides fire protection or prevention services . . . may, by ordinance, determine and propose for adoption a special tax for fire protection and prevention . . . other than ad valorem property taxes, pursuant to this section. Such proposition shall be submitted to the voters of the affected area or zone, or of the district, and shall take effect upon approval of two-thirds of the voters voting upon such proposition. The local agency which fixes such a special tax upon a federal or state governmental agency or another local agency.”

It can be seen that the statute specifically exempts only government agencies from the special tax. Statutes granting exemptions from taxation are strictly construed to the end that such concession will be neither enlarged nor extended beyond the plain meaning of the language employed. Cedars of Lebanon Hospital v. County of Los Angeles, (1950) 35 Cal. 2d 729, 734. Therefore, it is our opinion that a special tax such as the one adopted by the City of Palm Desert can be levied against church property.

If you have any further questions, please contact us.

Very truly yours,

Michele F. Hicks  
Tax Counsel

MFH:fr

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Mr. Robert H. Gustafson  
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Legal Section