

240.0011 **Non-Church Uses.** A church parking lot used for church parking and by other individuals and businesses on weekdays for parking that is not use for "commercial purposes," as defined in Revenue and Taxation Code Section 206.1, remains eligible for the exemption. C 5/28/87. (Am. M99-1)

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May 28, 1987



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Dear _____

This is in response to your May 14, 1987, letter to Mr. Richard Schorle and me wherein you inquired as to the availability of the welfare exemption and/or church exemption from property taxation for the St. John's Presbyterian Church of Rancho Park's parking lot were the church to allow others to use the parking lot or a portion thereof on a "not to interfere with church use" basis.

Per your letter, in part:

"Some of the 98 parking spaces in the Church parking lot are not needed for the Church's ministries during weekday mornings and afternoons. Because the Church is located in a crowded section of West Los Angeles, the Church has received requests from various individuals, businesses and other organizations concerning the use of its parking lot for themselves or their employees during weekday working hours.

"The Church leadership wishes to permit such use in certain situations, as a service to the individuals, businesses and other organizations involved and as a service to the community at large, but only if doing so will not adversely affect the Church's exemption from California property taxes with respect to any portion of its property. The Church either would charge no fee whatsoever or would charge a modest fee which does not exceed the ordinary and necessary costs of operating and maintaining the parking lot for parking purposes."

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Article XIII, section 4 of the California Constitution provides, in pertinent part:

"The Legislature may exempt from property taxation in whole or in part:

* * *

(b) Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (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. (Welfare exemption)

* * *

(d) Real property not used for commercial purposes that is reasonably and necessarily required for parking vehicles of persons worshiping on land exempt by Section 3(f)."
(Church exemption)

As you noted in your letter, Revenue and Taxation Code section 206.1, which implements article XIII section 4(d), provides that:

"All real property necessarily and reasonably required for the parking of automobiles of persons while attending religious services, or engaged in religious services or worship, or engaged in any religious activity,...which real property...is owned by the church or religious denomination or sect using such real property for the parking of automobiles as aforesaid, and which real property...is not at other times used for commercial purposes is exempt from taxation. As used in this section, 'commercial purposes' does not include the parking of vehicles or bicycles, the revenue of which does not exceed the ordinary and necessary costs of operating and maintaining the property for parking purposes."

Per your letter in this regard:

"The Church's parking lot is not larger than is necessarily and reasonably required for the parking of automobiles of persons while attending religious services. The present average attendance at the Church's Sunday morning worship services exceeds 400 persons and many parishioners park on side streets after the parking lot is filled. In view of the foregoing representation concerning fees, the parking lot would not at any time be used for commercial purposes."

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In 1975, section 206.1 was amended by Stats. 1975, ch. 128, in effect January 1, 1976, to delete "and exclusively used" after "required" and to substitute "used for commercial purposes" for "and which during the 12 months immediately preceding an application for tax exemption has not been used for commercial purposes..." in the first sentence, and to add the second sentence defining commercial purposes. From that time forward, property used for church parking and other parking has been eligible for the church exemption where such other parking has not constituted use for "commercial purposes", as that term is defined in the section. Since, according to your letter, the Church's parking lot would be used for church parking and other parking, and such other parking would not constitute use for "commercial purposes", as defined, it appears that the parking lot would remain eligible for the church exemption, which is administered by the Los Angeles County Assessor.

As to the availability of the welfare exemption under such circumstances, article XIII, section 4(b) of the Constitution and section 214 of the Code continue to require exclusive use of property for religious, hospital, or charitable purposes, and there is no mention of or reference to church parking lots in either. Thus, as the Church's parking lot would be used for other parking, it would no longer be used exclusively for religious purposes; and as a result, it would no longer be eligible for the welfare exemption.

The availability of the welfare exemption for a church parking lot was addressed in Peninsula Covenant Church v. San Mateo County, 94 Cal.App.3d 382, wherein the court considered section 206.1 applicable to church parking lots per se, irrespective of whether the church exemption or the welfare exemption had been claimed, and it concluded that the uses made of the Church's parking lot by church members and by others did not preclude the welfare exemption. As evidenced above, however, such a conclusion is not reconcilable with article XIII, section 4 since section 4(d) only refers to the church exemption and section 4(b) refers neither to church parking lots nor to section 4(d), and since section 4(b) and section 214 have always required exclusive use for qualifying purposes and ownership and operation by qualifying organizations.

In sum, in our view, the Church's parking lot would remain eligible for the church exemption were the Church to allow others to use the parking lot or portion thereof under the circumstances referenced, but it would no longer be eligible for the welfare exemption. Thus, we concur with Mr. Schorle's analysis that the Church could claim the church exemption for its parking lot and continue to claim the welfare exemption for its church buildings and the remainder of its property, with

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the result that the Church's property could continue to be exempt in its entirety.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM/rz

cc: Mr. John J. Lynch, Los Angeles County Assessor
Mr. Richard Schorle, Los Angeles County Assr. Ofc.
bc: Mr. Gordon P. Adelman
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