STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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April 22, 1987

Honorable R. J. Sanford
County Assessor
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

Attention Mr. James Dodd, Appraiser Analyst

Dear Mr. Sanford:

Re: Civil Air Patrol

This is in response to your letter to Richard Ochsner dated December 8, 1986 wherein you request our opinion regarding the assessability of real property owned by the Civil Air Patrol. The facts are as follows:

The Ventura County Assessor has for many years levied a possessory interest assessment against the Civil Air Patrol for an aircraft "tie down." This year the Civil Air Patrol has protested the assessment on the ground that it is an instrumentality of the United States pursuant to 10 U.S.C. section 9441(c) and that its property is therefore immune from taxation.

As you know, property owned by federal instrumentalities is immune from taxation by the states unless Congress has consented to taxation (Ehrman and Flavin, Taxing California Property (2d ed. 1979), sections 5.2, 5.3, pp. 112, 113.) An organization may, however, be a federal instrumentality for one purpose but not a federal instrumentality for other purposes. For example, In Lewis v. United States 680 F.2d 1230 (9th Cir. 1982), the United States Court of Appeals acknowledged that Federal Reserve Banks are deemed to be federal instrumentalities for purposes of immunity from state taxation but held they are not federal instrumentalities for purposes of the Federal Tort Claims Act.

10 U.S.C. section 9441(c) cited by taxpayer provides that "[t]he Secretary may use the services of the Civil Air Patrol

in fulfilling the noncombat mission of the Department of the Air Force, and for purposes of determining the civil liability of the Civil Air Patrol (or any member thereof) with respect to any act or omission committed by the Civil Air Patrol (or any member thereof) in fulfilling such mission, the Civil Air Patrol shall be deemed to be an instrumentality of the United States."

The foregoing statutory provision as amended in 1980 makes it clear that the Civil Air Patrol is a federal instrumentality for purposes of tort liability but it does not answer the question of whether the Civil Air Patrol is a federal instrumentality for purposes of immunity from local taxation.

The Civil Air Patrol was created by an Act of Congress July 1, 1946 and declared to be a body corporate, with perpetual succession and various powers including the power to sue and be sued; to acquire and hold property; to accept gifts, legacies and devises; to establish and maintain offices for the conduct of the affairs of the corporation in the District of Columbia and in the several States and Territories of the United States; and to do all acts and things necessary and proper to carry into effect the objects and purposes of the corporation (36 U.S.C.A. §§ 201, 205).

The objects and purposes of the corporation are to provide an organization to encourage and aid American citizens in the contribution of their efforts, services and resources in the development of aviation and in the maintenance of air supremacy; to encourage and develop by example the voluntary contribution of private citizens to the public welfare; to provide aviation education and training; to encourage and foster civil aviation in local communities and to provide an organization of private citizens with adequate facilities to assist in meeting local and national emergencies (36 U.S.C.A. § 202). The Civil Air Patrol has "no power to issue capital stock or engage in business for pecuniary profit or gain, its objects and purposes being solely of a benevolent character and not for the pecuniary profit or gain of its members." (36 U.S.C.A. § 204.)

In 1956, Congress enacted 10 U.S.C.A. section 9441 making the Civil Air Patrol a volunteer civilian auxiliary of the Air Force and authorized the Secretary of the Air Force to assist the Civil Air Patrol in the fulfillment of its objectives by giving, lending or selling it surplus equipment, related supplies and training aids; permitting the use of such Air

Force services and facilities he considers necessary for the Civil Air Patrol to carry out its mission; furnishing fuel and lubricants necessary for the Civil Air Patrol to carry out missions assigned to it by the Air Force; establishing, maintaining, and supplying liaison offices of the Air Force at the National, State, and Territorial Headquarters of the Civil Air Patrol; detailing or assigning any member of the Air Force or any officer or employee of the Department of the Air Force to any such office or to any unit or installation of the Civil Air Patrol to assist in the training program of the Civil Air Patrol; and in time of war or national emergency, authorizing the payment of travel expenses and allowances to members of the Civil Air Patrol while carrying out any mission specifically assigned by the Air Force.

Congress later amended 10 U.S.C.A. section 9441 beginning in 1980 to further provide that the Secretary of the Air Force may authorize the payment of aircraft maintenance expenses relating to various Civil Air Patrol missions, expenses of placing into serviceable condition major items of equipment furnished to the Civil Air Patrol by the Air Force, reimburse the Civil Air Patrol for costs incurred for the purchase of such major items of equipment necessary for the Civil Air Patrol to carry out its missions; and to furnish articles of the Air Force uniform to Civil Air Patrol cadets without cost to such cadets.

In 1984, Congress enacted 10 U.S.C.A. section 9442 to provide that the Secretary of the Air Force may arrange for the use by the Civil Air Patrol of such facilities and services under the jurisdiction of the Secretary of the Army, Navy, or the head of any other department or agency of the United States as the Secretary of the Air Force considers to be needed by the Civil Air Patrol to carry out its mission subject to necessary government approvals.

In Pearl v. United States, 230 F.2d 243 (10th Cir. 1956), the court considered those of the foregoing provisions which were then in effect and held that because Congress' control over the Civil Air Patrol was limited and the corporation was not designated as a wholly owned or mixed ownership government corporation under former 31 U.S.C. sections 846 and 856, the corporation was a nongovernmental, independent entity and thus was not a "federal agency" under the Federal Tort Claims Act.

The Pearl case, however, is not determinative of the question of whether the Civil Air Patrol is a federal instrumentality for purposes of immunity from state or local taxation. State

taxation has traditionally been viewed as a greater obstacle to an entity's ability to perform federal functions than exposure to judicial process and tax immunity is therefore liberally applied. (Federal Land Bank v. Priddy, 294 U.S. 229, 235 (1955). The test for determining whether an entity is a federal instrumentality for purposes of immunity from state or local taxation is very broad: it is whether the entity performs an important governmental function. (Lewis, supra, at p. 1242).

Neither the Pearl case nor any other case we have been able to locate has applied this test to the Civil Air Patrol for purposes of determining whether the Civil Air Patrol is immune from state or local taxation. However, in view of its purposes and objectives of providing adequate facilities to assist in meeting local and national emergencies, promoting the public welfare and providing aviation education and training on a nationwide basis, it appears that the Civil Air Patrol should be characterized as performing an important governmental function.

The court in Lewis in holding Federal Reserve Banks not to be federal instrumentalities for purposes of the Federal Tort Claims Act, noted that the Civil Air Patrol is a nonprofit, federally chartered corporation organized to serve the public welfare and closely resembled the status of the Federal Reserve Banks which it acknowledged are deemed to be federal instrumentalities for purposes of immunity from state taxation.

In Department of Employment v. United States (1966) 385 U.S. 355, the United States Supreme Court held that the American Red Cross is clearly an instrumentality of the United States for purposes of immunity from state taxation levied on its operations. There are many similarities between the Red Cross and the Civil Air Patrol. Both are congressionally chartered and listed as Patriotic Societies in 36 U.S.C.A. Congressional control, although minimal, is similar for both organizations (see Pearl, supra, at p. 245). The Red Cross performs a wide variety of functions indispensable to the workings of the Armed Forces around the world and assists the federal government in providing disaster assistance to the States in time of need which are similar to the functions of the Civil Air Patrol. Both receive voluntary private contributions and assistance from the federal government. The court pointed out that although the Red Cross differs from the usual government agency in that its employees are not employees of the United States and government officials do not direct its everyday affairs,

such facts made it like other tax immune institutions such as national banks. The Civil Air Patrol is in fact more like usual government agencies than the Red Cross in that the Secretary of the Air Force may assign Air Force or Department of the Air Force personnel to the Civil Air Patrol to assist in its training program. The similarities between the Red Cross and the Civil Air Patrol make it difficult to distinguish between the two organizations for purposes of tax immunity. Although the question is not completely free of doubt, it is our opinion based on all of the foregoing that the Civil Air Patrol is an instrumentality of the United States for purposes of immunity from property taxation.

This conclusion, of course, raises the question of why the Legislature enacted Revenue and Taxation Code section 213.6 to exempt the personal property of the Civil Air Patrol if the Civil Air Patrol is immune from state taxation because to do so would seem to be an idle act. A review of our files reveals the following history of section 213.6.

Until 1970, assessors generally had not been assessing property of the Civil Air Patrol in the belief that the Civil Air Patrol was an instrumentality of the federal government and thus immune from local taxation. This belief on the part of assessors may have been in part due to a Board ruling made March 3, 1953 to the effect that the Civil Air Patrol was a corporation wholly owned by the United States and sales to such units were therefore exempt from sales tax under Revenue and Taxation Code section 6381(b) which exempts from sales tax sales to "[a]ny incorporated agency or instrumentality of the United States wholly owned by the United States."

In a Board ruling dated March 27, 1970, the foregoing ruling was reversed on the ground that the Civil Air Patrol was in fact not "wholly owned by the United States or by a corporation wholly owned by the United States." As a result of the 1970 ruling, some county assessors indicated they might begin levying a property tax on Civil Air Patrol property.

To avoid this, the Legislature subsequently enacted AB 340 (Stats. 1974, ch. 31, in effect February 26, 1974, operative March 1, 1974) to exempt such property (both personal and real) from the property tax. Section 3 of the act provided for no reimbursement of local governments "because there is no actual loss of revenue since the property exempted by this act has never in fact been taxed." Section 3 was legislative recognition that assessors had previously treated the Civil Air

Patrol as an immune federal instrumentality for property tax purposes.

AB 340, however, did not succeed in granting this exemption because such exemption was tied to the welfare exemption and the Civil Air Patrol was unable to meet the requirement of irrevocable dedication to a religious, charitable, etc., institution upon dissolution. As a result, several counties did attempt to assess property tax in 1975-76. In response, AB 2478 (Stats. 1975, ch. 808) was enacted to eliminate the imposition of property tax (including any assessed in 1975) by clarifying the intent of AB 340 and exempting the personal property of the Civil Air Patrol under section 213.6(a) as it is now written. Since section 213.6 was no longer tied to the welfare exemption, the Legislature could no longer constitutionally exempt real property from taxation thus explaining why the "clarifying" legislation was limited to personal property.

Section 6 of AB 2478 made it an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution. One of the facts constituting such necessity was that "[i]f required to meet the tax obligation for the 1975-76 fiscal year, the ability of such organization to function effectively in providing air rescue support at times of local and national emergencies will be seriously impaired to the great detriment of our state. This act will remedy the situation, and in doing so, the public policy of the state will be subserved and the state as a whole will benefit."

From the foregoing, it appears that had section 213.6 not been enacted, assessors would have assessed the property of the Civil Air Patrol. Any such assessment, however, would have apparently been based on the Board's 1970 ruling that the Civil Air Patrol was not a wholly owned corporation of the United States and thus not exempt from sales tax under section 6381(b). The ruling did not reach the issue of whether the Civil Air Patrol was immune from state or local taxation as a federal instrumentality even though it was not wholly owned by the United States. Nor was any ruling made that the Civil Air Patrol was not a federal instrumentality for purposes of immunity from property taxation. Section 213.6, therefore, was apparently enacted only to prevent assessment of Civil Air Patrol property by those assessors who interpreted the Board's 1970 ruling to mean that the property of the Civil Air Patrol was not immune from property tax. Under these circumstances,

we are of the opinion that the Legislature's enactment of section 213.6 does not afford a reasonable basis for concluding that the property of the Civil Air Patrol is not immune from taxation. As indicated above, we believe that it is.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton