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October 29, 1996

Honorable William C. Greenwood
 Fresno County Assessor-Recorder
 Room 201 Hall of Records
 P.O. Box 1146
 Fresno, California 93715-1146

Dear Mr. Greenwood:

I am writing in reply to your letter dated October 1, 1996 addressed to Assistant Chief Counsel Lawrence Augusta in which you inquire about the procedure for granting a property tax exemption for property leased for a free public library ("library") or a free public museum ("museum"). As you state in your letter, Article XIII, section 3(d) of the California Constitution provides that property used for a library or museum is exempt from property taxation, therefore, property leased and so used can be exempt. Your question concerns the reason that the exemption is not effective as of the date that the lease is executed and the property so used but rather, as of the lien date each year. Specifically you ask the Board legal staff to "explain why a library or museum which leases property during the fiscal year, say in September, could not then apply for the exemption and be eligible to have the property used, exempted from taxes for the balance of the fiscal year."

As set forth below, under existing law, property leased and used for a library or museum must qualify as an exempt property on the lien date in order to be eligible for exemption during the ensuing fiscal year. There is no provision for partial exemption for libraries or museums as there is for certain other properties under Revenue and Taxation Code section 271(a). Further, the partial exemption for these properties does not extend to leased properties. Therefore, if a property is leased for use as a library or museum after the lien date, the exemption is not available for that year. Of course, if the property is leased and used for a library or museum on the next subsequent lien date, the exemption may be granted for the following fiscal year. Furthermore, the Revenue and Taxation Code makes no provision for a refund of taxes paid when property is leased and used for a library or museum during a fiscal year but subsequent to the lien date.

Article XIII, section 1 of the California Constitution sets forth the general principle of property taxation in California. Those properties which are exempt from property taxation are enumerated, in large part, in Article XIII, section 3. Among the exempted properties, subsection (d) of section 3 lists "[p]roperty used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and

state universities." Code section 202(a)(2) is the implementing statute exempting "property used for free public libraries and free museums." Note that section 3(d) and section 202(a)(2) exempt properties "used" for libraries and museums and, therefore, include properties leased and used for libraries and museums. While Article XIII, Section 3(d) and section 202(a)(2) exempt properties used for libraries and museums, in order to be eligible for the exemption the properties must be so used on the lien date. Properties which are not leased and used for libraries and museums on the lien date, as well as properties owned but not so used on the lien date, do not qualify for the exemption for any part of the following fiscal year. Thus, to answer your basic question, property that is taxable on the lien date remains taxable throughout the following fiscal year, regardless of the fact that it is thereafter leased and used for a library or museum, and the property tax paid on such property is not subject to refund or cancellation under any provision of the code.

As you know, Code section 271(a) provides in the case of owned property acquired after the lien date by an organization qualified for the college, cemetery, church, religious, exhibition, veterans' organization, or welfare exemption, that tax may be cancelled or refunded. There is no such provision for leased property leased after the lien date, however, or for property of a library or museum.

In your reference to the refund provisions of Code section 5096 it appears that you incorrectly assume that a refund for property tax paid is available for property leased at any time after the lien date. You state that "[i]f lessees are eligible for refunds (as explained in CAO 94/15) pursuant to section 5096 (R&T) it appears that the refund process would be proper at any time the lessee files an exemption claim." However, in exemption matters, the refund process is only applicable in cases of exempt properties, and a property leased and used as a library or museum is exempt only if it is leased and used as a library or museum on the lien date.

For leased property which does qualify as exempt under Article XIII, section 3(d) and Code section 202 (a)(2) on the lien date, Code section 254 requires that the person claiming the exemption "shall submit to the assessor annually an affidavit, giving any information required by the board." The Code section that you reference in your letter, section 255, sets out the time period for filing the affidavit which, pursuant to subsection (a), "shall be filed with the assessor between the lien date and 5 p.m. on March 15." If a leased property does qualify as exempt under Article XIII, section 3(d) and section 202(a)(2) but the claimant does not file within the period required by section 255, Code section 270(a)(1) provides for a late filing prior to the next succeeding lien date, and grants a refund of only 90 percent of the taxes paid, but no more than \$250 in tax will be paid (section 270(b)).

You indicate in your letter that CAO 94/15, Reduction of Taxes for Property Leased to Various Entities, lends support to the idea that the tax paid should be refunded at the time that a lessee files a claim for exemption. However, based on my review of CAO 94/15, it merely clarifies existing law but does not controvert the basic principle that property must be used for a library or museum on the lien date to be eligible for exemption. The purpose of CAO 94/15 was to explain the intent and implementation of Code section 202.2 which, in effect, provides that "any reduction in property taxes on leased property shall inure to the benefit of the lessee

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institution." What could have been added for clarity could have been a statement to the effect that the section applies only in instances in which all requirements for a particular exemption, library, museum, or otherwise, are met on the lien date, as discussed above. The lessee institution may receive the benefit either by a reduction in rental payments, by a refund of the rental payment already paid in an amount equal to the reduction in taxes or, if a lessor fails to claim the exemption, section 202.2 permits "a lessee to file a claim for refund under 5096 with respect to taxes paid by the lessor on the property." Section 202.2 provides that the refund shall be paid directly to the lessee and further provides that the 90 percent refund provision of Section 270(a)(1) does not apply and that the lessee is entitled to the full amount of the tax paid by the lessor. Thus, section 202.2 does not alter the basic requirements for exemption eligibility, and filing a claim for exemption alone, as you suggest, does not entitle the claimant to a refund; the property also must have been leased and used for a library or museum, or otherwise, on the lien date, and the property taxes must have been paid.

CAO 94/15 also explains that certain preconditions must be met before a refund may be approved. First, the property must be enrolled. An exempt institution will not receive the benefit of the exemption simply because the property, for whatever reason, is not enrolled. Second, the property must have been eligible for exemption and a claim for exemption must have been filed. Third, the lessor must have paid the taxes, because if no taxes have been paid then there are none to be refunded.

To summarize the relevant concepts and steps necessary to obtain a refund for property used for a library or museum: The property must be owned or leased on the lien date and used for a library or museum, and a claim for exemption must be filed. The property must be enrolled and the tax must have been paid. If the lessor files the timely claim for refund, then the benefit of the refund must inure to the lessee. If the lessor fails to file a claim for refund, then the lessee may do so and, if done timely, receive the refund directly.

The views expressed in this letter are, of course, advisory only and are not binding upon you or the assessor of any county.

Very truly yours,



Louis Ambrose
Tax Counsel

LA:ba

cc: Mr. Jim Speed, MIC:63
Mr. Dick Johnson, MIC:64
Ms. Jennifer Willis, MIC:70

RECEIVED

OCT 31 1996
PROP. TAX ADMIN.
State Board of Equalization

OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION

of

EVELLE J. YOUNGER
Attorney General
EDWARD P. HOLLINGSHEAD
Deputy Attorney General

No. CV 75/60

JULY 8, 1975

HONORABLE KEITH C. SORENSON, DISTRICT ATTORNEY OF THE COUNTY OF SAN MATEO, has requested an opinion on the following questions relating to the application of the property tax exemptions in favor of property used for libraries and museums that are free and open to the public and property used exclusively for public schools (Calif. Const., art. XIII, § 3, subd. (d)) and property owned by the state or local government (Calif. Const., art. XIII, § 3, subds. (a) and (b)). The questions may be stated as follows:

1. When property is leased or rented for public school or free library or museum uses, does the exemption apply at once, or does the use of the property on the lien date determine the property's status?

2. If the exemption applies at once, is it also removed at once at the end of the lease, or does the use on the lien date control?

3. Does the answer to the second question also apply to property otherwise coming from public to private ownership, such as the sale of surplus realty by a governmental agency?

The conclusions are:

1. Eligibility for the public schools exemption and the free library and museum exemption is to be determined as of the lien date each year. Property which

is leased or rented for such purposes can only be exempted after compliance with the claim provisions of the Revenue and Taxation Code.

2. The public schools exemption and the free library and museum exemption are not terminated at once but must be determined as of the lien date next following the expiration of the lease or rental agreement.

3. Property which is exempt because of public ownership becomes subject to taxation on the lien date next following the sale of the property to a purchaser not entitled to exemption.

ANALYSIS

Prior to the passage of Assembly Constitutional Amendment No. 32 (Stats. 1974, Res. Ch. 70) as Proposition 8 at the November 5, 1974, General Election, there was no requirement that property used exclusively for public schools and property used for libraries and museums that are free and open to the public be made subject to a claim for exemption. Such property was considered to be exempt under the language of former article XIII, section 1, of the Constitution. Ross v. City of Long Beach, 24 Cal.2d 258 (1944). Thus, local assessors did not assess property leased or rented for such purposes. Because of language in Mings v. Compton City School Dist., 129 Cal.App. 413, 417-18 (1933), to the effect that the public school exemption applied from the moment the use commenced, some assessors exempted property leased or rented to a school district or to a free public library or museum as soon as the use commenced and placed it back on the roll when the use terminated, without regard to the lien date. We are informed that this practice was not followed by the majority of county assessors and was not recommended by the State Board of Equalization.

It is a general principle of ad valorem taxation that the status and value of property and its eligibility for exemption must be determined as of the lien date. See §§ 401.3 and 405, Rev. & Tax. Code; Dodge v. Nevada Nat. Bank, 109 F. 726, 730 (9th Cir. 1901); East Bay Municipal U. Dist. v. Garrison, 191 Cal. 680, 692-93 (1923); 54 Ops. Cal. Atty. Gen. 98, 99 (1971). The lien date is 12:01 a.m. on the first day of March preceding the fiscal year for which the taxes are levied. § 2192, Rev. & Tax. Code.

Upon the passage of Proposition 8 and its companion measure, Statutes 1974, chapter 311, which became operative upon the adoption by the electorate of Proposition 8, a new set of constitutional and statutory provisions became applicable. Insofar as property leased by public schools and free libraries and museums are concerned, it is clear that the public schools exemption and the free libraries and museums exemption are to be determined as of the lien date each year.

Section 3, subdivision (d), article XIII, of the Constitution of California provides for the exemption of "Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities." This provision is based on a portion of former section 1 of article XIII. It has long been established that it is the use and not the ownership of the property in question which determines its status under this exemption. See Ross v. City of Long Beach, 24 Cal.2d 258, at 265.

Section 6 of new article XIII provides that:

"The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year."1/

1. Section 6 is a new provision. In the report entitled "Proposed Revision of Article XIII, California Constitution," dated May 6, 1974, Appendix to Assembly Daily Journal for May 16, 1974, the comment on section 6, at page 13259, states:

"This Section establishes constitutional authority for existing statutes which relieve individuals and organizations from hardship when an exemption or special classification is lost due to the failure to file for it.

"This provision applies only where a filing of an affidavit is required. Self-executing exemptions and classifications are not affected.

"Under this provision, relief statutes may be changed, but the changes will have prospective effect only."

This construction has been adopted by the Legislature. Stats. 1974, ch. 311, § 78, p. 323.

Section 33 of the same article further provides that: "The Legislature shall pass all laws necessary to carry out the provisions of this article." This provision was formerly in section 13, article XIII, of the Constitution.

In Statutes 1974, chapter 311, there are three provisions relating to the public school and free library and museum exemptions. Sections 202, 251, and 254 of the Revenue and Taxation Code were amended to provide in pertinent part as follows:

"202. The exemption of the following property is as specified in subdivisions (a), (b), (d) and (h) of Section 3 of Article XIII of the Constitution, except as otherwise provided in subdivision (a) of Section 11 thereof:

"(a) Growing crops.

"(b) Property used for free public libraries and free museums.

"(c) Property used exclusively for public schools.

"(d) Property belonging to this state, a county, or a city. . . ."

"251. The board shall prescribe all procedures and forms required to carry into effect the veterans', veterans' organization, church, cemetery, college, exhibition, immature forest trees, welfare, free public libraries, free museums, public schools and homeowners' property tax exemption."

"254. Any person claiming the church, cemetery, college, exhibition, welfare, veterans' organization, free public libraries, free museums, or public schools property tax exemption shall make a return of the property to the assessor annually, the same as property is listed for taxation, and shall accompany it by an affidavit, giving any information required by the board. In respect to the public schools exemption, this requirement shall not apply to property owned by a school district." Stats. 1974, ch. 311, § 5 (pp. 276-77), § 27 (p. 293), § 28 (p. 293).

During the same session of the Legislature, section 254 was amended a second time by Statutes 1974, chapter 1107, section 2, at page 79. The first paragraph now reads:

"Any person claiming the church, cemetery, college, exhibition, welfare, veterans' organization, free public libraries, free museums, or public schools property tax exemption and anyone claiming the classification of a vessel as a documented vessel eligible for assessment under Section 227, shall submit to the assessor annually an affidavit, giving any information required by the board."

In addition to the foregoing, section 255 of the Revenue and Taxation Code provides in pertinent part that:

"Affidavits required for exemptions named in this article, except the veterans' exemption and the homeowner's exemption, shall be filed with the assessor between the lien date and 5 o'clock p.m. on March 15. . . ."2/

Thus, the public schools exemption and the free library and museum exemptions are now within the claim-filing requirements contained in the Revenue and Taxation Code and are subject to the same rules of interpretation.

In the case of Chesney v. Byram, 15 Cal.2d 460 (1940), the Supreme Court of California held that even a constitutional exemption which is self-executing in the sense that no legislative enactment would be necessary to carry it into effect can be made subject to reasonable procedures prescribed by the Legislature for claiming the exemption. Id. at 468, 472. The court upheld a provision that the failure to follow such procedure constituted a waiver of the exemption. The court in Chesney was construing the validity of former section 3612 of the Political Code (now section 260 of the Revenue and Taxation

2. Section 255 was also amended by Statutes 1974, chapter 1107, but such amendment did not change the portion quoted above.

Code)3/ as applied to the veterans' exemption. See also McHugh v. County of Santa Cruz, 33 Cal.App.3d 533, 541-42 (1973).

In view of the provisions of section 6, article XIII, of the Constitution and section 260, Revenue and Taxation Code, taken together with the other provisions discussed above, we are of the opinion that when property is leased for public schools or free library or museum use, both the commencement and the termination of the public schools exemption and the free library and museum exemption must be determined as of the lien date each year, not the date the exempt use commences or terminates. Where property is leased or rented from a nonexempt lessor for public school purposes or free library or museum purposes, there is no longer any basis for granting an exemption until the next lien date upon the filing of the required claim for exemption. Thus, the answer to Questions 1 and 2 must be that the exemption commences on the lien date next following the lease or rental of the property for exempt uses and terminates as of the lien date following the end of the lease or rental.4/

3. Revenue and Taxation Code section 260: "If any person, claiming any exemption named in this article, fails to follow the required procedure, the exemption is waived by the person."

4. Section 4986, Revenue and Taxation Code, which was last amended by Statutes 1974, chapter 1101, in effect January 1, 1975, provides for cancellation of taxes on property acquired after the lien date by school districts and other public entities. Whether the provisions of section 4986 are limited by the constitutional and statutory enactments discussed above is beyond the scope of this opinion since section 4986 does not apply to property leased to school districts and other public entities. Similarly, section 271, which also provides for certain cancellations of property taxes, does not provide for such cancellation when the property is only leased for tax-exempt uses. It might also be noted that section 270 provides for cancellation of taxes when any of the exemptions herein involved "was available but for which a timely application for exemption was not filed. . . ." (Emphasis added.) Thus section 270 would not apply to the circumstances under consideration, when the use giving rise to the qualification for exemption begins after the lien date.

With respect to the termination of the exemption of other publicly owned property, the exemptions are provided for in section 3, subdivisions (a) and (b) of new article XIII of the Constitution of California. The exemption of property owned by the state (§ 3, subd. (a)) and property owned by local government (§ 3, subd. (b)) are a continuation in substance of the exemption formerly found in section 1, article XIII, of the California Constitution. See Appendix to Assembly Daily Journal for May 16, 1974, supra, page 13245, and Statutes 1974, chapter 311, section 78, at page 323, adopting said document as part of the public record and as a statement of legislative intent in adopting Assembly Constitutional Amendment No. 32.

Unlike the provisions relating to other exemptions from property taxation, there is no particular procedure spelled out in the Constitution or statutes for the termination of the public property exemptions founded upon section 3, subdivisions (a) and (b) of article XIII. When such property is acquired, section 4986, Revenue and Taxation Code, provides for cancellation of taxes, depending upon when the acquisition takes place. When tax-exempt property owned by the state or an agency of local government is sold after the lien date to a nonexempt purchaser it becomes subject to taxation. Eisley v. Mohan, 31 Cal.2d 637, 642-644 (1948); Los Angeles Dodgers, Inc. v. County of Los Angeles, 256 Cal.App.2d 918, 922-925 (1967).

There is, however, no provision for apportioning the taxes for the remainder of the year following the sale so that an assessment of the property could be made to the nonexempt purchaser. On the contrary, all taxable property is required to be assessed at its full value as of the lien date. §§ 401, 401.3, and 405, Rev. and Tax. Code. The provisions for assessing property which has escaped assessment are to the same effect. §§ 531-537, Rev. & Tax. Code. If the state, a county, or city owned the property on the lien date and it was exempt at that time,^{5/} the property continues to be exempt for that assessment year even though it is sold after the lien date to a purchaser not entitled to exemption. The appropriate procedure to be followed by the assessor in such cases is to assess the property to its new owner on the lien date next following the sale by the public agency to the nonexempt purchaser.

* * * * *

5. Certain property owned by local government is not exempt. See Const. art. XIII, § 11, subd. (a).