



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA

(PO. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

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No. 89/58

August 1, 1989

TO COUNTY ASSESSORS:

ASSESSMENT OF PERSONAL PROPERTY IN RESIDENTIAL FACILITIES

Section 1566 of the Health and Safety Code declares the policy of the Legislature to encourage the development of needed residential care facilities and deals with local regulation thereof.

Section 1566.2, a part of Article 7 (starting with Section 1566) provides:

"A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1566.3, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshall nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to State law or regulation or local ordinance, with respect to residential facilities which serve six or fewer persons."

For the purposes of this section, "family dwellings," includes, but is not limited to, single-family dwellings, units in multi-family dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

TO COUNTY ASSESSORS

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Recently, we became aware that while real property assessments of these facilities are routinely enrolled, some county assessors are exempting the personal property as household furnishings under Section 224 of the Revenue and Taxation Code.

Ad valorem taxes are imposed upon both real and personal property pursuant to the same provisions of the California Constitution and the Revenue and Taxation Code. As noted above, Section 1566.2 reads, "Nothing in this Section shall be construed to forbid the imposition of local property taxes." Therefore, while the personal possessions of the tenants are exempt under Section 224, the personal property of the owner or operator of the facility should be reported and assessed in the same manner as other business organizations in the state.

If you have any questions, please contact the Exemption Unit at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:wpc
AL-28-0072E



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450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 327-2455
FAX (916) 323-3387
www.boe.ca.gov

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First District, Hayward

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State Controller, Sacramento

December 4, 2000

JAMES E. SPEED
Executive Director

Re: Personal Household Furnishings in Residential Care Facilities

Dear Mr. :

Your September 27th, 2000 letter to Richard Johnson, requesting an interpretation of section 224 of the Revenue and Taxation Code as it applies to residential care facilities, was forwarded to the Legal Department for review. It is our opinion that the personal effects and household furnishings exemption of section 224 exempts any and all personal effects, household furnishing and pets owned by the licensee of the facility for his/her own use, but does not apply to personal property used solely in connection with the care of the residents.

Health and Safety Code sections 1566.2 and 1569.84 set forth identical provisions for exemption from local regulation of, respectively, general and elderly residential care facilities serving six or fewer persons. Both provisions state that such facilities "shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject."

Both sections also provide that "Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1566.3, local bond assessments, and other fees, charges and assessments to which other family dwellings of the same type in the same zone are likewise subject." Both sections are also followed by sections stating that "a residential facility ((or) a residential care facility for the elderly) which serves six or fewer persons shall be considered a residential use of the property for the purposes of this article. In addition, the residents and operators of such a ((or) the) facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article." (Health and Safety Code sections 1566.3 and 1569.85.)

The purpose of these exemptions is evidenced by the fact that they are both contained in "Local Regulation" articles in their respective Health and Safety Code chapters. In the one court decision

December 4, 2000

discussing the legislative history of these provisions, McCaffrey v. Preston (1984) 154 Cal.App.3d 422, the court noted that, by proscribing local regulation of small residential care facilities, the legislature was seeking to create home-like environments for elderly and disabled people and to prevent local regulation that would impede the location of these facilities in residential neighborhoods. Because imposition of the local property tax would not frustrate that legislative policy the way regulatory fees and zoning restrictions would, the legislature clarified its intent in sections 1566.2 and 1569.84 by stating that it was not "forbid[ding] the imposition of local property taxes... and other fees, charges and assessments to which other family dwellings of the same type in the same zone are likewise subject."

You view that sentence as encompassing only the property tax on the licensee's real property because of the exemption for personal effects and household furnishings in Revenue and Taxation Code section 224 . However, as provided in section 224 and article XIII, section 3(m) of the California Constitution, owners of family dwellings are also subject to tax on their personal property if it is "held or used in connection with a trade, profession or business..." A residential care facility is a business for purposes of the tax code, despite being deemed a "residence" for purposes of local zoning ordinances. Therefore, assessment of personal property, including furnishings, owned by the licensee and used in connection with his or her licensed care facility is an assessment "to which other single-family dwellings are likewise subject." (Health and Safety Code section 1566.2.) See enclosed annotation No. 630.0001, Ochsner Letter of September 16, 1987, and the August 21, 1987 letter referred to therein.

We would note, however, that the fact that a licensee operates a residential care facility out of his or her own home should not preclude application of the section 224 exemption for personal effects and household furnishings held for the licensee's own personal use, such as personal bedroom furnishings.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or any public entity.

You are welcome to call me at (916) 327-2455 if you have any further questions on this matter.

Sincerely,

/s/ Susan Scott

Susan Scott
Tax Counsel

Enclosures [Annotation 630.0001, C 6/19/87]

SAS:lg

Precedent/GenExemp/00/24sas.doc

Cc: Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Larry Augusta
Ms. Jennifer Willis, MIC:70



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450 N STREET, SACRAMENTO, CALIFORNIA
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
 916-323-3186 • FAX 916-323-3387
 www.boe.ca.gov

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JOHN CHIANG
 State Controller

KRISTINE CAZADD
 Executive Director

March 12, 2012

Mr.

**Re: Request for Legal Opinion – Assessment of Small Residential Care Facility
 Assignment No.: 11-300**

Dear Mr. _____ :

This is in response to your November 11, 2011, letter wherein you inquired further concerning the assessment of a residential care facility's (RCFE) business personal property and levy of business personal property taxes thereupon. You stated that you run a six-bed care facility in _____ County and believe that your RCFE should be exempt from business personal property taxes pursuant to Health and Safety Code sections 1566.2 and 1566.3. For the reasons stated below, we disagree and continue to believe that such facilities are subject to business personal property taxes.¹

Legal Analysis

Health and Safety Code sections 1566.2 and 1566.3 are found in Division 2, Licensing Provisions, Chapter 3, California Community Care Facilities Act, Article 7, Local Regulation.

Section 1566.2 states in relevant part:

A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by section 1566.3, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject.

Section 1566.3, subdivision (a) states in relevant part:

¹ We understand that you have an appeal pending before the _____ County Assessment Appeals Board. We contacted _____, Auditor Personal Property Supervisor in the _____ County Assessor's Office, who indicated that their office had no further information to add.

Whether or not unrelated persons are living together, a residential facility that serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

You argue that section 1566.2 applies only to local real property taxes, and does not apply to business property taxes since residences do not pay business property taxes. You also argue that section 1566.3 defines an RCFE as a residence for all purposes.

As you know, Board's staff's interpretation of section 1566.2's prohibition against certain taxes and fees upon residential facilities serving six or fewer persons has been that it does not extend to imposition of local property taxes.² You argue that "local property taxes" means only local *real* property taxes. As explained in the backup letters to Annotation 630.001 (copies of which were previously sent to you) in our view, local property taxes are taxes imposed upon both real and personal property pursuant to provisions of the California Constitution and the Revenue and Taxation Code.³ As well, we refer you to the California State Legislature's Revenue and Taxation Reference Book 2010 (August 2010) wherein the property tax base is described as consisting of both real and tangible personal property.⁴

Turning to section 1566.3, subdivision (a), as indicated, the section and subdivision are found in Article 7, Local Regulation, of Chapter 3, California Community Care Facilities Act. The provisions in Article 7 generally pertain to the types of local regulation which may or may not be imposed upon the described care facilities. Section 1566.3 refers to laws, zoning ordinances, local ordinances, conditional use permits, etc. dealing with health and safety, building standards, environmental impact standards, etc. Nothing in the section, including subdivision (a), refers to taxes. Further, the specific language in subdivision (a) upon which you rely is, by its own terms, limited to laws and zoning ordinances relating to the residential use of property pursuant to Article 7.⁵ Thus, while a residential care facility cannot be considered a business run for profit for purposes of regulatory local ordinances, section 1566.3, subdivision (a) does not support the conclusion that such a facility cannot be considered a business for purposes of taxation, including property taxation.⁶

Further with respect to the taxation of personal property, including business personal property, Article XIII, section 2 of the California Constitution provides the Legislature with the power to provide for the taxation of all forms of tangible personal property and to clarify such personal property for differential taxation or for exemption. As to the latter, the Legislature has exempted business inventories and personal effects and household furnishings among others (See Rev. & Tax. Code §§ 219 and 224).⁷ These provisions demonstrate that when the Legislature intends to exempt a specific type of property from local property taxation, it is able to do so in

² This was explained in a November 7, 2011, letter to you which attached copies of August 21, 1987, and September 16, 1987, Letters (Annotation No. 630.0001), and a December 4, 2000, Letter (Annotation No. 515.0010).

³ Division 1 of the Code.

⁴ Copies of Section 4 and Section 12 thereof are enclosed for your review.

⁵ Thus, it is not applicable to construction, application, etc. of other articles in Chapter 3, to other Health and Safety Code Chapters, or to other California Codes, including the Revenue and Taxation Code.

⁶ While Article 7 has been amended over the years, section 1566.3 continues to omit any reference to taxes and to limit its application to Article 7.

⁷ Division 1, Part 2, Chapter 1, Article 1 of the Code.

clear and express terms. Even though there have been many amendments to Article 1 of the Code and even several to section 224 itself since section 224 was added to the Code in 1968, there is no exemption from local property taxation for business personal properties of residential care facilities. To the contrary, section 224 continues to provide that "personal effects, household furnishings, and pets" does not include personalty held or used in connection with a business.⁸ In sum, we conclude that nothing in section 1566.3, subdivision (a) prevents the imposition of local property taxes pursuant to Division 1 of the Revenue and Taxation Code with respect to business personal property of a RCFE.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein. Therefore, they are not binding on any office, or any person or public entity.

Sincerely,

/s/ J. K. Mcmanigal, Jr.

J.K. McManigal, Jr.
Senior Tax Counsel

JKM:yg

J:/Prop/Prec/Personal Prop/2012/11-300.doc

Enclosure

cc: Honorable
County Clerk, Recorder, and Assessor

Ms.
Auditor Personal Property Supervisor

Mr. David Gau (MIC:63)
Mr. Dean Kinnee (MIC:64)
Mr. Mike Harris (MIC:64)
Ms. Ladeena Ford (MIC:64)
Mr. Todd Gilman (MIC:70)

⁸ Our understanding has been that persons operating residential care facilities claim depreciation, expenses, etc. for income tax purposes. Unless such facilities are considered businesses, such persons would not be able to do so.