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June 14, 2001

Honorable Charles W. Leonhardt
Plumas County Assessor
520 Main Street, Room 205
Quincy, CA 95971-9114

**Re: *Taxability or Exemption for Personal Property of Title Insurance Companies
Article XIII, Section 28 of the California Constitution***

Dear Mr. Leonhardt:

This is in response to your May 15, 2001, letter to Mr. Larry Augusta wherein you advised that you had recently been contacted by a local title company regarding the filing of its business property statement. It was claimed that the company should be exempt from filing a business property statement due to a special in lieu tax paid by insurance companies (Article XIII, Section 28 of the California Constitution). You request our review of the matter and our thoughts concerning the taxability or exemption of the title company's personal property.

As hereinafter indicated, constitutional provisions and statutes granting exemptions from property taxation are to be strictly, but reasonably construed, and persons who seek exemption of their properties from property taxation have the burden of showing that they clearly come within the terms of the exemption they seek. In the case of exemption of personal property of insurance companies, Article XIII, Section 28 exempts personal property owned by qualifying "insurers," insurance companies qualified to do business in California. The Department of Insurance maintains a listing of, and periodically issues a publication¹ containing the names of insurance companies authorized to do business in California, and we have been of the view that assessors should utilize the publications in the administration of this exemption. Thus, in the event that a taxpayer/insurance company seeks exemption of its personal property under Article XIII, Section 28 but it has not been recognized by the Department of Insurance as an insurance company qualified to do business in California, the burden is on the taxpayer/insurance company to establish to the Department of Insurance that it is an insurance company qualified to do business in California, such that it is so recognized by that Department and included in its listings and publications. However, whether or not a taxpayer/insurance company's personal property is exempt under Article XIII, Section 28, Revenue and Taxation Code sections 441 et seq. remain applicable because they pertain to personal property claimed, possessed, or controlled, which property is not exempt, as well as to owned personal property, which property may be exempt, and also to other taxable property.

¹ A copy of the Department's 1999 publication is enclosed.

Background

According to your letter, Article XIII, Section 28 provides for an in lieu tax on insurance companies based upon their insurance fee income. The Department of Insurance's website, which indicates which companies are subject to the in lieu tax, discloses that S [Redacted] Title Guaranty Company, a Texas company, is a company that is subject to the in lieu tax, but that the local title company, C [Redacted] Title Company,² which acts as an agent for S [Redacted] Title Guaranty Company, is not.

Analysis

1. Exemption from Property Taxation – Strict Construction-Burden Upon Taxpayer

Constitutional provisions and statutes granting exemption from property taxation are to be strictly, but reasonably construed, and persons who seek exemption of their properties from property taxation have the burden of showing that they clearly come within the terms of the exemption they seek. As stated by the California Supreme Court in Cedars of Lebanon Hospital v. Los Angeles County (1950) 35 Cal. 2d 729, 734:

"[1] Constitutional provisions and statutes granting exemption 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. (*Cypress Lawn Cemetery Association v. San Francisco*, 211 Cal. 387, 390 [295 P. 813]; *San Francisco v. San Mateo*, 17 Cal. 2d 814, 817 [112 P. 2d 595].) In this regard, it is immaterial that the institutions in question may contribute to the public welfare and serve the interests of the state, for they, like other private owners of property, have the burden of showing that they clearly come within the terms of the exemption. (51 Am. Jur. § 633, p. 606, *Corporation of Sisters of Mercy v. Lane County*, 123 Ore. 144 [261 P. 694, 697].) This rule has been expressly recognized in this state in the application of the orphanage exemption. (Cal. Const., art. XIII, § 11/2a; *Helping Hand Home v. San Diego*, 26 Cal. App. 2d 452, 458-459 [78 P.2d 778]

"But the rule of strict construction does not require that the narrowest possible meaning be given to words descriptive of the exemption, for a fair and reasonable interpretation must be made of all laws, with due regard for the ordinary acceptation of the language employed and the object sought to be accomplished thereby. (Cooley on Taxation, 4th ed., vol. 2, ch. 13, § 674, p. 1415; 51 Am. Jur. § 528, p. 531; *State ex rel. Spillers v. Johnston*, 214 Mo. 656 [113 S. W. 1083, 1084-1085]; *Trustees of Phillips Exeter Academy v. Exeter*, 90 N. H. 472 [11 A. 2d 569, 590-591].) As was said in the Spillers case, *supra*: ' ... strict construction must still be a reasonable construction'...."

In the case of exemption of personal property of insurance companies, Article XIII, Section 28 exempts personal property owned by qualifying "insurers," insurance companies qualified to do

² According to the Secretary of State's Office, Corporate Records Section, C [Redacted] Title Company is a California corporation, in good standing.

business in California. The Department of Insurance maintains a listing of and periodically issues a publication containing the names of insurance companies authorized to do business in California, and we have been of the view that assessors should utilize the publications in the administration of this exemption.³ See, for example, the September 6, 1989, Letter to Assessors No. 89/65, Listing of Insurance Companies, copy enclosed. Thus, in the event that a taxpayer/insurance company seeks exemption of its personal property under Article XIII, Section 28 but it has not been recognized by the Department of Insurance as an insurance company qualified to do business in California, the burden is on the taxpayer to establish to the Department of Insurance that it is an insurance company qualified to do business in California, such that it is so recognized by that Department and included in its listings and publications.

2. Requirements of Article XIII, Section 28

Article XIII, Section 28 imposes a gross premiums tax on insurance companies. This tax is in lieu of all other state or local taxes except for taxes on real property and other specified taxes. The long-established rule has been that the in-lieu provision exempts from property taxation all personal property owned by an insurance company, regardless of whether the property is actually used for the transaction of insurance company business.

This rule was modified by the court of appeal in *Massachusetts Mutual Life Ins. Co. v. City and County of San Francisco* (1982) 129 Cal. App. 3d 876, wherein the court held that personal property owned by an insurance company but used in non-insurance business should be subject to property tax. However, the California Supreme Court reinstated the rule in *Mutual Life Insurance of New York v. City of Los Angeles* (1990) 50 Cal. 3d 402: By virtue of the "in lieu" provision of subdivision (f) of Section 28, the personal property owned by insurance companies is exempt from property taxation regardless of whether the property is used for insurance related business or not. See the May 17, 1990, Letter to Assessors No. 90/40, *Mutual Life Insurance of New York v. City of Los Angeles*, copy enclosed.

Thus, the personal property exemption for insurance companies covers only personal property owned and used by an insurance company. The exemption does not extend to personal property leased by an insurance company (*Consolidated Title Securities Company v. Hopkins* (1934) 1 Cal. 2d 414), and it is not available to the personal property of an insurance company that is not actually engaged in insuring property.

As indicated in the Letter to Assessors, for personal property of a legal entity to be exempt from property taxation, the legal entity must be a qualifying "insurer". Subsidiary corporations are not exempt solely because of their affiliation with a qualifying parent corporation:

"It is our opinion that even though stock of a title and abstract company may be owned in part or in whole by a title insurance company, the title and abstract company is a distinct and separate entity from the title insurance company and that, therefore, the exemption from general tax in favor of title insurance companies does not apply to title and abstract companies, so that the tangible personal property of such latter companies is subject to

³ As you know, the Department of Insurance's website indicates which companies are subject to the in lieu tax. In addition the Department may be reached by telephone at 1-213-897-8921. Inquiry disclosed that an updated publication will be forthcoming.

assessment by county assessors." (August 1, 1944, Opinion of the Attorney General No. NS5510, Title Insurers ...; Title And Abstract Companies, Not Insurers, Are Subject To General Property Tax Despite The Fact They Are Owned By Title Insurers, 4 OAG 62, 64)

The same reasoning should apply in instances in which corporate entities are agents of qualifying insurers. As you know, an agent is one who represents another, known as the principal, in dealings with third persons (Civil Code section 2295). Any person having the capacity to contract may appoint an agent, and any person may be an agent (Civil Code section 2296). For purposes of the Corporations Code, the Revenue and Taxation Code, and other California codes, "person" includes a corporation. Thus, a corporation may appoint another corporation as its agent, but the corporate agent would be a legal entity separate and apart from the corporate principal, the same as is the case with parent corporations and their subsidiary corporations. Similarly then, the personal property of agents of qualifying insurers would not be exempt from property taxation because of the corporate agents' affiliations with qualifying principal corporations. Rather, for personal property of a corporate entity that is an agent of another corporation to be exempt from property taxation, the corporate agent must be a qualifying "insurer".

Accordingly, in our view, C [Redacted] Title Company's personal property would not be exempt from property taxation because the corporation is an agent of S [Redacted] Title Guaranty Company. Rather, for its personal property to be exempt under Article XIII, Section 28, C [Redacted] Title Company must establish to the Department of Insurance that it is an insurance company qualified to do business in California such that it is so recognized by that Department and included in its listings and publications.

3. Property Statements

As you know, Section 401.3 provides that the assessor shall assess all property subject to general property taxation on the lien date as provided in Articles XIII and XIII A of the Constitution and any legislative authorization thereunder. Sections 405, subdivision (a) then provides that annually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date. In the case of leased property, section 405, subdivision (b) provides that the assessor may assess all taxable property in his county on the unsecured roll jointly to both the lessee and lessor of such property. Thus, the assessor is to assess all property subject to general property taxation to the appropriate person or persons, as provided.

Sections 441 et seq. have been enacted to, and property statements have been designed to assist assessors in the performance of their duties. The initial section, section 441, requires the filing of a property statement (subdivision (a), (b), (c), (e), (f), (g), (h), (i), and (j)). It also requires a person to make available for examination information and records regarding his or her property or any other personal property located on the premises he or she owns or controls, as requested by the assessor (subdivision (d) and (g)). Section 442 specifically provides in these regards as follows:

The property statement shall show all taxable property owned, claimed, possessed, controlled, or managed by the person filing it and required to be reported thereon.

Every person owning, claiming, possessing, controlling, or managing property shall furnish any required information or records to the assessor for examination at any time.

The requirements of this article shall be satisfied with respect to property belonging to others for which the declarer has contractual property tax obligations if the declarer includes that property in the property statement, submits the statement timely, and includes in the statement all information required in the statement pertaining to property belonging to others.

We also note in these regards that sections 441 et seq. are in a different chapter (Chapter 3) of Part 2 of the Revenue and Taxation Code than are the exemption from property taxation sections (Chapter 1), and that nothing in sections 441 et seq. provides that their applicability or the applicability of any of them is contingent upon whether or not the owner's personal property is or may be exempt from property taxation.

Accordingly, whether or not a taxpayer/insurance company's personal property is exempt from property taxation under Article XIII, Section 28, sections 441 et seq. remain applicable because they assist assessors in the performance of their duties and pertain to personal property claimed, possessed, or controlled, which property is not exempt, as well as to owned personal property, which property may be exempt, and also to other taxable property. To avoid possible dispute as to the applicability of the self-reporting portion of section 441, subdivision (a), which states "Each person owning taxable personal property ... of one hundred thousand dollars (\$100,000) or more ... shall file a signed property statement with the assessor", in instances in which the taxpayer has been recognized by the Department of Insurance as an insurance company qualified to do business in California, an assessor can annually request the filing of a property statement from the taxpayer/insurance company.

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. If you have any questions, please call me at (916) 323-7715.

Very truly yours,

/s/ James K. McManigal, Jr.

James K. McManigal, Jr.
Tax Counsel IV

Enclosures
JKM:lg

cc: Mr. Richard Johnson, MIC: 63
Mr. David Gau, MIC: 64
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