880.0002 **Actual Operation of Exempt Activity.** Revenue and Taxation Code section 214(a)(3) was amended in 1990 to provide that for purposes of determining whether property is used for the actual operation of the exempt activity, consideration shall not be given to the use of property for meetings conducted by any other organization, if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities, are not held more than once per week, and the other organization and its use of the property meet the requirements of section 214 (a)(1)-(5). The owner of the property or the other organization, however, must file copies of valid, unrevoked letters or rulings from the Internal Revenue Service or Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under section 501 (c)(3) or section 501 (c)(4) of the Internal Revenue Code or section 23701d or 23701f of the Revenue and Taxation Code, together with duplicate copies of that organization's most recently filed federal income tax return, if the organization is required by federal law to file a return. C 7/18/95; C 6/30/97. (Am. M99-1)

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
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Controller, Sacramento

BURTON W. OLIVER
Executive Director

July 18, 1995

Ms. \
Paralegal
Crystal Cathedral Ministries
13280 Chapman Avenue
Garden Grove, CA 92640

Dear Ms. _

This is in response to your June 14, 1995, letter concerning the Conference Center Crystal Cathedral Ministries (Ministries) owns and operates in San Juan Capistrano, California. You state that Ministries has many group requests to use the facility, but that you are aware that to be able to retain the tax exempt status for the facility, Ministries must exercise care when permitting outside groups' use of it. Thus, you ask if there is some sort of guideline that can be provided to Ministries that will allow it to determine with some certainty what outside groups might use its facility without interfering with the facility's property tax exemption.

As you know, Revenue and Taxation Code, Section 214 states that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from property taxation if certain requirements are met. As construed by the court in *Christ The Good Shepherd Lutheran Church v. Mathiesen* (1978) 81 Cal. App. 3d 355, "'owned and operated' by community chests, funds, foundations or corporations" as used in Section 214 "reflects the dual constitutional requirements that the property must be both owned and operated by welfare organizations in order to qualify for the exemption." Thus, if one organization owns the property and another organization uses the property, both must file claims for the exemption, both must meet all the requirements for exemption, and the property must be used by one or both for qualifying purposes and activities. In this latter regard, page 7 of the advisory Assessor's Handbook AH 267, Welfare Exemption, provides the following example:

> "The property will not be exempt unless the owner and operator meet the specific requirements of Section 214. Usually the owner and operator are one and the same, and the filing of one claim will suffice. Section 214 does not require that the owner and the operator of the property be the same legal entity, however, (*Christ the Good Shepherd Lutheran Church v. Mathiesen,* 81 Cal.App. 3d 355), but if property is owned by one exempt organization and operated by another exempt organization, each must file a claim for exemption.
>
> "If the operator is not an exempt organization, the portion of the owner's property used by the operator is not eligible for the exemption..."

Thus, it has been and remains staff's position that both owners and operators of properties for which the welfare exemption is claimed must be qualifying organizations organized and operated for religious, hospital, scientific, or charitable purposes and must meet all of the requirements of Section 214 et seq. before the exemption can be granted. In addition, Article XIII, Section 4(b) of the California Constitution specifically limits the exemption's availability to organizations that are nonprofit.

As to when organizations using properties owned by exempt organizations are considered to be operators of the properties, staff has been of the opinion that organizations using properties on a regular basis, such as daily, weekly, bi-weekly, or even monthly, can be operators of the properties, depending on the particular circumstances. For example, an organization using property daily would be regarded as an operator, as would an organization using property monthly several days each month. Similarly, staff has been of the opinion that organizations using properties on extended bases, such as a several days, a week, or several weeks at a time, can be operators of the properties, again depending on the particular circumstances. For example, an organization using property two or three days a month every quarter would be regarded as an operator.

As is evident, such is a matter of statutory interpretation; and in many instances, determinations as to whether organizations using properties of exempt organizations are operators thereof are, of necessity, made on a case-by-case basis.

As to uses of properties of exempt organizations by other exempt organizations on a one-time basis or on an infrequent basis, staff has not regarded those organizations using the properties as operators of the properties. For example, an

organization using property once a year for part of a day or a day or using the property several times a year for limited periods on an irregular basis would not be regarded as an operator of the property and would not have to file a claim for exemption as an operator.

Again, such is a matter of statutory interpretation, and such determinations also are made on a case-by-case basis. All such organizations using the properties of exempt organizations, however, still must meet all the requirements for exemption, and the property must be used by the exempt organizations for qualifying purposes and activities.[1]

Finally, as also indicated in the June 7, 1995, letter to Mr. Charles J. Todd, Section 214, subdivision (a)(3) was amended in 1990 to provide that for purposes of determining whether property is used for the actual operation of the exempt activity, consideration shall not be given to the use of property for meetings conducted by any other organization, if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities, are not held more than once per week, and the other organization and its use of the property meet the requirements of Section 214, subdivision (a)(1)-(5). The owner of the property or the other organization, however, must file copies of valid, unrevoked letters or rulings from the Internal Revenue Service or Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501 (c)(3) or Section 501 (c)(4) of the Internal Revenue Code or Section 23701d or 23701f of the Revenue and Taxation Code, together with duplicate copies of that organization's most recently filed federal income tax return, if the organization is required by federal law to file a return.

Thus, uses of property for meetings conducted by other organizations are not considered in determining whether property is used for the actual operation of exempt activities if the above requirements are met. For example, if Ministries permitted the use of a portion of its Conference Center for meetings conducted by a nonprofit organization such as the Association of American Retired Persons (AARP), a non-profit organization, and AARP used it for its meetings not more than weekly, did not use it for fundraising meetings or activities, met the requirements of Section 214, subdivision (a)(1)-(5), filed copies of valid, unrevoked letters or rulings from the IRS or Franchise Tax Board stating that it (or the national organization of which it is an affiliate), qualified as an exempt organization under Internal Revenue Code Section 501

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[1]As to use of property for fundraising, see Mr. E. L. Sorensen's June 7, 1995, letter to Mr. Charles J. Todd, in this regard.

(c)(3) or 501 (c)(4) or Revenue and Taxation Code Section 23701d or 23701f, and filed duplicate copies of its most recently filed federal income tax return, (if required by federal law to file one), the use of the Conference Center for meetings by AARP would not be considered (Section 214, subdivision (a)(3)(D)).

Conversely, making the Conference Center available to nonprofit organizations that do not meet all the requirements for exemption or to for-profit organizations, which also do not meet all the requirements for exemption, would result in loss of the exemption for that portion or portions of the Center used by such organizations.

To answer your specific questions then, generally, only nonprofit organizations that are religious, hospital, scientific and/or charitable are the types of organizations that can use the Conference Center without interfering with the Center's property tax exemption. However, they must meet all the requirements for exemption in order for the Center to remain completely eligible for the exemption. Additional nonprofit organizations that meet the requirements of Section 214(a)(3)(D) can use the Conference Center without interfering with the exemption.

Ministries can allow other nonprofit religious, hospital, scientific or charitable organizations to use the Conference Center on their own, or it can jointly use it with such organizations. In either event, however, the other organizations must meet all the requirements for exemption in order for such operations and uses of the Center to not interfere with the exemption. Sponsoring an event with a nonqualifying organization that uses the Center would most likely result in that portion of the Center used being found ineligible for the exemption.

Finally, an Olympic soccer team could use the Conference Center without interfering with the exemption if it is or is part of a nonprofit organization that is charitable and meets all the requirements for exemption, or if it meets the requirements of Section 214(a)(3)(D) or is part of an Olympic organization that is a nonprofit organization that meets the requirements of Section 214(a)(3)(D). Lacking any information in these regards, we cannot and do not make any determination in this specific circumstance.

As you know, the welfare exemption requires an annual filing by the claimant with annual review by this Board and the County Assessor. Until such time as a claim or claims for exemption and all supporting documents are filed and reviewed by the Board's staff, we cannot make any final determinations.

Since the Assessor may deny the claim of an applicant the Board finds eligible for the exemption (Revenue and Taxation Code Section 254.5), you may wish to also obtain the opinion of the Orange County Assessor in these regards.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

James K. McManigal, Jr.
Staff Counsel III

JKM:jd
precednt/welexact/95012.jkm

Enclosure

cc: Honorable Bradley L. Jacobs, Orange County Assessor
Mr. John Hagerty, MIC:62
Mr. Dick Johnson, MIC:64
Mr. Jim Barga, MIC:64
Ms. Jennifer Willis, MIC:70

880.0002

State of California

Board of Equalization
Legal Division

Memorandum

To: Honorable Dean Andal
Member, Second District
MIC: 78

Date: June 30, 1997

From: Timothy W. Boyer
Chief Counsel

Timothy W. Boyer

Subject: **Property Tax Welfare Exemption**
Income Tax Exemption - State and Federal

In your May 15, 1997, memorandum (copy attached), you requested that staff provide a detailed analysis and explanation regarding why many taxpayers qualify for income tax exemption under Internal Revenue Code Section 501 (c)(3) and Revenue and Taxation Code Section 23701d yet fail to qualify for property tax exemption under Section 214 and related Revenue and Taxation Code sections. Hopefully, the following detailed analysis and exhibits will answer your inquiry and also aid in the planned review of the assessor's handbook on welfare exemptions.

As hereinafter explained, the reason why many organizations qualify for income tax exemption under IRC Section 501(c)(3) and/or Section 23701d, but their properties do not qualify for property tax exemption under Section 214 and related sections, is that the requirements for property tax exemption are in addition to and different from the requirements for income tax exemption. In fact, the requirements for income tax exemption are incorporated as only one of the requirements for property tax exemption. Revenue and Taxation Code Section 214.8 provides that it is a prerequisite to the granting of the property tax exemption that the organization have a Section 501(c)(3) or a Section 23701d income tax exemption letter. In addition to that requirement, to be exempt from property taxes, the property tax law requires that the property be "exclusively used" for exempt purposes, that it be "owned and operated" by the organization, and that it be used for the "actual operation" of an exempt activity.

The following are the specific reasons that these differences result in some organizations qualifying for the income tax exemption, while their property does not qualify for property tax exemption.

1. Since its inception, the Constitutional authorization for exemption of properties of religious, hospital, or charitable organizations has been based upon the organizations' use of their property exclusively for religious, hospital, or charitable purposes.

2. The argument in favor of the ballot proposition to create a property tax exemption for properties of religious, hospital, or charitable organizations stated that the proposed

amendment followed the wording of the income tax law, "but it is not as broad," and that to be exempted, property must be owned and used exclusively for the exempt purpose stated.

3. Revenue and Taxation Code statutes enacted to implement the Constitutional authorization have required use of properties exclusively for the exempt religious, hospital, scientific, or charitable purpose stated, and, since 1953, have required use of properties for the "actual operation" of the exempt activity.

4. Income tax exemptions under Internal Revenue Code Section 501 and Revenue and Taxation Code Sections 23701 and 23701d are based upon an organization's purposes, not upon an organization's use of its property.

5. The requirement of Revenue and Taxation Code Section 214.8 that an organization claiming the welfare exemption be in receipt of an income tax exemption letter is only one of numerous requirements for the welfare exemption.

6. It has been held by a California court of appeal that receipt of a Section 501(c)(3) income tax exemption letter or a Section 23701d income tax exemption letter, by itself, does not establish entitlement to the property tax welfare exemption.

7. As indicated by the court of appeal, income tax exemption letters are based largely on the tax exempt purpose language of an applicant's organizational documents , without further investigation or inquiry.

8. Revenue and Taxation Code Section 254.5 requires the Board to make its own determination as to eligibility of a claimant and its property for the property tax welfare exemption, including use of property for the actual operation of the exempt (religious, hospital, scientific, or charitable) activity.

DISCUSSION

In General

The welfare property tax exemption presents some unique legal and administrative issues and problems for a number of reasons. The first of these arises from the fact that the law specifically provides for joint administration by the Board and the county assessors. The assessor may deny the claim of an applicant the Board finds eligible, but may not grant the claim of an applicant the Board finds ineligible. Thus, the Board's role in assuring uniformity can be blurred because the assessors are not statutorily required to follow the Board's determination in this area as they may be in others.

Second, the general principles set forth in the Constitution and basic implementing statutes have been the subject of a significant amount of litigation. Some cases have resulted in judgments for the Board, and some for the applicants. Third, the Legislature has enacted technical legislation intended to apply to only a very limited number of properties.

In attempting to advise the Board and the county assessors of the impact of these court decisions and Legislative enactments, the Board staff has been faced with some significant problems of interpretation. Because these court decisions and special statutes have been quite technical in their approach, the staff, and prior Boards, have taken the most neutral approach, which is to give effect to the well accepted judicial principle that applicants have the burden of showing that they clearly come within the terms of the exemption. *Cedars of Lebanon Hospital v. Los Angeles County* (1950) 35 Cal.2d 729.

Furthermore, there has been a high degree of interest by third parties in assuring that the welfare exemption is properly administered by the Board and the assessors. Among those interested have been business people who have been concerned that organizations involved in what are essentially competitive businesses not be granted unjustified exemptions, since that gives those non-profit organizations an unfair competitive advantage. For example, in the case of *Clubs of California for Fair Competition v. Kroger* (1992) 7 Cal.App.4th 709, health clubs challenged the welfare exemption provided to the YMCA on the grounds that the YMCA was involved in a commercial endeavor that was indistinguishable from their own businesses.

Discussion of Specific Background Issues

Set forth hereinafter is a discussion of the eight specific factors underlying the difference in the welfare property tax exemption and the exemption from income tax.

1. Since its inception, the Constitutional authorization for exemption of properties of religious, hospital, or charitable organizations has been based upon the organizations' use of their property exclusively for religious, hospital, or charitable purposes.

In 1944, Proposition 4 on the November 7 Ballot, was approved by the voters. This amendment authorized the Legislature to exempt from property taxes property used for religious, hospital or charitable purposes and owned by agencies organized for such purposes, which were not conducted for profit and no part of the earnings of which inured to the benefit of any individual. The language of Proposition 4 is substantially similar to the present constitutional provision, Article XIII, Section 4(b) which was rewritten and reenacted as part of a Constitutional revision in 1974.

> "PROPOSED AMENDMENT TO THE CONSTITUTION.[1]
> "Sec. 1c. In addition to such exemptions as are now provided in this Constitution, the Legislature may exempt from taxation all or any portion of property used exclusively for religious, hospital or charitable purposes and owned by community chests, funds, foundations or corporations organized and operated for religious, hospital or charitable purposes, not conducted for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

A copy of Proposition 4 is attached as Exhibit 1.

Article XIII, Section 4(b) of the Constitution, added by amendment adopted November 5, 1974, states:

> "Sec. 4. 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.
> * * *"

Article XIII, Section 4(b) has remained unchanged since its adoption.

Thus, from inception, the Constitutional authorization for exemption of properties of religious, hospital, or charitable organizations has been based upon use of their properties exclusively for religious, hospital, or charitable purposes.

2. The argument in favor of the ballot proposition to create a property tax exemption for properties of religious, hospital, or charitable organizations stated that the proposed amendment followed the wording of the income tax law, "but it is not as broad," and that to be exempted, property must be owned and used exclusively for the exempt purpose stated.

The Argument in favor of Proposition 4 of 1944 stated, in part:

---

[1] Former Article XIII, repealed by amendment adopted November 5, 1974.

> "The principle of tax exemption for charitable agencies has been recognized in the California Income Tax Law. Proposition Four follows the wording of that law but it is not as broad. Experience under the Income Tax Law has proved that Proposition Four will not open the door to unworthy enterprises seeking to evade taxes. The meaning of every phrase has been clearly defined by the taxing authorities and by the courts. They have successfully confined exemptions to bona fide nonprofit charitable institutions.
>
> "To be exempted, property must be owned and used exclusively for the purpose stated....
>
> "...In a state-wide public opinion survey among California voters a substantial majority expressed their conviction that property used exclusively for religious, hospital, and charitable purposes should be tax exempt."

These representations were consistent with the expressed intent of Proposition 4 that only property used exclusively for religious, hospital or charitable purposes would be exempt from property tax..

The Argument in favor of Proposition 4, is attached as Exhibit 1.

3. Revenue and Taxation Code statutes enacted to implement the Constitutional authorization have required use of properties exclusively for the exempt religious, hospital, scientific, or charitable purpose stated, and, since 1953, have required use of properties for the actual operation of the exempt activity.

Section 214 as enacted in 1945 stated:

> "214. Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:
>
> * * *
>
> (3) The property is not used or operated by the owner or by any other person for profit regardless of the purposes to which the profit is devoted;..."

As construed and contrasted with the irrevocable dedication requirement which is also found in the income tax law the court in *Pasadena Hospital Assn. v. Los Angeles County* (1950) 35 Cal.2d 779, 785 noted:

> "...The question of present uses, rather than of ultimate purposes, to which particular pieces or portions of property were being put was the main and all-important consideration in the aforementioned consolidated hospital cases (*Cedars of Lebanon Hospital v. County of Los Angeles*, L.A. No. 20610, *ante*, p. 729 [221 P.2d 31]) in determining whether each of such pieces or portions of the property was then entitled to exemption. The additional but distinct condition of irrevocable dedication does not appear to be concerned with present uses as distinguished from ultimate purposes, and it seems clear that the requirement of irrevocable dedication to exempt purposes could, in itself, be met before any actual use is made of any of the property,...In other words, while the present exclusive use for exempt purposes is the primary condition to be met in order to obtain exemption for any particular piece or portion of the property at any given time, it would be wholly unreasonable to construe the further condition of irrevocable dedication to exempt purposes as requiring that the particular piece or portion of the property should, in some manner, be frozen permanently and irrevocably into such exclusive use...."

Section 214 was first amended in 1953 to add the specific requirement in subdivision (3) that property be used for the actual operation of the exempt activity.

Section 214(a) presently provides in pertinent part:

> "214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation...if:
>
> * * *
>
> "(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose."

4. Income tax exemptions under Internal Revenue Code Section 501 and Revenue and Taxation Code Sections 23701 and 23701(d), are based upon an organization's purposes, not upon an organization's uses of its property.

Contrasted with sections numbered 1-3, above, income tax exemptions are available to organizations which are organized and operated for qualifying purposes, as defined, and are not based upon the organization's uses of its property:

Internal Revenue Code Section 501 states, in part:

> (a) An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.
>
> * * *
>
> (c) The following organizations are referred to in subsection (a):
>
> * * *
>
> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Revenue and Taxation Code Section 23701 and Section 23701d state, in part:

> 23701. Organizations which are organized and operated for nonprofit purposes within the provisions of a specific section of this article,...are exempt from taxes imposed under this part, except as provided in this article or in Article 2 (commencing with Section 23731) of this chapter, if:
>
> (a) An application for exemption is submitted in the form prescribed by the Franchise Tax Board; and

(b) A filing fee of twenty-five dollars ($25) is paid with each application for exemption filed with the Franchise Tax Board after December 31, 1969; and

(c) The Franchise Tax Board issues a determination exempting the organization from tax.

23701d. (a) Corporations, community chests or trusts, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, (except as otherwise provided in Section 23704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section.

Thus, income tax exemption requirements are not parallel with those for the property tax welfare exemption. In fact, the basic requirements for income tax exemption are:

1. Organized and operated for the exempt purpose
2. No net earnings used for private benefit
3. No substantial propaganda or influencing legislation
4. No participation in political campaign
5. Assets must be irrevocably dedicated

The income tax exemption is only one of the requirements for property tax exemption (See 5, below). Thus, the requirements for income tax exemption are incorporated by reference into the property tax exemption, and other requirements of the property tax exemption are in addition to them.

The comparative number of property tax exemptions and income tax exemptions is of interest.

Number of Exemptions:

Welfare Exemption (1996)

10,376 Claimants

21,586 Properties
20,241 Properties Eligible
1,345 Properties Ineligible

California Income Tax Exemption, Section 23701d[2] (as of January 1997):

73,479 Active Organizations
10,349 Inactive Organizations

5. The requirement of Revenue and Taxation Code Section 214.8 that an organization claiming the welfare exemption be in receipt of an income tax exemption letter is only one of numerous requirements for the welfare exemption.

Revenue and Taxation Code Section 214 provides that the property of specified organizations is exempt from property taxation only if certain requirements are met. One such requirement is found in Section 214.8, which states that, with certain exceptions, the welfare exemption shall not be granted to any organization which is not qualified as an organization exempt from state income taxation under Section 23701d of the Revenue and Taxation Code or exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. An organization is required to file with the assessor duplicate copies of a valid, unrevoked exemption letter or ruling from either the Franchise Tax Board or, the Internal Revenue Service.

Additionally, Section 214.8 specifically states that the section shall not be construed to enlarge the welfare exemption to apply to organizations qualified under Section 501 (c)(3) but not otherwise qualified for the welfare exemption under other provisions of the Revenue and Taxation Code.

Assessors' Handbook AH267, at page 27, explains the interaction of Section 214.8 with the other Revenue and Taxation Code sections pertaining to the welfare exemption (copy attached

[2] As indicated, includes organizations organized and operated exclusively for religious, scientific, testing for public safety, literary, or educational purpose, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals in addition to organizations organized and operated exclusively for charitable purposes.

as Exhibit 3).[3] An important difference is that the welfare exemption is concerned with use of the property and has more restrictions than the income tax laws.

Among the most important of the additional restrictions is that the property be "owned and operated" by the organization, "used exclusively" for the exempt purposes, and used for the "actual operation" of the exempt activity.

The requirement of an income tax exemption has been upheld in two leading cases: *City of Los Angeles v. Los Angeles County* (1971) 19 Cal.App.3d 968, (Exhibit 4) and *John Tennant Memorial Homes, Inc. v. City of Pacific Grove* (1972) 27 Cal.App.3d 372, (Exhibit 5).

To the same effect is the California Attorney General's June 12, 1973, Opinion No. CV73-45, 56 OAG 255, (Exhibit 6) pertaining to the exemption of charitable veterans' organizations' properties from property taxes and the same Sections 214.8 and 214, as well as Revenue and Taxation Code Section 215.1, Veterans' Organization Exemption. The conclusion as stated on page 256 is that a veterans' organization seeking the veterans' organization exemption for its property, like a charitable organization seeking the welfare exemption for its property, must meet the requirements of Section 214 and other related sections as well as the requirements of Section 214.8, the income tax exemption letter requirements, as determined by the Board:

> "Sections 214.8 and 215.1 of the Revenue and Taxation Code, which provide for the veterans' organization exemption, are constitutional since they require as a prerequisite to the granting of the exemption that the organization be organized for charitable purposes and that the property be used exclusively for charitable purposes, as prescribed in section 1c, article XIII, of the Constitution of California. In order to qualify for the exemption, the organization must meet all the requirements of sections 214, subdivisions (1) through (7), 214.01, 214.8, 215.1, 251, 254, 254.5, and 259.7 of the Revenue and Taxation Code, and section 1c, article XIII of the Constitution of California. Whether a particular veterans' organization or its property in fact meets these requirements must be determined by the State Board of Equalization and the county assessor, as provided in section 254.5 of the Revenue and Taxation Code."

6. It has been held by a California court of appeal that receipt of an Internal Revenue Code Section 501 (c)(3) income tax exemption letter or a Revenue and Taxation Code

[3] In your memorandum of May 15, 1997, you caution that long-standing positions of Board staff should be avoided as precedent unless supported by, among other things, Board approved publications. The current Assessors' Handbook AH267 was adopted by the Board on January 9, 1986.

Section 23701d income tax exemption letter, by itself, does not establish entitlement to the property tax welfare exemption.

In *Alcoser v. San Diego County* (1980) 111 Cal.App.3d 907, a construction industry vocational training school operated under a trust that was created by a labor union and construction industry employers, pursuant to a collective bargaining agreement. The trust claimed exemption from property taxes under Section 214, contending that its training school operated for the benefit of the general community and thus qualified for exemption. The trust sought to offer into evidence letters from the Internal Revenue Service and the Franchise Tax Board confirming its income tax exemptions under Section 501(c)(3) and Section 23701d. The trial court refused to admit the letters into evidence.

The court of appeal affirmed the trial court's holding that the trust's school was not eligible for the welfare exemption because the trust was primarily intended to benefit and did primarily benefit the union and the employers that created it rather than the community in general. The Court of Appeal had this to say regarding whether the trial court erred in refusing to admit the income tax exemption letters into evidence.

> "Regardless of the correctness of the court's ruling no prejudice resulted. The status conferred could only have been based on the self-serving tax-exempt purpose language of the trust agreement since the school had not then begun full operation. Further, no evidence was submitted to show what relevance the income tax exemptions given have to the right to the property tax exemption requested here. If relevant at all, the letters are of insignificant evidentiary weight and would not affect the result of this case." (p. 913)

A copy of *Alcoser v. San Diego County* (1980) 111 Cal.App.3d 907 is attached as Exhibit 7.

7. As indicated by the court of appeal, exemption letters are based largely on the tax-exempt purpose language of the applicant's organizational documents, without further investigation or inquiry.

Exemplary Internal Revenue Service letters to applicants state:

> "Based on information supplied and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501 (c)(3), effective on the date shown above."

Exemplary Franchise Tax Board letters to applicants state:

> "You are exempt from state franchise or income tax under the section of the Revenue and Taxation Code indicated above.
>
> "This decision is based on information you submitted and assumes that your present operations continue unchanged or conform to those proposed in your application...."

8. Revenue and Taxation Code Section 254.5 requires the Board to make its own determination as to eligibility of a claimant and its property for the property tax welfare exemption including use of property for the actual operation of the exempt (religious, hospital, scientific, or charitable) activity.

As indicated above, in addition to the charitable purpose requirement, Section 214 (a)(3) has a charitable activity and use requirement which also must be met, and a charitable purpose does not, by itself, establish that a charitable activity or use exists. Rather, that determination must be based on the activity or use taking place on the property. Section 254.5 provides in this regard:

> "254.5 (a) Affidavits for the welfare exemption...shall be filed in duplicate on or before March 15 of each year with the assessor...Copies of the affidavits and financial statements shall be forwarded not later than April 1 by the assessor with his or her recommendations for approval or denial to the board which shall review all the affidavits and statements and may institute an independent audit or verification of the operations of the owner and operator to ascertain whether both the owner and operator meet the requirements of Section 214 of the Revenue and Taxation Code. In this connection the board shall consider, among other matters, whether:
>
> * * *
>
> (4) The property on which exemption is claimed is used for the actual operation of an exempt activity and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose."

Section 254.5(a)(4), above, is, in large part, a restatement of Section 214(a)(3):

> "(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose."

Application of the requirement that property be used exclusively in the actual operation of an exempt activity, as applied to specific situations, is discussed on pages 29-37 of Assessors' Handbook AH267. Copies are attached as Exhibit 8.

Conclusion

Again, I hope that this detailed analysis satisfactorily responds to your request, and that it may be useful in your planned review of the Assessors' Handbook on the welfare exemption. If you have any questions concerning this analysis, please contact me at 445-4380 or Assistant Chief Counsel Larry Augusta at 445-6493.

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EXHIBITS, JUNE 30, 1997, WELFARE EXEMPTION
LETTER TO HONORABLE DEAN ANDAL.

EXHIBIT 1.	Proposition 4, TAXATION EXEMPTION OF RELIGIOUS, HOSPITAL AND CHARITABLE ORGANIZATIONS, on November 7, 1944, Ballot.
EXHIBIT 2.	Assessors' Handbook AH 267, Welfare Exemption, pages 2-4.
EXHIBIT 3.	Assessors' Handbook AH 267, Welfare Exemption - page 27.
EXHIBIT 4.	City of Los Angeles v. Los Angeles County (1971) 19 Cal App.3d. 968.
EXHIBIT 5.	John Tennant Memorial Homes, Inc. v. City of Pacific Grove (1972) 27 Cal. App.3d. 372.
EXHIBIT 6.	June 12, 1973, Attorney General Opinion No. CV 73-45, 56 OAG 255.
EXHIBIT 7.	Alcoser v. San Diego County (1980) 111 Cal. App. 3d 907.
EXHIBIT 8.	Assessors' Handbook AH 267, Welfare Exemption, pages 29-37.

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