



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE 916-255-2148 • FAX 916-323-3387
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

November 7, 2008

**Re: Welfare Exemption – Application of Revenue and Taxation Code Section 271
Assignment No.: 08-150**

Dear Mr. _____ :

This is in response to your letter to Assistant Chief Counsel Randy Ferris, received August 4, 2008, wherein you requested an opinion from the Board's legal staff concerning the application of Revenue and Taxation Code¹ section 271 with respect to real property purchased by the _____ School on January 20, 2006, for future use.

As hereinafter explained, section 271, subdivision (a)(1) applies to property acquired during a given calendar year, after the lien date but prior to the first day of the fiscal year commencing within that calendar year; and section 271, subdivision (a)(3) applies to property acquired after the beginning of any fiscal year. Thus, in this case, since the property was acquired on January 20, 2006, the relevant lien date specified in section 271, subdivision (a)(1) was January 1, 2006, while the relevant lien date for purposes of section 271, subdivision (a)(3) was January 1, 2005. Once property is acquired and the requirements of section 271 are or are not met, as the case may be, the property is owned property no longer subject to the provisions of section 271. On the following January 1 lien date and on subsequent lien dates, properties owned by the qualifying organization on January 1, 2006, and properties acquired by the qualifying organization in 2006 must be used for a qualifying purpose(s) and for a qualifying activity or activities on the respective lien dates.

In this instance, on the January 1, 2007, lien date, the property was not eligible for the exemption because it had been rented to and was being used by individuals unrelated to the

¹ All statutory references are to the Revenue and Taxation Code, unless otherwise specified.

school as their residence. On the January 1, 2008, lien date, however, the property was eligible for the exemption because it was in the course of construction (section 214.1), to be used for the school's President's campus residence.

Your Letter

According to your letter, the property was purchased by the school on January 20, 2006 for future use, but pending a determination of such use, it was rented to private parties. In May 2007, the school's Board of Trustees determined that the property should become the President's campus residence, the third party tenancy was terminated effective July 14, 2007, and renovations initiated to make the property suitable for the President's use. The President's occupancy began on March 1, 2008.

Enclosed therewith were copies of e-mail correspondence from the County Assessor's Office's Administrative Services Officer (ASO) and from the Board's County-Assessed Properties Division's Supervising Property Appraiser (SPA) indicating that a March 26, 2008, welfare exemption claim for the property could be granted for the 2008-2009 fiscal year but not for the 2007-2008 fiscal year² because the property was not in use for a qualifying purpose and qualifying activity on the January 1, 2007, lien date.

According to your letter in this regard:

Read literally, §271 applies only to property 'acquired' after the lien date, and thus has no application here because the subject property was acquired prior to the 2007 lien date, but the qualified use began after that date. The property was, however, 'of a kind that would have qualified for an exemption,' but for the fact of its earlier acquisition, and we submit therefore within the intent and purpose of the tax relief provisions § 271. As interpreted by the . . . [ASO] and . . . [SPA], the scope of the section is severely restricted. It is a rare and exceptional case where property is already put to a qualified use by the lien date, but not yet owned by a qualified organization.

Analysis

Section 271 states, in pertinent part:

(a) Provided that an appropriate application for exemption is filed within 90 days from the first day of the month following the month in which the

² According to your letter, "notwithstanding the provisions of . . . section 271."

property was acquired³ or by February 15 of the following calendar year, whichever occurs earlier, any tax or penalty or interest imposed upon:

- (1) Property owned by any organization qualified for the . . . welfare exemption that is acquired by that organization during a given calendar year, after the lien date⁴ but prior to the first day of the fiscal year commencing within that calendar year, when the property is of a kind that would have been qualified for the . . . welfare exemption if it had been owned by the organization on the lien date, shall be canceled or refunded.

* * *

- (3) Property acquired after the beginning of any fiscal year by an organization qualified for the . . . welfare exemption and the property is of a kind that would have qualified for an exemption if it had been owned by the organization on the lien date, whether or not that organization was in existence on the lien date, shall be canceled or refunded in the proportion that the number of days for which the property was so qualified during the fiscal year bears to 365.

It has been our view that "acquired" as used in section 271 connotes a single event, that of becoming the owner of property. Once property is acquired and the requirements of section 271 are or are not met, as the case may be, the property is owned property no longer subject to the provisions of section 271, as hereinafter discussed.

Section 271, subdivision (a)(1) pertains to property acquired by a qualifying organization during a given calendar year, after the lien date but prior to the first day of the fiscal year commencing within that calendar year. Section 271, subdivision (a)(3) pertains to property acquired by a qualifying organization after the beginning of any fiscal year. As the property in question was purchased/acquired on January 20, 2006, between the January 1, 2006, lien date and prior to July 1, 2006, the first day of the 2006-2007 fiscal year, January 1, 2006 was/is the applicable lien date for purposes of subdivision (a)(1) As the property was purchased/acquired

³ According to Black's Law Dictionary, Revised Fourth Edition (1968):

ACQUIRE. To gain by any means, usually by one's own exertions; to get as one's own; to obtain by search, endeavor, practice, or purchase; receive or gain in whatever manner; come to have. *Clarno v. Gamble-Robinson Co.*, 190 Minn. 256, 251 N.W. 268, 269.

In law of contracts and of descents, to become owner of property; to make property one's own. *Crutchfield v. Johnson & Latimer*, 243 Ala. 73, 8 So.2d 412. To gain ownership of. *Commissioner of Insurance v. Broad Street Mut. Casualty Ins. Co.*, 312 Mass. 261, 44 N.E.2d 683, 684. . . .

ACQUIRED: To get, procure, secure, acquire. *Jones v. State*, 126 Tex.Cr.R. 469, 72 S.W.2d 260, 263.

Coming to an intestate in any other way than by gift, devise, or descent from a parent or the ancestor of a parent. *In re Miller's Will*, 2 Lea (Tenn.) 54.

⁴ The specific language of section 271, subdivision (a)(1), "after the lien date," precludes interpreting the section to be "applicable to a property acquired, as here, prior to the lien date."

on January 20, 2006, after the first day of the 2005-2006 fiscal year, January 1, 2005, was/is the applicable lien date for the purposes of subdivision (a)(3).

As indicated, subdivision (a)(1)'s and subdivision (a)(3)'s further requirements are that the acquired property be owned by an organization qualified for the welfare exemption, and that the property be of a kind that would have been qualified for the welfare exemption had it been owned by the organization on the lien date, in this instance, on January 1, 2006, and on January 1, 2005, respectively. In this instance, the purchased property was acquired/owned by a qualifying organization, but the property would not have been qualified for the exemption had it been owned by the organization on the January 1, 2006, and January 1, 2005, lien dates because property acquired and held for future use is not being used and hence, is not used for a qualifying purpose and qualifying activity as section 214 requires.

In *Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal.2d 729,⁵ the Hospital contended, among other things, that buildings under construction on the lien date and intended for use in the housing of student nurses were within the welfare exemption. In upholding the trial court's determination that they were not, the Supreme Court stated, at page 742:

As above quoted, the pertinent constitutional provision (Art. XIII, § 1c) and the implementing statute (Rev. & Tax. Code, § 214) unequivocally require that the property be 'used' for the enumerated purposes. Such express limitation, making use the focal point of consideration, contemplates actual use as differentiated from an intention to use the property in a designated manner. (Emphasis added.)

Thus, the fact of qualifying use on the lien date rather than an intention to use is the determinative factor. See also *Southern California Telephone Co. v. County of Los Angeles* (1931) 212 Cal. 121, 125-126, *First Baptist Church v. County of Los Angeles* (1952) 113 Cal.App.2d 392, 394-395, and *Christward Ministry v. County of San Diego* (1969) 271 Cal. App. 2d 805, 811, in this regard.

As to the time for filing a claim for the welfare exemption for after-acquired property, section 271, subdivision (a) states that an appropriate application for exemption must be filed within 90 days from the first day of the month following the month in which the property was acquired or by February 15 of the following calendar year, whichever occurs earlier. In the event that a timely filing pursuant to subdivision (a) is not made, section 271, subdivision (b) provides for late filing provided that an appropriate application for exemption is filed after the last day on which relief could be granted under subdivision (a).

Thereafter, on the following January 1 lien date, in this instance January 1, 2007, and on subsequent lien dates, properties owned by the qualifying organization on January 1, 2006, and properties acquired by the qualifying organization in 2006 must be used for a qualifying purpose(s) and for a qualifying activity or activities on the respective lien dates, and an

⁵ It was because of the Supreme Court's construction of former Article XIII, Section 1c of the Constitution and section 214 in *Cedars of Lebanon Hospital v. County of Los Angeles*, *supra*, as not exempting from taxation buildings under construction that the Legislature added section 214.1 to the Revenue and Taxation Code in 1953, effective upon the adoption of an amendment to said Article XIII, Section 1c in 1954. See *infra*.

application for exemption must be filed on or before February 15 of each year with the assessor.⁶ In the event that a timely filing pursuant to section 254, subdivision (a) is not made, section 270, subdivision (a)(1) and (2) provide for late filing.

Generally, the status of property for purposes of property taxation is determined as of the lien date. (Rev. & Tax. Code, § 405.). Property which is not taxable on the lien date is not taxable for the year. *Dodge v. Nevada National Bank* (1901) 109 F. 726. See also *East Bay Municipal Utility District v. Garrison* (1923) 191 Cal. 680. Thus, properties meeting all the requirements for exemption on the lien date will be granted exemption for the forthcoming fiscal year. Conversely, properties not meeting all the requirements for exemption on the lien date will be taxable for the forthcoming fiscal year.

In this instance, on the January 1, 2007, lien date, the property was not eligible for the exemption. While it was no longer vacant and unused, it had been rented to and was being used by individuals⁷ unrelated to the school as their residence for one year, commencing May 1, 2006, and terminating May 1, 2007.⁸ It was for this reason that the e-mail correspondence indicated that the March 26, 2008, welfare exemption claim could not be granted for the 2007-2008 fiscal year. As there is no statute or court decision contrary to the generality that properties meeting all the requirements for exemption on the lien date will be granted exemption for the forthcoming fiscal year and those not meeting such requirements on the lien date will not but rather, will be taxable for the forthcoming fiscal year, a change or changes in use of property subsequent to the lien date, in this instance, the January 1, 2007, lien date, will not result in any change in the finding of ineligibility for the property as of the January 1, 2007, lien date.

Since the property was taxable for the 2007-2008 fiscal year, the property could next be eligible for the exemption as of January 1, 2008, for the 2008-2009 fiscal year, as the e-mails conclude to be the case. This is because section 214.1 provides, in pertinent part, that as used in section 214, "property used exclusively for charitable purposes" includes facilities in the course of construction on the lien date, together with the land on which the facilities are located as may be required for their convenient use and occupation, to be used exclusively for charitable purposes. In this instance, the facilities were to be used for the school's President's campus residence.

In conclusion, in view of the above, we do not agree with your contention that section 271 is applicable to the property for the January 1, 2007, lien date and particularly, to the claim that "[T]he property was, however, 'of a kind that would have qualified for an exemption,' but for the fact of its earlier acquisition." That requirement of section 271, subdivision (a)(1) is that "when the property is of a kind that would have been qualified for the . . . welfare exemption if it had been owned by the organization on the lien date," (Emphasis added.), and the lien date for property acquired on January 20, 2006, was/is January 1, 2006, as indicated. Similarly, that requirement of section 271, subdivision (a)(3) is that "the property is of a kind that would have

⁶ Section 254.5, subdivision (a).

⁷ As you know, the welfare exemption is both an "ownership" and a "use" exemption. For property to be granted the welfare exemption, an organization which meets all the requirements for exemption must own the property, and the property must be used for qualifying purposes and activities. If another organization also uses the property, both it and the owner must meet all the requirements for exemption. As the result of the lease, the owned-and-operated-by-welfare-organizations requirement was not met on the January 1, 2007 lien date. Individuals are neither qualifying organizations nor qualifying owners or operators for purposes of the exemption.

⁸ Lease apparently extended, but lease terminated July 14, 2007, according to your letter.

qualified for an exemption if it had been owned by the organization on the lien date, (Emphasis added.), and the lien date for property acquired on January 20, 2006, was/is January 1, 2005, as indicated.

As to the observation/claim that "[I]t is a rare and exceptional case where property is already put to a qualified use by the lien date, but not yet owned by a qualified organization," there can be/are many instances in which qualifying organizations are leasing and using property from individuals and from nonqualifying organizations on the lien date. As indicated above, as the result of such leases, the owned-and-operated-by-welfare-organizations requirement is not met and the property is not eligible for exemption. Whether leased property is put to a qualified use on the lien date and, thereafter, acquired, or whether property is acquired after the lien date, section 271 only requires in this regard that the property is of a kind that would have been qualified for the welfare exemption if it had been owned by the organization on the lien date.

The views expressed in this letter are only advisory in nature. They represent the analysis of the Legal Department based on present law and the facts set forth herein and are not binding on any person or government entity.

Sincerely,

/s/ J. K. McManigal, Jr.

J. K. McManigal, Jr.
Senior Tax Counsel

JKM:cme

J:/Prop/Prec/WELEXQAL/2008/08-150.jkm.doc

cc: Honorable
County Assessor

Honorable Kenneth Stieger, President
California Assessors' Association

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. James Anderson	MIC:64
Mr. Todd Gilman	MIC:70