STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE 916-445-6137 • FAX 916-323-3387
www.boe.ca.gov

January 17, 2007

Honorable Eeve T. Lewis
Sonoma County Clerk-Recorder-Assessor
585 Fiscal Drive, Room 104 F
Santa Rosa, CA 95403-2872

Attn:

Re: Cattle Grazing Leases on the P Preserve

Dear Mr. :

This is in response to your letter dated September 21, 2006, to Ms. Kristine Cazadd, Chief Counsel, requesting an opinion as to whether property owned by the P Foundation, subject to cattle grazing leases, qualifies for the welfare exemption. For the reasons set forth below, we conclude that the property owned by the P Foundation that is subject to the cattle grazing leases does not qualify for the welfare exemption.

Factual Background

You have provided the following facts:

The P Foundation owns approximately 3,100 acres of real property (P), and holds an organizational clearance certificate.

P is held as a preserve and used for charitable purposes.

P is used for research and educational programs by various welfare organizations and schools.

P has two lease agreements with individuals X and Y for 2006 for cattle grazing purposes.

The two lease agreements were inherited from the previous owner, a tax-exempt organization.

For the grazing rights, the two lessees are to pay rent in the form of money.

The P Foundation states that the purpose of the cattle grazing leases is a management tool incidental to its preservation purposes.

Based on the foregoing facts, you ask whether the land subject to the cattle grazing leases with X and Y qualify for an exemption under Revenue and Taxation Code[1] section 214, subdivision (a).

Law & Analysis

To receive the welfare exemption, both the owner and the operator of real property must qualify for the exemption.

Section 214, subdivision (a), provides that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by corporations organized and operated for those purposes is exempt from taxation if certain requirements are met. The "owned and operated" requirement of section 214 has been interpreted to mean that the owner and the operator of a property may be separate legal entities; however, the property must be both owned and operated by organizations eligible for the welfare exemption in order to qualify for the exemption. (*Christ The Good Shepard Lutheran Church v. Mathiesen* (1978) 81 Cal.App.3d 355.) Thus, if another organization also uses the property, both it and the owner must meet all of the requirements for exemption, and the property must be used by both for qualifying purposes and activities.

Assessors' Handbook, Section 267, *Welfare, Church, and Religious Exemptions*, April 2002 (AH 267), further provides:

> The property will not be exempt unless the owner and operator meet the specific requirements of section 214. An operator is a user of the property on a regular basis, with or without a lease agreement. Typically, the owner and operator are one and the same and the filing of one claim for exemption will suffice. However, it is not necessary that the owner and the operator of the property be the same legal entity. If property is owned by one exempt organization and operated by another exempt organization, each must qualify and file a claim for the exemption.

In this case, P has two lease agreements with X and Y. Here, X and Y are considered operators of the property because X and Y use P on a regular and frequent basis. Because X and Y are considered operators of the property, they must also meet the requirements of section 214 in order for P to qualify for the exemption.

[1] Unless otherwise stated, all section references are to the Revenue and Taxation Code.

The property must be used exclusively for an exempt purpose.

As noted above, section 214 provides an exemption for property "used exclusively" for religious, hospital, scientific, or charitable purposes. The Revenue and Taxation Code does not specifically define the term "used exclusively;" however, the courts have done so in a series of decisions. The California Supreme Court, following a rule of strict, but reasonable construction, has construed "exclusively used" in section 214, subdivision (a), to include any use of the property which is "incidental to and reasonably necessary for the accomplishment of the [exempt] purpose." (*Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.) Thus, the exclusive use requirement means that a qualified organization's ongoing use of its property must be for exempt purposes and activities, and any other uses of the property must be related to and reasonably necessary to the accomplishment of the exempt purpose.

Here, the P Foundation asserts that the purpose of the cattle grazing leases is in furtherance of P 's charitable land preservation purpose. However, the use of P by X and Y for cattle grazing purposes is not exclusively for P 's charitable preservation purpose; it also serves X and Y's commercial cattle production purpose. Since the cattle grazing activity has both an exempt and nonexempt purpose, this use of the property does not meet the exclusive use requirement under section 214.

Operator not an exempt organization

Finally, if the operator/lessee is not an exempt organization, the portion of the owner's property used by the operator is not eligible for the exemption. (AH 267, pp. 14-15.) While P Foundation may be a qualifying nonprofit organization, its property is not used exclusively for qualifying purposes and activities. Thus, the portion of property not exclusively used for an exempt purpose is not exempt.

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

Sincerely,

/s/ Mariam Baxley

Mariam Baxley
Tax Counsel

MB:pb
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cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70