



STATE OF CALIFORNIA

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TIMOTHY W. BOYER
Interim Executive Director

March 26, 2004

***Re: Welfare Exemption Qualification of Limited Equity Low-Income Housing Cooperatives –
County***

Dear _____ :

This is in response to your letter of September 20, 2003, in which you request reconsideration of the Board's denial of exemption for the _____ Mobile Home Park owned by the _____ Mobile Home Park Cooperative, Inc. (Cooperative).¹ The Board Exemptions Unit staff initially approved the exemption in findings issued on June 22, 2001, but subsequently issued findings on November 07, 2001, which denied exemption.² Both the Board and the Assessor of _____ County have determined that the property does not qualify for exemption as lower income rental housing under section 214, subd. (g) of the Revenue and Taxation Code³ because the Cooperative's members/mobile home park residents, hold ownership interests in the property.

Based upon our review of relevant documents, the Cooperative's exemption claim file, and applicable law, we conclude that property owned by cooperative housing corporations, including limited equity cooperative housing corporations, that is eligible for the homeowner's exemption under section 218 is not property used exclusively for rental housing and related facilities within the meaning of section 214, subd. (g). Accordingly, the Board Exemptions Unit staff and the Assessor of _____ County have determined correctly that such property is

¹ Several documents were enclosed with your letter for purposes of our analysis, including, the Membership Certificate, Occupancy Agreement, Bylaws, and Articles of Incorporation of _____ Mobile Home Park Cooperative, Inc., a photocopy of the organization's IRC section 501(c) (3) tax exempt letter, "Independent Auditor's Report on Supplementary Information," and April 17, 1994 correspondence addressed to the Mayor of the City of _____.¹

² The Board Exemption Unit staff's stated basis for denial on the finding sheet was "resident-owned park, a per claim form and assessors office, section 214 allows exemption solely for rental housing, and the tenants may not be members of the organization that owns the property."

³ All section references are to the Revenue and Taxation Code unless otherwise specified.

ineligible for the exemption from property taxation. However, any mobile home spaces and/or dwellings held by the Cooperative that are rented at the prescribed rent levels to qualifying lower income tenants who are not Cooperative members may qualify for exemption under section 214, subd. (g) of the Revenue and Taxation Code, provided that all other requirements for exemption are met.

Factual Background

The property is located at _____ in the City of _____ (APN _____) There are 93 units, including three apartments that are rented to non-members, and one mobile home owned by _____ Mobile Home Park Cooperative, Inc. that has been rented to an on-site maintenance person as part of his compensation. Eighty-eight members own their mobile homes, but one resident, who owns his mobile home, opted not to become a member. The non-member mobile home owner and the lessees of the apartments do not have voting rights. The monthly charge for a space is \$294, which also covers sewer and garbage services.

The Articles of Incorporation of _____ Mobile Home Park Cooperative, Inc. state that it was formed as a nonprofit public benefit corporation in 1987 for the purpose of operating a mobile home park for low and moderate income families and individuals as a limited equity cooperative pursuant to section 33007.5 of the Health and Safety Code. (Article II (b)). Article IV(a) provides that, “[t]he property of this corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member of this corporation or to the benefit of any private individual. Article IV (b) states that upon the winding up and dissolution of the corporation and after paying the debts and obligations, the remaining assets shall be distributed to a nonprofit fund, foundation, or corporation that is organized and operated exclusively for charitable purposes.

Section 3 of Article III defines “members” as “natural persons who have been approved (for membership) by the Board of Directors and who have paid for their membership and received membership certificates.” The cost of a membership certificate is \$1,500. Additional requirements are that the member must be a registered owner/occupant of a mobile home within the park as his/her principal residence, with an “Occupancy Agreement” for a specific space or dwelling unit.

According to the Articles of Incorporation, membership in the Cooperative is limited solely to members, who own and hold a membership share in the Cooperative, who own or occupy a space or dwelling unit in the park as their primary residence. (Article III, sections 1, 3) The Bylaws provide that the memberships may be sold and also may be transferred by will or intestate succession. (Article III, Section 7(f)).

The membership certificate provides, in relevant part,

Incorporated under the laws of the State of California
Certificate No. xxx
Mobile Home Park Cooperative, Inc.
Membership Certificate

93 shares, consisting of: par value \$1500.00 each; plus the value, as determined by the Board of directors, of any improvements installed at the expense of the member with prior approval of the Board of Directors; plus interest at the annual rate provided in Section 7(d)(2) of Article III of the Bylaws of said Corporation for each year of membership in good standing.

This certifies that _____ is the record owner of one membership par value \$1,500.00 in _____ Mobile Home Park Cooperative, Inc. transferable on the books of said Corporation only as provided for in Section 7 of Article XIII of the Bylaws of said Corporation and subject to the lien rights of said Corporation, as provided for in Section 6 of Article III of said Bylaws.

The rights of any holder hereof are subject to the provisions set forth in the Articles of Incorporation, as amended, the Bylaws of said Corporation, as amended, and to all the terms, covenants, conditions, and provisions of a certain Occupancy Agreement made between the person in whose name this Certificate is issued and said Corporation, for a cooperative space or unit in premises known as _____ Mobile Home Park Cooperative, Inc., and located in the city of _____, _____ County, California.

Section 1.5 of the Occupancy Agreement provides as follows:

If property taxes are owed, the Member shall pay his or her proportional share of the property taxes as determined in accordance with the annual schedule of property taxes prepared by the Tax Assessor for the County of _____. The Cooperative shall bill the Member for the property taxes on a semi-annual basis, providing the member with a copy of the schedule prepared by the Tax Assessor. It is the member's responsibility, upon acceptance of a Certificate of membership and execution of this Agreement to file with the Assessor Change in Ownership information as required by law and to file information required for a Homeowner's Tax Exemption.

LAW AND ANALYSIS

I. A limited equity cooperative is a stock cooperative owned by the members.

As noted above, the _____ Mobile Home Park Cooperative, Inc. is a nonprofit public benefit corporation organized under California nonprofit public benefit corporation law (Corporations Code, section 5110 et seq.) as a limited equity cooperative.

Our research indicates that limited equity housing cooperatives were statutorily created to provide ownership housing for low and moderate-income residents.⁴

A limited equity housing cooperative is a stock cooperative that meets certain public or charitable requirements.⁵ (Health and Safety Code section 33007.5; Civil Code section 1351(m)). In that regard, the Cooperative is a nonprofit corporation, its assets will be distributed to charitable ownership on termination of the corporation (Articles of Incorporation, Article IV); and the corporation bylaws contain specified limitations on the equity that can be realized from selling a share or membership interest. (See Bylaws of Mobile Home Park Cooperative, Inc., section 7(d)).⁶

A stock cooperative is a common interest development in which a corporation holds title to the property in fee simple or for a term of years,⁷ and all or substantially all the shareholders/members/park residents receive a right of exclusive occupancy in a portion of the real property. (Bus. & Prof. Code section 11003.2; Civil Code section 1351(l)(4)). Thus, the Cooperative is an organization owned by the shareholder-members in that each owns a share of stock, and a membership in the corporation, which entitles him or her to occupy one of the spaces in the Mobile Home Park. Both the separate interest, the exclusive right to occupy a particular space during the term of occupancy, and the interest in the stock cooperative corporation are interests in real property. (See attached section 783.1 of the Civil Code).

II. California property tax law defines a member of the cooperative as an “owner” for purposes of the Homeowners’ Exemption.

Section 218, which defines homeowner for purposes of the homeowner’s exemption states that “owner” includes a person who holds shares of membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.⁸ Thus, members in cooperative housing corporations, including limited equity cooperative housing corporations, are deemed owners of such property for purposes of California property tax law, and they are able to claim and receive the homeowners’ exemption for their residences. In that regard, the Cooperative’s members have claimed and have been granted the homeowners’ exemption for their residences on the property. The Assessor’s staff has verified this fact. See also the above-cited provision of the Cooperative’s Occupancy Agreement (Section 1.5), which states that it is the member’s responsibility to file with the Assessor information required for the homeowners’ exemption. Conversely, the members/mobile home residents are not eligible for the renter’s credit administered by the Franchise Tax Board, which is an income tax credit available to renters of property and designed to offset the tax benefits homeowners enjoy when

⁴ Section 1.25 B, Limited Housing Cooperatives of the 1984 California Continuing Education of the Bar publication California Condominium and Planned Development Practice: Update April 2003.

⁵ Miller & Starr, California Real Estate, 3rd Ed., section 25:16

⁶ Health & Safety Code section 33007.5(a); Business and Profession Code section 11003.4).

⁷ In this instance, the corporation (Cooperative) holds title to the property in fee simple. The former owner conveyed the property by Grant Deed recorded February 19, 1988.

⁸ The Legislature amended Section 218 to add this language in 1970. (Stats. 1970, p. 1030, in effect November 23, 1970)

granted the homeowners' exemption. The renter's credit is granted to a "qualified renter" which does not include an individual who has been granted or whose spouse has been granted the homeowner's property tax exemption during the taxable year. (Rev. & Tax. Code section 17053.5)

Section 218 is implemented by subdivision (f) of Property Tax Rule 135, Homeowners' Property Tax Exemption (Title 18, Public Revenues, California Code of Regulations, Section 135), which was added by the Board in 1975 subsequent to the amendment of section 218, to provide that "owner" includes a person who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling. Subsection (f) of Rule 135 provides, in relevant part, that [a]nnually the assessor shall request from every cooperative housing corporation containing dwelling units eligible for the exemption (1) a list of owners of shares or memberships entitling them to occupancy of a particular dwelling unit and (2) the designations of the dwelling units they are entitled to and did occupy as shown on the corporate membership record for the lien date, and which is designed to establish the availability of the homeowners' exemption to properties of cooperative housing corporations. As noted above, the Cooperative's Occupancy Agreement requires the member to file information required for homeowners' exemption with the Assessor. Accordingly, the Cooperative's eighty-eight members residing on the Cooperative's property are considered owners, rather than renters of the property, for property tax purposes.

It would appear that member/owner/residents of the property held by a "limited" equity cooperative have some, but not all rights of beneficial owners. As members of the corporation, the residents are able to exercise control over the housing through voting at the corporation's annual meeting. A member may sell his/her share or membership, but the price to the buyer is limited to the original purchase price of the membership plus three percent annual interest. A member may not lease his premises or become an absentee owner of a membership. Moreover, the members may not dissolve the corporation and benefit from an increase in the value of the property since the assets are to be transferred to a qualifying charitable organization upon dissolution of the corporation.

III. The welfare exemption applies to property used exclusively for lower income rental housing and related facilities.

The Legislature enacted subdivision (g) of Section 214 in 1988 to extend the welfare exemption from property taxes to rental housing for lower income households meeting specified requirements. (Stats. 1987, Chap. 1469, in effect January 1, 1988). Thus, section 214, subd. (g) was enacted *after* the amendment of section 218 to allow the homeowners' exemption for Cooperative members who occupy their respective premises as their primary place of residence. Nonetheless, section 214, subd. (g) was enacted without any provision for the exemption of property owned by cooperative housing corporations and/or limited equity cooperative housing corporations.⁹ Accordingly, the property of member-residents of the corporation eligible for the

⁹ Assembly Bill 3481 would have amended section 214, subd. (g) to include limited equity housing cooperatives, and was passed by the Assembly and the Senate in August of 1988. Governor Deukmejian returned the bill to the

homeowners' exemption is precluded from eligibility for the exemption for rental housing for lower income households in subdivision (g) of section 214. In that regard, it should be noted that the Board's Assessors' Handbook, Section 511, Assessment of Manufactured Homes and Parks, November 2001, provides, in relevant part, that "the exemption provided for in section 214, subdivision (g), applies only to rental housing for low-income households, and the tenants may not be members of the organization that owns the property. Therefore, a resident-owned park would not qualify for the welfare exemption, even if the residents meet the low-income limitations." (page 70) Further, the elected Board members of this agency heard an appeal in 1991, which was filed by a limited equity housing cooperative on the issue of whether property used to house resident-owner/members of a nonprofit limited equity cooperative housing corporation was eligible for the exemption under section 214, subd. (g), as property used exclusively for rental housing. The Board determined that this property was not eligible for exemption under section 214, subd. (g) and denied the welfare exemption claim.

IV. Conclusion

Staff concludes, therefore, that property owned by cooperative housing corporations, including limited equity cooperative housing corporations, and eligible for the homeowners' exemption under section 218 and Property Tax Rule 135, subsection (f) is not property used exclusively for rental housing and related facilities within the meaning of section 214, subd. (g). Accordingly, such property is not qualified for the exemption from property taxes under section 214, subd. (g). But, as noted above, the Cooperative's property leased within the prescribed rent levels to nonmembers who are qualified low income tenants, may qualify for the exemption, provided that all the legal requirements for exemption are met.

Sincerely,

/s/ Mary Ann Alonzo

Mary Ann Alonzo
Senior Tax Counsel

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cc: The Honorable
County Assessor

Ms. Kristine Cazadd, MIC: 82

Assembly without his signature. The Governor stated that he was concerned that, "the effect of this bill would be to expand property tax exemptions from the traditional religious, hospital, scientific or charitable entities to a new class of persons, homeowners. This would circumvent the existing \$7,000 Homeowners' property Tax Exemption and create two classes of homeowners' exemptions."

Mr. David Gau, MIC: 63
Mr. Dean Kinnee, MIC: 64
Ms. Lisa Thompson, MIC: 64
Mr. Michael Harris, MIC: 64
Mr. Gordon Ferguson, MIC: 64