880.0205 **Owner and Operator.** The ownership of a multi-space parking garage by an entity eligible for the welfare exemption and by a for-profit entity disqualifies the entire garage for the exemption even though the qualified entity has by agreement with the co-owner exclusive use of 43 percent of the spaces. The requirements for exemption are ownership and use by a qualified organization or organizations. C 2/2/89.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7715

February 2, 1989

Dear !

This is in response to your January 11, 1989 letter following up our recent telephone conversations concerning the extent to which Children's Hospital of Orange County (CHOC) is entitled to the welfare exemption pursuant to Revenue and Taxation Code Section 214 with respect to a parking garage owned by it and PRG Investments West, a California General Partnership (PRG), and a for-profit entity that is not related to CHOC.

Per your letter, the garage is owned, as tenants-in-common, 50% by CHOC and 50% by PRG. On June 13, 1975, CHOC and AID, PRG's predecessor-in-interest, entered into an agreement setting forth specific terms of operation, use, ownership, and allocation of revenues from the garage. As to operation, CHOC was to maintain and operate the garage. As to use, CHOC received the exclusive right to use 140 spaces of the total 325 spaces in the garage (43%), which spaces are specifically designated in the Agreement and delineated by signs in the garage itself. As to revenues, all parking revenues derived from CHOC's spaces were to be CHOC's sole property. Pursuant to paragraph 5 of the Agreement, CHOC agreed to exercise its best efforts to operate the garage in a manner so that its interest in the garage would qualify for the exemption.

Enclosed with your letter were copies of the Agreement between CHOC and AID; Exhibit 1 thereto; a packet of 1975 correspondence between Mr. Jeffrey L. Nagin, AID's counsel, and Mr. James M. Williams, Staff Counsel; and the July 27, 1988 amended finding sheet for the garage for the 1987-88 fiscal year:

> O.E.U. Only those portions of the property used exclusively for religious, hospital, or charitable purposes meet the requirements for exemption.

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Tuly Exempt Prop. Tax

L.F. (85%) Late filing.

Only real or personal property which is used exclusively for hospital purposes is eligible for the exemption.

No Exhibit 2 to the Agreement (parking spaces plan) was enclosed.

Regarding the enclosed correspondence, a May 19, 1975 letter from Mr. Nagin enclosed a draft of the then-proposed agreement, and requested confirmation that if CHOC and AID entered into the agreement and operated in accordance therewith, CHOC's interest in the garage would be eligible for the exemption. By letter dated May 21, 1975, Mr. Williams indicated that it probably would be, stating in pertinent part:

> "...If..., then I would conclude that CHOC, an exempt organization, is both the owner and operator of those spaces designated in 'Exhibit 2' and thus meets the test of exclusive use within the meaning of Revenue and Taxation Code, section 214."
>
> "As a precaution, I must clearly point out that there is no provision in law whereby a firm commitment for exemption can be made in advance of application. My conclusion above is directed to the exclusive use aspect of the property and does not affect other requirements of the statute...."

Based upon section 214(a), which refers to exclusive use but not to exclusive ownership; section 214(a)(1), which refers to "the owner" and which you construe to mean the owner who derives the benefit of the exemption must not be organized or operated for profit; and the enclosed correspondence, you contend that CHOC is still entitled to the exemption for its 140 spaces in the garage (43%).

Section 214(a) provides 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. While "owned by" as used therein is not modified by "exclusively," it is modified by "community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes," of which PRG is none. As expressed in the November 1944 Ballot Pamphlet:

> "TAXATION EXEMPTION OF RELIGIOUS, HOSPITAL AND CHARITABLE ORGANIZATIONS. Assembly Consitutional [sic] Amendment No. 17. Authorizes Legislature to exempt from property taxes property used for religious, hospital or charitable purposes and owned by agencies organized for such purposes, which are not conducted for profit and no part of the earnings of which inure to the benefit of any individual."

Thus the exemption is both an "ownership and a "use" exemption; that is, 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. If another organization also uses the property, both it and the owner must meet all the requirements for exemption. In this regard, page 7 of Assessor's Handbook AH 267, Welfare Exemption, provides in pertinent part:

> "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. On the other hand, if the owner of the real property is not an exempt organization, the operator may still receive the exemption as to personal property and improvements it owns if it meets the requirements of Section 214. Property leased from an owner which is not an exempt organization is not exempt under the welfare exemption, but may be eligible for another exemption which depends solely upon use of the property."

Thus, the Handbook contemplates that only property owned and operated solely by exempt organizations will be eligible for the exemption.

And, as construed by the court in Christ The Good Shepherd Lutheran Church v. Mathiesen, supra, at page 362, "owned and operated" by community chests, funds, foundations or

corporations as used in section 214 "merely reflects the dual constitutional requirements that the property must be both owned and operated by welfare organizations in order to qualify for the exemption (Art. XIII, § 4, subd. (b))."

In light of the constitutional provision, the statute, the Handbook, and Christ The Good Shepherd Lutheran Church v. Mathiesen, supra, it has been our position that to be eligible for the exemption, property must be both owned and operated by qualifying organizations exclusively. The recent Superior Court cases of Focus on the Family v. Los Angeles County; The State Board of Equalization; et al., Los Angeles County Superior Court Nos. C 47 94 65 and C 610877, reflect that position. In those cases, the property was owned one-half by Focus on the Family, a qualifying organization, and one-half by two individuals; and Focus on the Family claimed the exemption for that one-half of the property owned and used by it. Because individuals are not eligible for the exemption and would not meet numerous requirements therefor if they were, the exemption was denied because the property was not owned solely by qualifying organizations. While you have emphasized in your letter that under its Agreement with PRG, CHOC has the exclusive right to use 140 spaces out of the 325 total spaces in the garage, in Focus on the Family v. Los Angeles County, The State Board of Equalization, et al., supra, Focus on the Family was using the entire property. Thus, in that case as in this one, exclusive use of property, or a portion thereof, does not entitle an organization to the exemption where ownership of the property is in a person or persons not eligible for the exemption and where, as the result, the property is not both owned and operated by qualifying organizations exclusively.

In this instance, ownership of the entire property is in PRG as well as in CHOC. As you are aware, property owned in tenancy-in-common is held in common with the other owners. Thus, the co-tenants have an undivided interest in the entire property, not a specific or determined portion of the common property in severalty. As the result, CHOC and PRG are both owners of the entire garage, including that portion specifically used by CHOC; and PRG is not an organization that qualifies for the exemption.

With respect to the copies of the 1975 correspondence, Mr. Williams' May 21, 1975 letter is conditioned upon the fact that there is no provision in law whereby a firm commitment for exemption can be made in advance of application (second paragraph, first sentence) and is further limited by the next

sentence stating that the conclusion that CHOC is both the owner and operator of the 140 spaces and thus meets the test of exclusive use within the meaning of section 214 "is directed to the exclusive use aspect of the property and does not affect other requirements of the statute." Thus, it appears that the use aspect, rather than the ownership aspect, of the exemption was the focal point of the communications, correspondence, etc. between Messrs. Nagin and Williams and that little, if any, consideration was given to the ownership aspect of the matter. Even if the ownership aspect had been considered, however, the May 21, 1975 letter could not affect the Board's duty to annually review all claims for the exemption and to make findings as to the eligibility of claimants and their properties. As indicated above, consistent with past and present interpretations, CHOC's 1987 claim for the exemption for its portion of the garage should have been found ineligible for the exemption, and the finding sheet for the garage should have stated:

> P.P.O. Personal property only.
>
> Claimant owns only an undivided interest in real property at this location. Other owner does not qualify. Thus, real property is not eligible for exemption. Only personal property owned by the claimant is exempt.

Thus, an amended finding to this effect will issue.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:wak

cc: Mr. Bradley L. Jacobs
Orange County Assessor
Ms. Lucy Flores

2189H

bc: Mr. John Hagerty
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. James Barga
Mr. Bill Minor: Please prepare and issue amended finding.
DAS File
Legal