



# Memorandum

To:

Date: March 1, 1994

From: Ken McManigal

Subject: Welfare Exemption

This is in response to the request that the legal staff review the staff's denial of the claimant's claim for exemption for the 1993-94 fiscal year under the following circumstances:

**Claimant**

has, as managing general partner, claimed the welfare exemption for the 1993-94 fiscal year for a lower income household rental housing property owned by \_\_\_\_\_ under Revenue and Taxation Code Section 214(g). That section provides, in part, that property used exclusively for rental housing and related facilities and owned and operated by \_\_\_\_\_ corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of Section 214 shall be deemed to be within the exemption and shall be entitled to exemption or partial exemption depending upon whether specified, applicable criteria are met.

Claimant, an eligible nonprofit corporation apparently meeting all of the requirements of Section 214 and presently the managing general partner of the limited partnership that owned the housing property on the March 1, 1993, lien date was not the managing general partner on the March 1, 1993, lien date, however, Rather, the limited partnership was formed in 1992, it acquired the property in December 1992, claimant became a managing general partner in August 1993, and claimant filed the claim for exemption in November 1993.

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Per claimant's attorney, although claimant was not the managing general partner of the limited partnership on the March 1, 1993, lien date, the exemption should be granted for the proportion of the 1993-94 tax year during which claimant was the managing general partner of the limited partnership pursuant to Revenue and Taxation Code Section 271(a)(3). As hereinafter explained, in our view, Section 271 is inapplicable under these circumstances, and the property is not eligible for exemption for the 1993-94 fiscal year.

Revenue and Taxation Code Section 271(a)(3) provides that under certain circumstances property taxes can be canceled or refunded even though the claimant did not own the property on the lien date and even if the claimant acquired the property after the beginning of the fiscal year:

Sec. 271(a). Provided that an appropriate application for exemption is filed on or before the first day of March of the calendar year next succeeding the calendar year in which the property was acquired, any tax or penalty or interest thereon--

\* \* \*

(3) Imposed upon property acquired after the beginning of any fiscal year by an organization qualified for the college, cemetery, church, religious, exhibition, veterans' organization, or welfare exemption and the property is of a kind which 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.

Thus, claimant contends that the limited partnership falls within the scope of Section 271(a)(3) and is entitled to a proration of the 1993-1994 property taxes.

Consistent with Section 214 and related sections as they existed in 1971, Section 271 was added to provide relief from property tax imposed upon property acquired after the beginning of a fiscal year by an organization qualified for the welfare exemption. As described in Section 214, such organizations were religious, hospital, and scientific organizations, and charitable community chests, funds, foundations, or corporations. Section 214(g) was added in 1987 to provide that

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property used exclusively for rental housing and related facilities and owned and operated by corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, was deemed to be within the exemption. Thus, property owned by one entity, a limited partnership, and used for specific housing was now eligible for the exemption if another entity, an eligible nonprofit corporation, was the managing general partner. At the time Section 214(g) was added to provide for the specific "two-entity" rental housing situation, however, the "single-entity" Section 271(a)(3) remained unchanged.

A further indication that Section 271(a)(3) does not apply is the specific language of the section itself, "property acquired... by an organization qualified for the... welfare exemption." The property in question was acquired by a limited partnership, which organization is not an organization qualified for the welfare exemption. Neither Section 214 nor subdivision (g) thereof considers limited partnerships to be organizations qualified for the exemption. Rather, as indicated, Section 214(g) merely recognizes certain properties as properties being within the exemption. Thus, the property was never and has yet to be acquired by an organization qualified for the welfare exemption.

A further indication that Section 271(a)(3) does not apply is that the limited partnership owned the property on March 1, 1993, prior to the beginning of the 1993-94 fiscal year. Section 271(a)(3) by its terms applies to property acquired after the beginning of a fiscal year. The fact that claimant was added to the limited partnership as a general partner after March 1, 1993, means only that the limited partnership had a new member, not that a new limited partnership was created.

In sum, the limited partnership was formed prior to March 1, 1993, was not an organization qualified for the welfare exemption (Section 214(g)) at the time of formation or on March 1, 1993, had no qualifying managing general partner at the time of formation or on March 1, 1993, was in existence on March 1, 1993, and was the same limited partnership but with an additional general partner after March 1, 1993, when claimant thereafter became a general partner. Also, the limited partnership acquired/owned the property prior to claimant's becoming a general partner thereof. Under such circumstances, the requirements of Section 271(a)(3) are not met.

As you may recall, the identical question was before the Board in 1993 in the Matter of the Claims for Welfare Exemption, Property Tax, of

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By a majority vote, the Board upheld the staff's denials and denied the claims.

Given the above, claimant's attorney's citation to *Community Television of So. Cal. v. Los Angeles County*, 44 Cal.App.3d 990, does not compel a different conclusion, as that case is distinguishable from this one:

"The Court recognized that even though the exemption from taxes had not been filed according to statute the Legislature could have constitutionally waived such procedural requirements in the first instance. In brief, the court looked to the substance which consisted of the basic eligibility of the organization to receive the exemption rather than paying slavish adherence to the administrative means by which the organization would have to prove its eligibility, and stated at page 283: 'Undoubtedly, it is not the filing of the affidavit that creates the right to the exemption, but that right arises from the status of the hospital as a nonprofit corporation'. (Italics added.)"

The above-quoted language referred to by claimant's attorney follows this paragraph in that opinion:

"In *Doctors General Hospital v. County of Santa Clara*, 188 Cal.App.2d 280 [10 Cal.Rptr. 423], the court determined that Revenue and Taxation Code section 263 was constitutional as against an attack similar to that made here against Revenue and Taxation Code section 271.4. There the hospital was qualified for an exemption but filed the affidavit required by Revenue and Taxation Code section 254.5, 33 days late." (emphasis added.)

Thus, in *Doctors General Hospital v. Santa Clara County, supra*, the hospital was qualified for the exemption on the March 1 lien date. a limited partnership, was not qualified for the exemption on the March 1, 1993, lien date and is not qualified for the exemption now. As indicated above, neither Section 214 nor Section 214(g) consider limited partnerships to be organizations qualified for the exemption. Rather, Section 214(g) merely recognizes certain properties as properties being within the exemption.


In addition, since the cases of *Doctors General Hospital v. Santa Clara County, supra*, and *Community Television of So. Cal.*

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v. *Los Angeles County, supra*, Article XIII of the California Constitution has been repealed and added. Section 6 of Article XIII now states:

"The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year.

As construed by the court in *Copren v. State Board of Equalization*, 200 Cal.App.3d 828, this section does not merely preclude the Legislature from granting relief to anyone who fails to make a timely claim for an exemption. It also precludes the Legislature from granting relief to anyone who fails timely to claim an exemption "in a manner required by the laws in effect at the time the claim is required to be made." Thus, Revenue and Taxation Code Section 214.12, which provided a retrospective welfare exemption for certain claimants who would previously have qualified therefor but for a failure to have their property interests recorded, was unconstitutional as conflicting with this section since it was an attempt to retrospectively grant relief to an organization that did not make a claim for an exemption in the manner then required. Accordingly, to the extent that those cases conflict with Section 6 of Article XIII and cases construing that section, they are of no precedential value.

  
JKM:jd