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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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January 17, 1995

Mr. Alfred E. Carlson
Office of the Santa Clara County Assessor
County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1771

Attention: Mr.

Re: Exemptability of Personal Property/Revenue & Taxation Code Section 271, Subdivision (a)(3)

Dear :

This is in response to your letter of November 16, 1994, to Mr. wherein you requested the Legal Staff's opinion with respect to the following:

1. A qualified Welfare organization recently acquired real property after the lien date. The personal property acquired is also on the secured roll. The land and improvements are entitled to pro-rata exemption pursuant to Revenue and Taxation Code Section 271, subdivision (a)(3). You ask whether the personal property also is entitled to pro-rata exemption.

2. You ask also whether if the personal property was not on the secured roll but was on the unsecured roll, would the personal property be exempt pursuant to Section 271, subdivision (a)(3). In this regard you state that the practice of your office has been to exempt personal property on the unsecured roll from "lien date to lien date". You have never granted pro-rata exemptions for personal property on the unsecured roll.

LAW AND ANALYSIS

1. As you know, the secured roll contains a listing that includes the following types of property:

(A) All taxable land and improvements privately owned in fee.

(B) All land and secured improvements being purchased under contract of sale from a public agency, such as the Department of Veterans Affairs.

(C) All assessable personal property owned by owners of either (A) or (B) above, where such land is sufficient security for the taxes on the personal property in the opinion of the assessor, and the personal property is either located upon such real property on the lien date (Revenue and Taxation Code Section 2189) or is secured by means of the "certificate" procedure (Revenue and Taxation Code Section 2189.3).

Section 2189 provides that real property may be used as security for personal property taxes when the personal property is located on the real property and is assessed to the person who owned the real property on the lien date. As used therein, "located" means the actual physical location of the personal property. Section 2189.3 provides for securing personal property to real property owned by the same person in the same county at different locations, in certain instances.

As you also know, property taxes on lands, improvements, and personal properties on the secured roll are liens against the lands assessed (Section 2187). A property tax has the effect of a judgment against the person (Section 2186), and a lien created by a property tax has the effect of an execution duly levied against the property subject to the lien (Section 2193). As noted in Cal. Jur. III, Volume 51, <u>Property Taxes</u>, Section 125, <u>In General</u>, however, the property tax is a judgment only in the sense that it is the final determination of the amount of public burden to be borne by the property on which it is charged, and there is no personal obligation on a landowner to pay the taxes on his land; payment can be enforced only by sale of the land.

Accordingly, prior to 1969, Welfare organizations and certain other organizations that acquired secured roll properties subject to liens after the beginning of any fiscal year took the properties subject to those liens and, for all practical purposes, became liable for payment of any unpaid taxes, in lieu of sale of the properties for such taxes. To remedy these situations, the Legislature enacted former Revenue and Taxation Code Section 271.4, in Stats. 1969, Ch. 88, in effect May 20, 1969, which provided in part:

> "When property is acquired after the beginning of any fiscal year by an organization qualified for the college, cemetery, church, exhibition, orphanage or welfare exemption and the property is of a kind which would have qualified for an exemption if it had been owned by such organization on the lien date, whether or not that organization was in existence on the lien date, the tax and any penalty or interest imposed thereon shall be canceled in the proportion that the number of days for which the property was so qualified during the fiscal year bears to 365...."

At the same time, Section 3 of Stats. 1969, Ch. 88 provided similar and retroactive relief to organizations qualified for the church exemption that acquired secured roll properties after the March 1, 1968, lien date and prior to October 5, 1968. In Section 4 of Stats. 1969, Ch. 88, the Legislature stated in this regard:

> "Some organizations qualified for the church exemption pursuant to Sections 206 and 206.1 of the Revenue and Taxation Code purchased property during the 1968 calendar year, after the lien date for that year, which property was taxed for the fiscal year 1968-69, although it would have been exempt from taxation for that year by reason of the church exemption had it been acquired prior to such lien date. If required to meet such tax obligation, the ability of such organizations to function effectively will be seriously impaired to the great detriment of our state. This act will remedy that situation, and in so doing, the public policy of the state for the exemption of property owned by religious organizations, as expressed in Section 1-1/2 of Article XIII of the Constitution, will be subserved and the state as a whole will benefit."

A copy of Stats. 1969, Ch. 88, is enclosed for your review.

Revenue and Taxation Code Section 271, subdivision (a)(3), which is substantially the same as former Section 271.4, currently provides as follows:

> "(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-
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> * * *
>
> (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, the Legislative intent continues to be that secured roll properties acquired by Welfare organizations and certain other organizations after the beginning of a fiscal year and subject to property taxes for that year should not be subject to but rather, should be relieved from property taxes during the periods they are owned by the Welfare organizations and other organizations.

As was the case with former Section 271.4, Section 271, subdivision (a)(3) refers to "property," which includes all matters and things, real, personal, and mixed, capable of private ownership (Section 103). "Real property" includes the possession of, claim to, ownership of, or right to the possession of land (Section 104, subdivision (a)) and improvements (Section 104, subdivision (c)). "Personal property" includes all property except real estate (or real property) (Section 106).

Accordingly, Section 271, subdivision (a)(3) applies to secured roll personal properties as well as to secured roll lands and improvements acquired by Welfare organizations and certain other organizations after the beginning of a fiscal year and subject to property taxes for that year, and all are entitled to pro-rata exemption thereunder, assuming that all the requirements for exemption are met.

2. As to the unsecured roll, it is that part of the roll containing property that is not on the secured roll (Section 109) and contains a listing that includes the following types of property:

(A) Foreign improvements.

(B) Taxable possessory interests.

(C) Personal property which is not located on an assessee's land on the lien date and which has not been secured by the certificate procedures authorized by Section 2189.3.

Unlike property taxes on lands, improvements, and personal properties on the secured roll, however, the Revenue and Taxation Code does not specifically provide that a tax on personal property constitutes an automatic lien on the property assessed. Absent such a provision, property taxes on personal properties on the unsecured roll are not liens on the properties assessed. It is settled law in California that the lien of a property tax exists only by virtue of statute and that taxes are not a lien on the property assessed unless expressly made so by statute (*T.M. Cobb Company v. County of Los Angeles* (1976) 16 Cal.3d 606). And as indicated above, while upon assessment personal property taxes may under certain circumstances constitute an automatic lien on real property belonging to the owner of the personal property (Sections 2189 and 2189.3), the lien is on the real property, not on the personal property.

Accordingly, property taxes for personal properties on the unsecured roll are the obligations of the persons to whom those properties are assessed on the lien date, and Welfare organizations and other organizations that acquire unsecured roll personal properties, whether before or after the beginning of a fiscal year, do not take them subject to any liens and hence, do not become liable for payments of any unpaid property taxes with respect to those properties. Thus, circumstances that give rise to the application of Section 271, subdivision (a)(3) do not exist, and resort thereto is neither contemplated nor necessary in such instances.

According to *T.M. Cobb Company v. County of Los Angeles, supra,* under the Revenue and Taxation Code, a county has four ways of collecting unsecured personal property taxes. First, pursuant to Section 3003, the county may in a civil action sue the taxpayer in its own name for the recovery of delinquent taxes or assessments, with penalties and costs. Second, pursuant to Section 3101 et seq. the official collecting taxes on the unsecured roll may file in the office of the county clerk a certificate specifying certain facts and obtain a summary judgment against the taxpayer entered by the court clerk without a hearing. This procedure results in a judgment lien against all property in any county where the lien is filed, and any such property acquired in the next 10 years (Section 3103). The liens resulting from either of these procedures are subordinate to the rights of all prior lienholders (Civil Code Section 2897.) Still, however, property taxes for personal properties on the unsecured roll are the obligations of the persons to whom those properties are assessed on the lien date; and Welfare organizations or other organizations that purchased personal properties from taxpayers who later were subject to Section 3003 proceedings would take such properties free and clear of such proceedings. Similarly, personal properties purchased by Welfare organizations or other organizations from taxpayers whose remaining personal properties were later subject to Section 3101 proceedings would not be subject to such proceedings both because property taxes remain the obligations of the persons to whom the properties were assessed on the lien date and because they were purchased before such proceedings commenced.

Third, pursuant to Section 2191.3 the tax collector may file a certificate of delinquency for record in the county recorder's office. From the time of such filing the amount required to be paid together with interest and penalty "constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in such certificate or acquired by him in such name before the lien expires [with an exception not here applicable]..." Section 2191.4) Like the others, this lien is subordinate to any other lien prior in time (Section 2191.5.) Again, however, property taxes for personal properties on the unsecured roll are the obligations of the persons to whom those properties are assessed on the lien date; and personal properties purchased by Welfare organizations or other organizations from taxpayers whose remaining personal properties were later subject to Section 2191.3 proceedings would not be subject to such proceedings because of that fact and because they were purchased before such proceedings commenced.

Fourth, Section 2914 et seq., now Section 2951 et seq., permit the tax collector to seize and sell any personal property "belonging or assessed to the assessee." The sections do not state what rights, if any, the tax collector has in such property, and absent any such statement or otherwise clearly manifested intent in that regard, a tax collector, seizing and selling personal property for taxes under Section 2914, has no priority over prior private liens (*T.M. Cobb Company v. County of Los Angeles, supra*). Again, however, property taxes for personal properties on the unsecured roll are the obligations of the persons to whom those properties are assessed on the lien date; and personal properties purchased by Welfare organizations or other organizations from taxpayers whose remaining personal properties were later subject to Section 2914 or Section 2951 proceedings would not be subject to such proceedings because of that fact and because they were purchased before such proceedings commenced.

In sum, in none of the above instances would Welfare organizations or other organizations become liable for payment of any unpaid property taxes with respect to such properties, and resort to Section 271, subdivision (a)(3) would not be necessary.

Finally, there may be instances in which Welfare organizations or other organizations wish to purchase personal properties from taxpayers who are subject to Section 3003 proceedings or personal properties that are subject to Section 3101, Section 2191.3, or Section 2914/2951 proceedings. In the former, the proceedings are against taxpayers who have had personal properties assessed in their names and, if held liable for applicable taxes, will have to pay them. To the extent that courts allow sales of personal properties in such instances, presumably, courts would substitute their jurisdiction over the purchase prices for their jurisdiction over the personal properties sold, Welfare organizations and other organizations would not be liable for payment of any unpaid property taxes with respect to such properties since the Section 3003 proceedings are, as indicated, tax collection proceedings, and again, resort to Section 271, subdivision (a)(3) would not be necessary.

In the latter instances in which Welfare organizations or other organizations wish to purchase personal properties that are subject to Section 3101, Section 2191.3, or Section 2914/2951 proceedings, it is unlikely that county officials or courts would permit sales of such personal properties while such proceedings were pending. To the extent that county officials or courts would permit sales of such personal properties in the course of such proceedings, presumably again, they would substitute their jurisdiction over the purchase prices for their jurisdiction over the personal properties sold, Welfare organizations and other organizations would not be liable for payment of any unpaid property taxes with respect to such properties, and again, resort to Section 271, subdivision (a)(3) would not be necessary.

In sum, consistent with the above, it is our view that Section 271, subdivision (a)(3) does not apply to personal property on the unsecured roll because of the nature of assessments made on the unsecured roll, the ways in which unsecured personal property taxes may be collected, and the circumstances under which Welfare organizations or other organizations may acquire personal properties that have already been assessed to others. Such properties are not subject to property taxes when acquired and become eligible for exemption the following March 1, assuming all the requirements for the exemption(s) claimed are met.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

James K. McManigal, Jr.

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Staff Counsel III

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cc: Mr. John W. Hagerty, MIC:64
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