

State of California

Board of Equalization
Legal Department – MIC:82
Telephone: (916) 445-6493

Memorandum

To: Ms. Lisa Thompson (MIC:64)
Principal Property Appraiser

From: J. K. McManigal, Jr.
Senior Tax Counsel

Subject: *Claim for Organizational Clearance Certificate –
Assignment No. 07-328*

Date: December 31, 2007

This is in response to your August 17, 2007, e-mail concerning The E's (Redacted) claim, in its name, with respect to real property held in an irrevocable trust for which it is the sole beneficiary and the applicability of Property Tax Annotation 880.0206 and former Revenue and Taxation Code¹ section 214.12. As hereinafter indicated, in instances in which properties are held in trust, the trustee holds legal title to the property while the beneficiary or beneficiaries hold equitable title and ownership of the property for property tax purposes.

Typical trusts for welfare exemption purposes are trusts established for charitable purposes having as beneficiaries the community as a whole or an unascertainable portion thereof. Other trusts are trusts established for charitable purposes having as beneficiaries specific, named organizations which are charitable organizations. The E (Redacted) is an example of the latter type of trust: The E (Redacted), the trust beneficiary and claimant (hereinafter claimant), is the equitable owner of the real property for welfare exemption purposes. As indicated, a trustee holds only legal title to the property. The trust and the claimant both have to meet requirements for the exemption. The trust has to meet organizational requirements for the exemption while the claimant has to meet all the requirements for the exemption. The property may be recorded in either the name of the trust or in the name of the trustee. Either the trustee or claimant must file a claim for an organizational clearance certificate and a claim for exemption.

In response to your questions then, claimant as the trust beneficiary is the equitable owner of the property and can file the claim for an organizational clearance certificate; and the property is eligible for exemption if claimant meets all the requirements for the exemption and if the trust meets the organizational requirements therefor. As to the recordation requirement of section 261, a deed to the trust, or a deed to the trustee and acknowledgment that the property is held in trust for claimant, and recordation in the name of the trust or in the name of the trustee, as the case may be, is acceptable.

¹ All further statutory references are to the Revenue and Taxation Code, unless otherwise specified.

Finally, the March 11, 1991, letter upon which Annotation 880.0206 is based and the annotation are correct and are an example of an instance in which real property is held in an irrevocable trust with a specific, named beneficiary or beneficiaries; and former section 214.12 has no bearing upon your inquiry.

Factual Background

You state that you have received a Claim for Organizational Clearance Certificate from The E (Redacted). Claimant was formed in 2004 and according to its Articles of Incorporation, its specific purpose is to: 1) operate, in perpetuity, a Victorian era home in (Redacted) as a public museum to be known as "The (Redacted) House," 2) restore, preserve and maintain the home for education and enjoyment of citizens; and 3) obtain historic landmark designation as a museum.

The claimant does not own the museum. The real property upon which it seeks exemption is owned by/in a trust. According to information provided, the claimant is the sole beneficiary of a testamentary nonprofit charitable and irrevocable trust created by the will of the Late (Redacted) County Superior Court Judge (Redacted). Under the irrevocable trust, the Directors as Trustees and Directors of The E (Redacted) hold the exclusive possessory interest in the subject property, in perpetuity. The legal title of record to the property is held in trust by the trustee, Wells Fargo Bank, for the use and benefit of the beneficiary. The beneficiary owns the equitable title.

Analysis

Trusts as Qualifying Organizations

While section 214.14 provides for exemption for property used as specified and owned and operated by a religious, hospital, scientific, or charitable fund, foundation, limited liability company, or corporation which meets all the requirements of section 214, subdivision (a), and while section 214, subdivision (a) provides for exemption for property used as specified and owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for specified purposes, these and other sections implementing the welfare exemption follow from article XIII, section 4, subdivision (b) of the California Constitution² which states:

The Legislature may exempt from property taxation in whole or in part:

(b) Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operating for those purposes, (2) that are nonprofit, and

² As originally adopted in 1944, former article XIII, section 1c stated:

In addition to such exemptions as are now provided in this Constitution, the Legislature may exempt from taxation all or any portion of property used exclusively for religious, hospital, or charitable purposes and owned by community chests, funds, foundations or corporations organized and operated for religious, hospital or charitable purposes, not conducted for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(3) no part of whose net earnings inures to the benefit of any private shareholder or individual. (Emphasis added.)

Thus, while not specifically mentioned in section 214, subdivision (a) or in section 214.14, property held in trust by a qualifying trust has been eligible for the welfare exemption for many years. Historically, in order to determine whether organizational requirements have been met, the trust instrument has been cited as one of the documents to review. For example, Assessors' Handbook 267, *Welfare Exemption* (1973) at pages 21 and 22 and at page 40 provides the following:

d. Property is Irrevocably Dedicated to Exempt Purposes and Will Not Inure to the Benefit of Any Private Person on Dissolution, Liquidation, or Abandonment of Owner

. . . The question is one of the authority of the institution with respect to its assets as set forth in the Articles of Incorporation, Constitution, or Declaration of Trust under which the institution is operation.³ (p. 21-22.)⁴

D. COMPLETION OF THE ASSESSOR'S FIELD INSPECTION REPORT

It is imperative that the assessor complete the Assessor's Field Inspection Report (form AH 267F) with care. . . .

Section A – Claimant

Check the appropriate space according to your understanding of the primary purpose of the organization. The answer here concerns the claimant and not the use of the property. A consideration of the facts shown in the articles of incorporation, the constitution, trust instrument, or other document evidencing the nature of the organization should assist you⁵ in making this determination. (p. 40.)

(See also *Alcoser*⁶ v. *County of San Diego* (1980) 111 Cal.App.3d 907, copy attached, in which a trust which had claimed exemption for its property met all the organizational requirements for exemption but its activity/use of the property was held to be a nonqualifying one.)

³ Emphasis added.

⁴ Assessors' Handbook 267, *Welfare Exemption* (2004) refers to trusts on page 17:

NOT ORGANIZED OR OPERATED FOR PROFIT

A basic requirement for the welfare exemption is that the owner(s) and/or operator(s) of property must not be organized or operated for profit. Determination of nonprofit status can usually be made after a review of an organization's formative documents such as articles or incorporation, articles of association, bylaws, constitutions of unincorporated associations, or declarations of trust.

⁵ Emphasis added.

⁶ *Alcoser* was probably one of the trustees of the trust.

Trusts, Trustees, and Beneficiaries

As you know, in instances in which properties are transferred and held in trust, the trust can be a qualifying organization. The trustee or trustees hold legal title to the property while the beneficiary or beneficiaries hold equitable title and ownership of the property. Thus, the nature of the trust and of the beneficiary or beneficiaries of the trust is important for property tax purposes.

Trusts with General Beneficiaries

Typical trusts for welfare exemption purposes are trusts established for charitable purposes having as beneficiaries the community as a whole or an unascertainable portion thereof, for example, persons in need of medical care. In such instances, the trust is viewed as the organization which must meet all the requirements for exemption in order for the trust property to be eligible for the exemption. *Alcoser v. County of San Diego, supra*, is typical of this type of trust: a trust created to receive and administer contributions required by a labor agreement for use in instruction in construction for persons 18 years or older. See also copies of the following documents, attached:

1. April 11, 1973, memorandum from Mr. W.W. Dunlop, a prior Executive Director, to Honorable Milton Marks regarding (Redacted) and (Redacted) for Northern California.
2. July 19, 1973, letter from Mr. J.J. Delaney to Mr. (Redacted) regarding (Redacted).
3. March 26, 1975, letter from me to Mr. William H. Cook regarding The (Redacted) Foundation.
4. March 17, 1976, and February 9, 1977, letters from me to Mr. (Redacted) regarding The (Redacted) Foundation of America.

Accordingly, the trust has to have a qualifying statement of purpose, an acceptable statement of irrevocable dedication, and an acceptable dissolution clause in its trust document or bylaws; it has to have an acceptable income tax exemption letter; it has to file financial statements and satisfy the charitable/donations requirement; and it has to meet all the other organizational requirements of section 214 and following, including recordation of the trust's real property in the trust's name or in the trustee's name.⁷ As the organization which must meet all the requirements for exemption in order for the trust property to be eligible for the exemption, the trust through the trustee or trustees would be the person to file the claim for an organizational clearance certificate and the claim for a welfare exemption.

Trusts with Specific, Named Beneficiaries

Other trusts are trusts established for charitable purposes having as beneficiaries specific, named organizations which are charitable organizations,⁸ for example, The E (Redacted). In such instances, the trust must meet organizational requirements for the exemption, but the Ms.

⁷ See page 2 of the copy of the February 15, 1968 letter, attached, as to property held in the name of a trustee.

⁸ The trustee, whether another nonprofit organization or a for-profit organization, holds only legal title to the property. Ownership for welfare exemption purposes, equitable title, is in the trust beneficiary/qualifying charitable organization.

beneficiary or beneficiaries must meet all the requirements for exemption in order for the trust property to be eligible for the exemption. See copies of the following documents, attached:

1. February 15, 1968, letter from Mr. John Knowles to Mr. (Redacted) regarding (Redacted).
2. March 5, 1973, letter from Mr. John Knowles to Mr. (Redacted) regarding (Redacted).
3. July 26, 1973, letter from Mr. Thomas Hartigan to Mrs. (Redacted) regarding (Redacted).
4. August 29, 1973, letter from Mr. Hartigan to Mr. (Redacted) regarding (Redacted).

Accordingly, the trust has to have a qualifying statement of purpose and an acceptable statement of irrevocable dedication and an acceptable dissolution clause in its trust document or bylaws, and it has to have an acceptable income tax exemption letter. And each beneficiary must have a qualifying statement of purpose and an acceptable statement of irrevocable dedication and an acceptable dissolution clause in its articles of incorporation, an acceptable income tax exemption letter, and financial statements. Each beneficiary must meet the charitable/donations requirement, and each must meet all the other organizational requirements of section 214 and following, except that as to the recordation requirement of section 261, a deed to the trust, or a deed to the trustee and acknowledgment that the property is held in trust for the qualifying charitable organization or organizations, and recordation in the name of the trust or in the name of the trustee, as the case may be, is acceptable. (*See* page 2 of the copy of the February 15, 1968, letter as to property held in the name of a trustee.)

As to the filing of a claim for an organizational clearance certificate and a claim for the welfare exemption, either the trust through the trustee or trustees or the beneficiary/qualifying charitable organization or organizations could make the filings. (Again, see page 2 of the copy of the February 15, 1968, letter.)

Annotation 880.0206

Consistent with the February 15, 1968, letter and the longstanding administration of the welfare exemption with respect to trusts with specific, named beneficiaries, the March 11, 1991, letter upon which Annotation 880.0206 is based states in pertinent part:

In instances in which properties are transferred and held in trust, the trustee holds legal title to the property while the beneficiary or beneficiaries hold equitable title and ownership of the property for property tax purposes. Thus, the nature of the present beneficiary or beneficiaries under the trust would be determinative.

. . . If the Corporation were the beneficiary, the property would be exempt under the welfare exemption during the trust period if all of the requirements of Section 214 et seq. were met. . . .

The letter then addressed the possibility of multiple trust beneficiaries and concluded:

. . . . Thus, unless the Corporation were the present beneficiary or one of the present beneficiaries of the trust during the trust period and all of the requirements of Section 214 et seq. were met by the Corporation and other users of the property, as applicable, the property would not be eligible for the welfare exemption during the trust period.

Accordingly, the March 11, 1991, letter upon which Annotation 880.0206 is based and Annotation 880.0206 are broad summaries of the February 15, 1968, letter and applicable in instances in which real property is held in an irrevocable trust with a specific, named beneficiary or beneficiaries.

Former Section 214.12

Finally, section 214.12, as added by Stats. 1984, Ch. 1040, in effect January 1, 1985, and as repealed by Stats. 1991, Ch. 646, in effect January 1, 1992, has no bearing upon your inquiry. As indicated in the November 20, 1984, Letter to Assessors No. 84/107, copy attached, section 214.12 was added to provide that for years prior to 1983 in Sierra County, a claimant, which would have qualified for a welfare exemption with respect to taxes on a possessory interest in publicly owned land or on improvements on land owned by another except for a failure to have that interest of record on the lien date (section 261), would be granted a welfare exemption with respect to that interest or improvements.⁹ This was in response to Sierra County Assessor Copren's denial of the claimant's claim for exemption because claimant's interest in property in Sierra County had not been of record on prior lien dates in the Sierra County Recorder's Office (section 261). Your inquiry pertains to a claim for organizational clearance certificate with respect to real property held in an irrevocable trust and recorded in the name of the trust. However, a copy of the recordation should be obtained and reviewed.

JKM:pb

Prop/Prec/OCC/07-328.jkm.doc

Attachments

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

⁹ In Copren v. State Board of Equalization (1988) 200 Cal.App. 3d 828, the court of appeal determined that the claimant had waived the exemption, and that section 214.12 was unconstitutional.

April 11, 1973

Hon. Milton Marks
Senator, 9th District
State Capitol, Room 2070
Sacramento, California

Attention: Mr. (Redacted)

W. W. Dunlop

(Redacted) for Northern California

You requested our explanation of the reasons for finding the above-named trust ineligible for the welfare exemption. The finding sheet made by our welfare exemption officer dated April 9, 1973, lists the following three reasons:

1. The trust instrument did not provide that the property of the trust was irrevocably dedicated to religious, charitable, scientific, or hospital purposes as required by section 214.01 of the Revenue and Taxation Code.

2. The claim did not include a letter from the appropriate governmental agency ruling that the trust was exempt under section 501(c)(3) of the Internal Revenue Code or section 23701d of the Revenue and Taxation Code.

3. The petitioner did not show that the property was exclusively used for charitable purposes.

The first two reasons for denial are procedural in nature. An irrevocable dedication clause could be added by way of amendment to the trust document at any time prior to March 1, 1974, and the organization would qualify for the exemption for the tax year 1973-74. Similarly, the organization could obtain a ruling from the Internal Revenue Service or the Franchise Tax Board that the trust qualified under the appropriate section to satisfy the requirement of section 214.8. The remaining reason for the finding of ineligibility is of a substantive nature. The trust instrument provides in Article IV, as amended by amendment No. 4, effective January 1, 1972, that the board of trustees shall have the power and duty to administer the fund for the purpose of educating and training persons as journeymen or

apprentices in all classifications covered by collective bargaining agreements "to the end that there shall be an adequate supply of educated and skilled journeymen available to man the jobs of individual employers." In order to qualify for the welfare exemption, the organization must show that it is making a gift to the community as a whole or a large indefinite portion thereof. Where parties to an arrangement pay for what they receive, the essential donative element is lacking. (Martin Luther Homes v. County of Los Angeles (1970) 12 Cal.App.3d 205.) In the present case the employer organizations are paying into the trust fund in order to train apprentices in the various trades so that they will be assured of an adequate working force.

What we consider to be a similar situation was litigated last year by the County of Los Angeles. The California College of Mortuary Science prepared applicants for becoming embalmers and funeral directors in a one-year course of study following graduation from high school. In this case, California College of Mortuary Science v. County of Los Angeles (1972) 23 Cal.App.3d 702, 705, the Court of Appeal ruled that the taxpayer's training program did not "benefit primarily the community as a whole or an unascertainable and indefinite portion thereof, but benefits instead primarily a definite segment thereof, namely, the funeral services industry, by providing for it competently trained personnel. (citation) This special and limited benefit is characteristic of vocational schools generally."

The welfare exemption application does not show any charitable activity in which the trust fund engages. We consider the training of apprentices for the construction industry to be insufficient to qualify for the exemption.

W. W. Dunlop
Executive Secretary

WWD:el

THK

bc: Mr. Vance Price

July 19, 1973

Mr. (Redacted)

Dear Mr. (Redacted) :

Enclosed, as you requested, is a model dedication-dissolution clause which we regard as satisfying the requirements of Section 214(6) of the Revenue and Taxation Code. You undoubtedly will want to tailor it so as to exclude references to religious, scientific and/or hospital purposes. Additionally, since the subject organization's charter requires that its property on dissolution be deeded to the United States Government, it will not be necessary that the dissolution portion of the clause make reference to other nonprofit funds, foundations or corporations organized for exclusively charitable purposes.

Since the tax letter requirement of Section 214.8 has been satisfied, we will, on receipt of a copy of the organization's amended bylaws prior to March 1, 1974, issue new finding sheets. For the year 1973-74 the new finding sheet will indicate that a 100 percent exemption is in order for property owned by the trust which is not used for any commercial purpose. For the year 1972-73 we will recommend exemption in the amount of 85 percent as provided by Section 270(a)(2) with the limitation of \$250 tax, penalty and interest as provided in Section 270(b).

Although you indicated that you are not concerned with the filing made by this organization for its property in San Francisco County, you may wish to advise your client that the deficiencies we have noted concerning the Monterey property also exist as regards the San Francisco property and that your action in having the bylaws amended will make the San Francisco property eligible for exemption to the extent mentioned above.

Very truly yours,

J.J. Delaney
Assistant Chief Counsel

JJD:fb

bc: Mr. Jack F. Eisenlauer
(Mr. Vance Price)
(1 for S.F. Legal Section
1 for Monterey Legal Section)

cc: Mr. Donald F. Stewart

March 26, 1975

Mr. William H. Cook
Santa Barbara County Assessor
105 E. Anapamu Street, Rm. 204
Santa Barbara, California 93101

Attention: Mr. K. L. Marvin
Assistant Assessor

Dear Mr. Marvin;

This is in response to your request that we review The (Redacted) Foundation's Trust Agreement and proposed activity in light of the organizational and use requirements of section 214 and following of the Revenue and Taxation Code which provide for the welfare exemption.

Section 214 provides:

"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 taxation if:

- (1) The owner is not organized or operated for profit . . . ;
- (2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual;
- (3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose;
- (4) The property is not used or operated by the owner or any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor or bondholder of the owner or operator, or any other person through the distribution of profits, payment of excessive

charges or compensations, or the more advantageous pursuit of their business or profession:

- (5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose;
- (6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes;

And, section 214.02 provides:

"For the purpose of section 214, property shall be deemed irrevocable dedicated to religious, charitable, scientific, or hospital purpose only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation, or in the case of any other fund or foundation, . . . in the bylaws, articles of association, constitution, or regulations thereof, as determined by the State Board of Equalization."

Considering the organizational requirements first, per the Trust Agreement:

"2. Purpose of Trust: The purposes of this Trust are to devote and apply the property by this instrument vested in the Board of Managers and the income to be derived therefrom exclusively for charitable, religious, scientific, literary or educational purposes, either directly or by contribution to organizations duly authorized to carry on charitable, religious, scientific, literary or educational activity; however, it is the specific desire of the creator of this Trust that the principal and income hereof be used to develop low cost housing for economically disadvantaged persons; provided, however, that no part of this Trust fund shall inure to the benefit of any private individual, other than as a

recipient of aid dispensed for the above-named purposes, .
. .

"11. Compensation And Expenses: The Board of Managers is authorized, from time to time, to fix whatever, if any, reasonable compensation shall be paid to its members or any of them for the services they may render to this Trust at such amount as the Board of Managers may from time to time determine . . . "

As the Foundation is organized and operated for purposes other than religious, hospital, scientific, or charitable purposes, its purposes are too broad and do not meet the requirement of section 214 that an organization be organized for an exempt purpose or purposes enumerated therein. Also, as board members are authorized to compensate themselves for their services to the Foundation, that no part of the trust property is to inure to the benefit of any private individual does not, it appears, preclude net earnings from inuring to the benefit of the board members or prevent the trust property or a portion thereof from being used or operated so as to benefit the board members through the distribution of profits or payment of excessive charges or compensations.

Again, per the Trust Agreement:

"1. Name of Trust: The name of this Trust shall be the _____ Foundation.

"4. Use of Trust Fund: The Board of Managers, except as hereinafter limited, shall have the power and authority and is directed to distribute from time to time exclusively for charitable, religious, scientific, literary or educational purposes, or any or all of them, said amounts of income and/or principal of this Trust as in its discretion said Board of Managers deems appropriate, always having in mind the charitable purpose for which this trust was created Provided, however, that if in the discretion of the Board of Managers it becomes impractical or impossible to carry out the specific purpose for which this Trust was created, the income of this Trust shall be distributed at least annually to carry out the general purposes of this Trust.

It is the intention of the creator of this Trust that this Trust shall be perpetual in operation, but, if in the discretion of the Board of Managers, it is ever deemed advisable to terminate this Trust and distribute the corpus hereof, said corpus shall be distributed directly or indirectly for charitable, religious, scientific, literary or educational purposes

"14. Construction And Irrevocability. This Trust shall be construed in accordance with the laws of the State of California This Trust shall be irrevocable, but it may be terminated at any time after 1985 by unanimous action of the Board of Managers. Upon the termination of this Trust, as aforesaid, the assets of this Trust remaining after payment of, or provision for payment of, all debts and liabilities of this Trust shall be disposed of in such manner as may be directed by decree of the Superior Court . . . , upon petition by the Attorney General of the State of California, or by any person concerned in the liquidation, in proceedings to which said Attorney General is a party."

In our opinion, property owned by a charitable trust which is, in name, a foundation, can obtain the benefit of the exemption where either the trust instrument or the bylaws under which the trust property is managed meet the requirements of section 214.01. As neither paragraphs 4 and/or 14 or any other paragraph of the Trust Agreement contains a statement of irrevocable dedication to only religious, charitable, scientific, or hospital purposes, however, the trust property is not irrevocably dedicated to such purposes for the purpose of sections 214 and 214.01. Also, as paragraph 4 pertains to the event of dissolution and distribution for purposes other than religious, hospital, scientific, or charitable purposes, that dissolution provision is too broad. See the enclosed sample dedication-dissolution clause in this regard.

Section 214.8 provides that with certain exceptions, the welfare exemption shall not be granted to any organization which is not qualified as an exempt organization under section 23701d of the Revenue and Taxation Code or section 501(c)(3) of the Internal Revenue Code. Thus, a Franchise Tax Board letter to the effect that the Foundation is exempt from State income tax under section 23701d or an Internal Revenue Service letter to the effect that the Foundation is exempt from Federal income tax

under section 501(c)(3) would meet the requirement of this section.

In sum, the organizational requirements of section 214 et seq. are not now met.

If and when organizational requirements are met, it is necessary for an organization to establish that its property is actually used for an exempt activity or activities in order for it to receive the exemption. In this regard, Mr. _____, Attorney at Law, has advised that the Foundation is considering the purchase of property from the Redevelopment Agency of the City of Santa Barbara for the purpose of private redevelopment. Upon receiving title to the property, the Foundation would construct low-income housing units thereon, and upon completion, the entire project would be leased to the Housing Authority of the City of Santa Barbara under a long-term lease.

The manner in which the project is to be financed is not disclosed. However, where a nonprofit organization meeting the organizational requirements of section 214 et seq. holds title to property, improves the property by constructing a housing project thereon under section 23 of the U.S. Housing Act of 1937 (42 U.S.C., § 1421 (b)) or by using its own funds, contributions, loans, or

(916) 445-8485

March 17, 1976

Mr. (Redacted)

Attorneys at Law

Dear Mr. (Redacted):

This is in response to your March 9, 1976, letter wherein you request that we review proposed changes in the (Redacted) Foundation of America's Declaration of Trust in light of the organizational requirements of section 214 and following of the Revenue and Taxation Code which provide for the welfare exemption.

Per your letter, the following changes are proposed:

1. In the Whereas Clauses and in paragraph 5(e), "charitable, educational, scientific and religious purposes that meet the requirements for exemption provided by Section 214 of the Revenue and Taxation Code" is to be substituted for "charitable, educational, scientific and religious purposes".

2. In the first part of paragraph 5, "charitable, educational, scientific, and religious purposes that meet the requirements for exemption provided by Section 214 of the Revenue and Taxation Code, including, but without limitation:" is to be substituted for "the purposes of".

3. In paragraph 7(c), "charitable, educational, scientific and religious purposes that meet the requirements for exemption provided by Section 214 of the Revenue and Taxation Code" is to be substituted for "substantially the same purposes as those of this trust".

4. In paragraph 7(e), "levied" is to be substituted for "leveled".

5. In paragraph 10, "paragraph 7" is to be substituted for "paragraph 5" in the second sentence; "charitable, educational, scientific or religious purposes that meet the requirements for exemption provided by Section 214 of the Revenue and Taxation

Code" is to be substituted for "charitable, educational, scientific or religious purposes" in the third sentence; and "Section 501(c)(3)" is to be substituted for "Section 501", also in the third sentence¹⁰

While changes of this nature are necessary, the proposed changes are not sufficient to meet all the organizational requirements of Section 214 and following. Initially, section 214 describes the general type of property which can be exempt, namely, that devoted to religious, hospital, scientific, or charitable purposes. Although "charitable" embraces some educational purposes, not all educational purposes are "charitable". Hence, the necessity for the limitation "meeting the requirements for exemption as provided by section 214 of the Revenue and Taxation Code" where purposes of an organization are educational. Also, the statutory scheme employs "or" rather than "and" where an organization pursues multiple purposes. Accordingly, "religious, scientific, charitable or educational purposes meeting the requirements for exemption as provided by section 214 of the Revenue and Taxation Code" rather than "charitable, educational, scientific, and religious purposes that meet the requirements, etc." should be substituted in any Reformation of Declaration of Trust which might be executed.

In addition, section 214(6) provides that property used exclusively for exempt purposes owned and operated by organizations organized and operated for exempt purposes is exempt from taxation if it is irrevocably dedicated to religious, scientific, or charitable purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, scientific, or charitable purposes. As to when property is "irrevocably dedicated" to such a purpose or purposes, section 214.01 provides that for the purpose of section 214, property shall be deemed irrevocably dedicated to religious, scientific, or charitable purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation, or in the case of any other fund or foundation, in the bylaws, articles of association, constitution, or regulations thereof, as determined by the State Board of Equalization.

In our opinion, property owned by a trust which is, in name, a foundation can obtain the benefit of the exemption where

¹⁰ We require this change in light of Section 214 (6), hereinafter discussed.

either the trust instrument or the bylaws under which the trust property is managed meet the requirements of section 214.01. As there is no statement of irrevocable dedication to only exempt purposes in the Declaration of Trust, however, the trust property is not irrevocably dedicated to such purposes for the purpose of sections 214(6) and 214.01. See the enclosed copy of SBE-ASD AH 267 Dedication-Dissolution Clause 2-1-74 in this regard. Per the last paragraph on the first page and the Note on the second page thereof, the following might be used as a statement of irrevocable dedication:

"The property of this trust is irrevocably dedicated to religious, scientific, charitable or educational purposes meeting the requirements for exemption as provided by section 214 of the Revenue and Taxation Code....."

As you will note, section 214(6) also requires that upon the dissolution of the owner, the property will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes. While the Declaration of Trust does contain a termination provision in paragraph 10, a dissolution provision similar to that indicated in the enclosures should be substituted therefor.

In addition, paragraph 7(c) is too broad in that selected beneficiaries to or for whom principal or income of the trust can be paid are not limited to qualifying organizations organized and operated for an exempt purpose or purposes. Any such beneficiaries should be limited to such qualifying organizations.

Concerning any reformation of the Declaration of Trust, we direct your attention to Sections 12580 through 12597 of the Government Code, Uniform Supervision of Trustees for Charitable Purposes Act, and particularly, to Section 12591 thereof:

"The Attorney General may institute appropriate proceedings to secure compliance with this article and to invoke the jurisdiction of the court Nothing in this article shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings."

Since the trust is expressly made irrevocable, since neither trustors nor others are empowered to amend, modify, or revoke the trust, and since the trust purposes are, in part, charitable, any reformation should be accomplished by means of a legal action filed in the appropriate Superior Court to which the Attorney General is a party.

Finally in this regard, in the event that the Declaration of Trust is reformed, the changes should be reported to the Franchise Tax Board and the Internal Revenue Service for consideration of their effect on the Foundation's exempt status. Copies of the Franchise Tax Board's and the Internal Revenue Service's reply's thereto, when received, should be forwarded to our Assessment Standards Division, P.O. Box 1799, Sacramento, California 95808, together with copies of the Superior Court judgment, Reformation of Declaration of Trust, and related documents.

If and when organizational requirements are met, it is necessary for an organization to establish that its property is actually used for an exempt activity or activities in order for it to receive the exemption. Per Mr. Hartigan's May 12, 1972, letter to Mr. (Redacted), property with respect to which the exemption was claimed for the 1972-73 fiscal year was not so used:

"As we discussed yesterday, this board is affirming the denial of the welfare exemption to the above claimant, which denial was first made via the finding sheet forwarded to the claimant April 11, 1972. The finding sheet listed as a reason for denial only that the trust instrument lacked the necessary irrevocable dedication language. It should have also listed as a reason for denial that the property for which exemption was sought, personal property consisting of religious publications and recordings and office furniture and equipment, was not used exclusively for religious, hospital, or charitable purposes as required by section 214 of the Revenue and Taxation Code.

"The publications and recordings are sold to the public, and the equipment is in great measure used in connection with this selling activity. Regardless of the ultimate intended goal, namely, that the sale of these materials will result in the purchasers following the teachings of (Redacted), the activity remains in its essence a commercial one, the sale of

books and recordings to the public, a nonqualifying activity. Therefore, the property used in the activity is not used for exempt purposes, and is not exempt."

That property with respect to which the exemption may be claimed for the 1976-77 fiscal year is actually used for an exempt activity or activities will have to be established.

In conclusion, we have previously advised that where a claim for the welfare exemption is filed on or before March 15 for a fiscal year, an exemption can be allowed even though certain organizational requirements therefor are not met on the initial March 1 lien date. For example, section 214.01 provides in this regard that absent a statement of irrevocable dedication to an exempt purpose or purposes, a claimant shall have until the next succeeding March 1 lien date to amend its articles or other appropriate instrument and to file a certified copy of such amendments that conform to the provisions thereof. As to the use or uses made of property, however, the use or uses made on the initial March 1 lien date is determinative with respect to the availability of the exemption.

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:el
Encl

bc Mr. Jack F. Eisenlauer (W. Grommet)
DAS File
Legal Section

(916) 445-8485

February 9, 1977

Mr. (Redacted)

Attorneys at Law

Dear Mr. (Redacted):

This is in response to your October 26, 1976, and January 27, 1977, letters wherein you request that we accept the (Redacted) Foundation of America's October 1, 1976, Restatement of Declaration of Trust as having been duly executed and in full force and effect without obtaining consent of the Superior Court of the State of California.

In light of Deputy Attorney General Tapper's January 13, 1977, letter to the effect that judicial approval of the Restatement is not necessary under the circumstances, we are accepting the Restatement as a trust instrument which meets the requirement of sections 214 and 214.01 of the Revenue and Taxation Code.

We would suggest that you have the trustors sign their approval to your January 10, 1977, letter for the purpose of memorializing their intent, as recommended by Mr. Tapper. We would suggest also that you report the changes brought about by the Restatement to the Franchise Tax Board and to the Internal Revenue Service for consideration. Copies of the January 10, 1977, letter, as approved, and the Franchise Tax Board's and Internal Revenue Service's replies should be forwarded to our Assessment Standards Division, P.O. Box 1799, Sacramento, California, 95808.

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:ip

cc: Mr. Lawrence R. Tapper
Deputy Attorney General

Mr. R.L. King
Ventura County Assessor

bc: Mr. Jack F. Eisenlauer (V. Price Restatement satisfies I.D. portion of the 1976-77 findings. Assessor is still inquiring into)

DAS File
Legal Section

February 15, 1968

Mr. John H. Bevis, Assessor
San Bernardino County Courthouse
351 North Arrowhead Avenue
San Bernardino, CA 92401

(Redacted) Trust

Dear Mr. Bevis:

The Title Insurance and Trust Company is the trustee of a trust created by the (Redacted) Inc. The trust was created in 1960 and qualifies for the welfare exemption. In 1966, (Redacted) and (Redacted) made a grant deed to Title Insurance and Trust Company. On its face, the deed appears to convey fee simple absolute to the grantee. However, the grantee has declared that it holds the property in trust for the (Redacted) and the deed makes reference to the use of the property as a boy scout camp.

The receipt of the deed and the acknowledgement of the trustee that the property is held in trust is sufficient under California law to create a voluntary trust. (Civil Code § 2222; Oeth v. Mason (1967) 247 Cal. App. 2d 805 [56 Cal. Rptr. 69].) The trust for the benefit of the (Redacted) is a charitable trust. The property qualifies for the welfare exemption providing various procedural requirements are met.

The real property in question was added to the existing trust created in 1960 under a trust provision allowing for such additions. The trustee and trustor have amended the trust to include an acceptable irrevocable dedication of the property. The boy scout council has the proper income tax exemptions to qualify under section 214.8. The claim was filed by the beneficiary through its scout executive.

The issue to be decided is whether this trust has met the requirement of section 261 of the Revenue and Taxation Code requiring the interest in real property of the claimant be of record on the lien date in the office of the county recorder.

The answer to the question lies in the understanding of the trust relationship. A trust places legal ownership in the trustee who operates the trust for the benefit of its

beneficiaries. The interest of the beneficiaries is recognized by courts of equity and is usually called equitable title.

Revenue and Taxation Code section 214 does not mention trusts. It is rather clear that charitable trusts in which the beneficiaries are the public or an undefined portion thereof were intended to qualify for the exemption. The question then arises as to who must be shown as record owner according to section 261. In the case of many charitable trusts, the public at large as the beneficiary cannot possibly be named as record owner. Clearly, the legal owner in these cases must be designated in the deed.

In the present case, the equitable owner is a charitable corporation which is ascertainable. Nevertheless, we believe it is sufficient if the trustee, alone, is shown as the grantee on the face of the deed. This interpretation recognizes the trustee as the legal owner of the real property and avoids any question as to when the equitable owner must be included in the deed which is recorded.

It is true that section 261 requires the interest of the claimant to be recorded. However, we allow trustees to file claims on behalf of beneficiaries or to join in our file separate claims for the trust property. This is necessary because of the division of equitable and legal ownership. We do not believe that this treatment violates the pertinent code sections. We therefore amend our original finding as respects the Camp Hunt property to include the real property as well as the personal property and improvements.

Very truly yours,

John H. Knowles
Tax Counsel

JHK:dj

cc: Title Insurance & Trust Co.
P.O. Box 921
San Bernardino, California 92402

bcc: Mr. J.F. Eisenlauer
Mr. J.J. Delaney

March 5, 1973

Mr. (Redacted)
Attorney at Law

Re: (Redacted), South Parcel

Dear Mr. (Redacted):

This letter will confirm our telephone conversation of last week concerning the possible application of the welfare exemption to a portion of the (Redacted) Ranch. Mr. (Redacted) left legacies to ten charities by his will. (One of the legatees borrowed against the legacy and its lender was substituted as his distribute. I understand this to be a security arrangement and will assume that this transaction does not affect the applicability of the exemption.)

Another of the legatees is the Los Angeles County Museum of Art, a governmental entity. The other legatees qualify for income tax exemption pursuant to section 501 (c) (3) of the Internal Revenue Code.

The property in question was left in trust for the benefit of the ten legatees who share equally in its proceeds. The trust res is a ranch property on which you plan to file for the welfare exemption. In order to qualify the land for the welfare exemption the charities propose to graze livestock, which livestock will be slaughtered, butchered, and donated to needy families. As an alternative, you state that the charities are considering a plan whereby the beef would be distributed pro rata to the charities and used by them in furtherance of their own exempt purposes.

In your letter of February 8, 1973, you ask three questions, which I will try to answer in the order presented.

1. Although the bank is the trustee of the ranch property, the property may still obtain the benefits of the welfare exemption if the beneficiaries of the trust qualify pursuant to

section 214 et seq. of the Revenue and Taxation Code and the property is actually used for a charitable purpose.

2. The fact that one-tenth of the property is held as security for a loan does not disturb the exemption if the ultimate beneficiary qualifies. Evidence of the status of the named distributee as a security holder rather than ultimate beneficiary should be presented with the welfare exemption claim.

3. The contemplated use of the ranch to produce beef to be donated to needy families constitutes an exempt use of the land in our opinion. We have made a distinction in other welfare exemption claims between use of agricultural property that directly benefits the needy (or other indefinite group, aid to which may be considered charitable) and use which merely produces income even though the income may in turn be devoted to charitable activities. The contemplated plan and the alternative are to directly benefit the poor and needy with the agricultural products from the land. There is no conversion of the products into cash prior to donation according to our understanding.

Very truly yours,

John H. Knowles
Tax Counsel

JHK: el

bc: Mr. Ronald B. Welch
Mr. Robert Gustafson
Mr. Neilon Jennings
Mr. Abram F. Goldman
Mr. Jack F. Eisenlauer
Legal Section

bc: Mr. Ronald B. Welch
Mr. Robert Gustafson
Mr. Neilon Jennings
Mr. Abram F. Goldman
Mr. Jack F. Eisenlauer
Legal Section

July 26, 1973

Staff Counsel
Franchise Tax Board
Aerojet/Nimbus

Dear Mrs. (Redacted):

We discussed the requirements of a trust to obtain a tax letter from your board classifying it as a Section 23701d organization. You suggested the claimant submit the matter to you. I am taking the liberty of forwarding the information I have to you in the expectation that on your reply I can advise the claimant as to both your and our requirements.

Ten ostensibly charitable organizations were left an undivided one-tenth interest each in personal and real property of decedent Starr. The real property is a cattle ranch.

The ten as grantors assigned their interests to Bank of California as Trustee in a Trust Agreement, a copy of which is attached together with an explanatory letter from counsel for the Trustee. The Trustee filed a claim for the welfare exemption as to the ranch. The Trustee states it is the intention of the parties to raise cattle on the ranch for distribution of meat in kind to the indigent or alternately back to the ten charities.

At this point we believe the trust must be reformed to include recitals of irrevocable dedication and charitable purpose before the organizational requirements for the welfare exemption are met. Likewise, we believe that the trust must receive the Section 23701d classification. Please indicate what specific reformations of the trust instrument are required by your board to allow the classification. Your attention is called to paragraph 10 wherein the trust may be revoked by direction of six of the Grantors.

Very truly yours,

Thomas L. Hartigan
Tax Counsel

TLH:el
Encl



STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 1799, SACRAMENTO, CALIFORNIA 95808)

GEORGE R. REILLY
First District, San Francisco

JOHN W. LYNCH
Second District, Fresno

WILLIAM M. BENNETT
Third District, San Rafael

RICHARD NEVINS
Fourth District, Pasadena

HOUSTON I. FLOURNOY
Controller, Sacramento

W. W. DUNLOP
Executive Secretary

August 29, 1973

Mr. (Redacted)
Attorney at Law

Re: Welfare Exemption Claim of the Bank of (Redacted), Trustee, for
the (Redacted) Society and Nine Other Grantors as to the
(Redacted) Ranch, South Parcel, (Redacted) County

Dear Mr. (Redacted):

We have reviewed the above-referenced claim in light of your correspondence with Mr. John Knowles prior to filing and our conversation since and conclude that although exemption may be possible next year provided the intended charitable use is carried out and certain organizational requirements are complied with, we cannot grant the exemption for this year. We will set forth our reasons for denial, but before we do so a brief summary of the facts leading up to the claim is in order.

Mr. (Redacted) willed his interest in the south half of the (Redacted) Ranch to ten charitable organizations. The organizations (hereinafter referred to as the grantors), in turn, granted their interests (which ultimately became fee ownerships) in trust to the Bank of (Redacted) as trustee to manage the property for them. To have the property be exempt from the property tax under the welfare exemption, a plan was advanced to devote the property to charitable purposes, namely, the raising of cattle for free distribution of food to the indigent. Prior to filing for the exemption the opinion of Mr. Knowles as to the feasibility of the plan was sought, and he replied that exemption would be in order. Upon receipt of the filed claim, however, certain matters came to light which require denial of the exemption for this year.

Section 1c of Article XIII of the Constitution and sections 214 et seq. of the Revenue and Taxation Code provide that before property can be exempt from the property tax under the welfare exemption it must be in actual use for the qualifying purposes on the lien date and owned by an entity which meets certain organizational requirements. The first problem which came to light upon the filing of the claim concerned the use requirement.

As you may be aware, each filing when forwarded to this board contains a report from the assessor as to his inspection of the property for which exemption is sought. As to the subject claim, the assessor reported July 6, 1973, "The property consists of 5,494.90 acres, which will

support about 400 cattle per verbal estimate from a bank official. There were no cattle on the ranch on the lien date. There are now 25 cattle." On the basis of this report it is difficult for us to find any use of the property on the lien date, much less the alleged charitable use, i.e., raising cattle and distribution of products therefrom in kind to the indigent.

You supplemented the information given by the assessor by stating that the property had been previously used as a cattle ranch, that there was fencing on the property, that on the lien date the fencing was being repaired. You project the fence repair as being sufficient use of the property on the lien date to allow the exemption in reliance on the following statement in the constitutional provision governing the exemption:

". . . 'property used for religious, hospital, or charitable' purposes shall include a building and its equipment in the course of construction . . ."

It is our view that one of the basic reasons the voters amended the constitutional provision to allow buildings in the course of construction on the lien date to be allowed the exemption is that commencement of such a substantial undertaking as the construction of a building which also, in the general case, is committed by the nature of the constructing organization as well as by the design of the building to a qualifying use gives assurance that the building when constructed will be in fact used for a qualifying purpose. The fence repair in the subject claim, however, does not suggest as substantial an undertaking as the construction of a building, nor does the nature of the repairing entity or the design of the facility being repaired give any assurance of an ultimate qualifying use. Repair of cattle fencing on trust property by a trustee of a management trust whose sole purpose is deriving ultimate gain from the trust property for the grantors is as compatible with raising cattle for a profit as it is for raising cattle for charity.

For these reasons it is our finding that the property for which exemption is sought was not used for a qualifying purpose on the lien date in 1973, and therefore the claim for exemption from the 1973-74 taxes must be denied. Looking to the next lien date, if there is full implementation of the plan, including the presence of cattle on the property in a number approaching the capacity of the ranch, together with evidence of the free distribution of the cattle to feed the indigent, then from a use standpoint there will be no impediment to exemption.

We now turn to the organizational requirements for the exemption. As above set forth it is required not only that the property be used for qualifying purposes, but also that it be owned by an organization that meets the organizational requirements for the exemption. Where there are several entities having an ownership interest in the property it is possible to have the property exempted if all qualify. Before turning to the ownership interest in the property represented by the trust, let us review the qualifications of the ten grantors.

The assessor reports and our review confirms that Museum Associates has no irrevocable dedication clause in its articles of incorporation as required by section 214.01 of the Code. You stated you would forward a certified copy of an amendment to the articles incorporating the required clause, however, the amendment has not been received to date.

The assessor reports and our review confirms that Resthaven has not forwarded the required tax letter from the Internal Revenue Service. There are two letters from the Internal Revenue Service in the file but neither gives the required classification. One letter dated October 22, 1969 states:

"After review . . . we find your Federal tax exempt status continues . . ."

Another letter dated October 20, 1970, states:

:. . . we have classified you as an organization that is not a private foundation as defined in 509(a) of the Internal Revenue Code . . ."

Again, before the organizational requirements are met as to Resthaven, there must be a letter from the IRS making a positive statement that Resthaven falls within the organizations described in section 501(c)(3) of the Internal Revenue Code of 1954. (See Rev. & Tax. Code, § 214.8.)

Lastly, as to the grantors, the assessor had doubts whether the classification by the IRS of the Los Angeles Orthopedic Hospital as an organization within ". . . section 103(6) of the Revenue Act of 1932 . . ." would fulfill the requirements as to a tax letter. We have researched the 1932 act in relation to the 1954 code and find that section 103(6) of the former was the predecessor and is essentially equivalent to section 501(c)(3) of the latter and classification thereunder is therefore sufficient.

We now come to the most difficult problem presented by this claim, namely, what if anything must be required as to the trustee and/or the trust instrument to allow the exemption to be granted. One view is that there is a bank, manifestly a non-charitable organization, which has an interest in the property, and stemming from this fact alone, the exemption cannot be granted. However, a closer look at the arrangement indicates that although technically the bank has an interest, the interest is that of a servant of the ten grantors. True, it receives fees for its services as trustee and has the power to lend money to the trust and receive interest on the money so loaned, but neither incident necessarily requires the bank as an entity to qualify as a charitable organization. As to the fees, the bank is analogous to a salaried employee of the grantors, and so viewed the only inquiry is whether the fees are reasonable for the services rendered. We find they are: the flat rate of \$1,000 a year for the management of a ranch of this size is not exorbitant; as to the fees for extraordinary services, our judgment will have to await future events, for the present we assume that such fees will be reasonable, i.e., those normally charged for such services. As to the power to lend money and receive interest, the bank is like any other lender, and the law does not require lenders to charitable organizations to independently qualify as charitable organizations themselves.

We believe we can dispense with the necessity for the bank to qualify as an organization and allow the exemption if the trust instrument is reformed to add two provisions. The first is that the overall purpose of the trust is to operate the ranch for the raising of cattle to be distributed free to feed the indigent, i.e., the charitable purpose described in your letter to Mr. Knowles and set forth in Section B of the claim. The second is a provision irrevocably dedicated the trust res to charitable purposes. Enclosed is a model dedication/dissolution clause for your use in this regard.

Thus, the organizational requirements for the exemption as to the ownership interest represented by the trust are to be satisfied by having the trust instrument itself incorporate the assurances normally required of a charitable organization. We presented the claim to the Franchise Tax Board, and as per memorandum of August 10th (a copy of which is enclosed), that board stated that reformation of the trust instrument as above indicated would allow it to give the trust the classification called for under section 214.8 of the Code.

In summation, it is our finding that the claim for exemption from 1973/74 taxes is denied because of lack of charitable use of the property on the lien date. As to next year, a claim for exemption may be granted provided there is charitable use on the lien date and the organizational requirements are met. The articles of Museum Associates must be amended to include an irrevocable dedication and dissolution clause, (Redacted) must have a tax letter, and the trust must be reformed as above indicated and a tax letter obtained as to it.

Very truly yours,

Thomas L. Hartigan
Tax Counsel

TLH:el

cc: Mrs.

County Assessor's Office

Mr. James C. Stewart
Franchise Tax Board

bc: Mr. Ronald B. Welch
Mr. Robert Gustafson
Mr. Neilon Jennings
Mr. Abram F. Goldman
Mr. Jack F. Eisenlauer – Vance Price – Please issue a finding sheet in accordance with
this letter.
Legal Section