



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
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Executive Director

July 3, 1991

Redacted

Dear Redacted

This is in response to your May 24, 1991, letter, with attachments, to Mr. James Barga wherein you asserted that construction activities undertaken by the Corporation on its Opera House property in 1986 are sufficient to qualify the property for the welfare exemption from property taxation pursuant to Revenue and Taxation Code Section 214 and 214.1 for the 1986-87 through 1990-91 fiscal years, even though construction activities thereafter ceased and the property remained vacant and unused. In your letter, you referred to the case of National Charity League, Inc. v. Los Angeles County (1958) 164 Cal App. 2d 241, which dealt with the question of whether the League's property was in the course of construction within the meaning of Section 214.1 on the March 1955 lien date, and you contended that the Corporation's construction activities exceeded those of the League's, as discussed in that case.

Section 214 provides that property used exclusively for religious, hospital, scientific or charitable purposes owned and operated by corporations organized and operated for religious, hospital, scientific or charitable purposes is exempt from taxation if certain requirements are met. In addition to a corporation being organized and operated for religious, hospital, scientific or charitable purposes, section 214(a)(3) requires that:

“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.”

Per the Supreme Court in Cedars of Lebanon Hospital v. Los Angeles County (1950) 35 Cal. 2d 729, wherein the hospital contended, among other things, that buildings under construction on the lien date and intended for use in the housing of student nurses were within the welfare exemption:

“Such express limitation, making use the focal point of consideration, contemplates actual use as differentiated from an intention to use the property in a designated manner.”

The informational Board-adopted Assessor's Handbook AH 267, Welfare Exemption, states in this regard at page 29:

“b. Use of Property

“The exemption is allowed only for property ‘ used in the actual operation of the exempt activity’. The use of the property for which exemption is claimed is the primary consideration when analyzing the status of an organization claiming exemption once it has been ascertained that the organizational requirements have been met. Even though an organization meets all of the requirements of Section 214, to receive the exemption the property for which exemption is sought must be used exclusively for exempt purposes. Any property owned by the organization and not used for exempt purposes is not exempt.”

and at page 31:

“c. Exclusive Use of Property

“The property must be used exclusively for religious, hospital, or charitable purposes and be in such use on the lien date. The exemption would thus be inapplicable to an unused vacant lot and to an unused building or an unused portion of a building. See First Baptist Church v. County of Los Angeles, 113 Cal.App.2d 392, and Fredericka Home for the Aged v. County of San Diego, 35 Cal. 2d 789”

Based on the language of the section and the courts’ interpretation thereof, it has been staff’s position that just as property not used for the actual operation of an exempt activity is not eligible for the exemption, property not in use, whether temporarily or permanently, is not eligible for the exemption. Thus, where the exemption is claimed and it is determined that the claimant’s property was not in use, staff’s findings of ineligibility for the exemption have been:

V.U.P. Vacant, unused property does not meet the requirements for exemption.

Subsequent to Cedars of Lebanon Hospital v. Los Angeles County, supra, and Fredericka Home for the Aged v. San Diego County (1950) 35 Cal. 2d 789 and First Baptist Church v. Los Angeles County (1952) 113 Cal. App. 2d 392, Section 214.1 was added to the Code in 1953 to provide that as used in Section 214, “property used exclusively for religious, hospital or charitable purposes” shall include facilities in the course of construction on or after the first Monday in March, 1954, together with the land on which the facilities are located as may be required for their convenient use and occupation, to be used exclusively for religious, hospital or charitable purposes. As the result, unused property in the course of construction could be eligible for the exemption on and after the first Monday in March, 1954. And had Cedars of Lebanon Hospital’s buildings under construction in 1946 instead been under construction on the first Monday in March, 1954, lien date, such buildings could have then been eligible for the exemption under Section 214.1. However, the Supreme Court’s construction of “use” as requiring “actual use” in Cedars of Lebanon Hospital v. Los Angeles County, supra, has remained:

“Actual use and not intended use is the criteria for exemption. (Cedars of Lebanon Hospital v. County of Los Angeles, *supra*, 35 Cal. 2d 729, 742.)” (Christward Ministry v. San Diego County (1969) 271 Cal. App. 2d 805)

“... A typical charity’s interest in real property is considered tax exempt only if the property is being used for a charitable purpose. (Rev. and Tax. Code §214; see e.g., Cedars of Lebanon Hospital v. County of Los Angeles (1950) 35 Cal. 2d 729, 742-743. . . .)” (California Academy of Sciences v. Fresno County (1987) 192 Cal. App. 3d 1436.)

Accordingly, to be eligible for the exemption, property must be used by a qualifying religious, hospital, scientific, or charitable organization exclusively for the actual operation of a religious, hospital, scientific, or charitable activity. The Corporation’s property was not used during the years in question. As the result, the use requirements of Section 214 were not met. For the Corporation’s property to be eligible for the exemption for the 1986-87 through 1990-91 fiscal years, or any of them, then, the property must have been “in the course of construction” within the meaning of Revenue and Taxation Code Section 214.1 throughout or in some of those years.

As indicated, Section 214.1 defines “property used exclusively for religious, hospital or charitable purposes” to include facilities in the course of construction on or after the first Monday of March, 1954, together with the land on which the facilities are located as may be required for their convenient use and occupation, to be used exclusively for religious, hospital or charitable purposes. As construed by the District Court of Appeal in National Charity League, Inc. v. Los Angeles County, *supra* “in the course of construction”, as used in Section 214.1, included the digging of some foundation trenches prior to the lien date in a situation where the building was thereafter completed without delay and used for exempt purposes:

“According to the pretrial conference order made February 25, 1957, plaintiff and defendant at that conference stipulated that plaintiff qualifies for tax exemption under the welfare provisions of the Revenue and Taxation Code (§§214, 214.1); that plaintiff is the owner of the land described in the complaint; that plaintiff intended to construct on said real property a building to be used in connection with its nonprofit activity, and ‘if and when said building was either constructed or actually in the course of construction then said real property and the building either completed or in the course of construction would have been exempt from taxation’; that prior to the first Monday in March, 1955, ‘the plaintiff had cleared said real property, had dug certain trenches for foundations and had placed lumber upon said property, all of which activities were in furtherance of the construction of a building on said real property for welfare use’; that all plans and specifications had been filed with the proper officials and a building permit had been issued; that all financing had been arranged, and thereafter the building was prosecuted to completion and used for welfare purposes. (p. 243)

* * *

“The evidence in the instant action that at noon on tax day some trenches for the foundation of the building had been dug is not, as a matter of law insufficient to support the finding that the building had been commenced. A building having been commenced and not yet finished, unless abandoned, is ‘in the course of construction.’ In the instant

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action, it is stipulated that the plaintiff's building was completed without delay.”
(emphasis added) (p. 248)

Important for purposes of the Corporation's claims for exemption is the court's construction of "in the course of construction" as contemplating completion of construction, once construction commences, without delay. While typical construction may take a year or, perhaps, two, construction of this Corporation's building on the property began in 1986 and remained incomplete in 1990, more than 4 years later. As the Corporation's building was not completed without delay and remained incomplete, staff and, apparently, the Napa County Assessor's Office have considered section 214.1 inapplicable in this instance.

The welfare exemption is granted for property used exclusively for religious, hospital, or charitable purposes (Article XIII, Section 4(b) of the California Constitution and Section 214) and extends to buildings under construction and land required for their convenient use if the intended use qualifies the property for exemption. (Article XIII, Section 5 of the California Constitution and Section 214.1) There is not the welfare exemption for property used exclusively for such purposes and another exemption for buildings under construction and required land for intended use. Thus, as indicated, staff has construed Section 214 and 214.1 as contemplating ongoing construction, without delay, followed by actual use of property for qualifying purposes. Neither section provides for delays in construction/actual use for any reason, including delay due to lack of funding.

Very Truly Yours,

James K. McManigal, Jr.
Senior Tax Counsel

JKM:jd
3952H

cc: Honorable Mike Thompson
Senator, Fourth District
Mr. John Tuteur
Napa County Assessor
Mr. John Hagerty
Mr. Verne Walton
Mr. James Barga
Ms. Colleen Dottarar