



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE 916-324-2579 • FAX 916-323-3387
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

January 15, 2010

**Re: *Actual use of property for group home and therapeutic farming activities
Assignment No. 09-206***

Dear Mr. _____ :

This letter is in response to your September 17, 2009, letter (September 17, 2009, Letter) to Randy Ferris, Assistant Chief Counsel, regarding the applicability of the welfare exemption to property owned by a nonprofit organization (claimant) that operates a group home. In particular, you asked whether a portion of the property used for agricultural and animal husbandry activities in connection with therapy programs treating adults with psychiatric disabilities would satisfy the use requirement of the welfare exemption pursuant to section 214, subdivision (a)(3) of the Revenue and Taxation Code.¹

For reasons discussed in further detail below, it is our opinion that the entire property may satisfy the requirements of section 214, subdivision (a)(3). However, it is the assessor who must make such a determination.² Furthermore, any part of the property not in use for exempt activities or under construction on the lien date will not presently qualify for the welfare exemption.

Facts

The claimant is a nonprofit mental health agency organized as a nonprofit public benefit corporation. According to your representations, the organization has received an OCC. In or about March 2008, you state that the claimant acquired a 10.45 acre parcel with the intent of using the property to treat adults with mental disabilities by having them participate in agricultural and animal husbandry activities. The property contains a three bedroom house that the claimant is currently renovating; the claimant intends eventually to house 10 adults with psychiatric disabilities on the premises. A caretaker currently lives on the property, assisting the

¹ All section references are to the Revenue and Taxation Code unless otherwise specified.

² We note that while the Board offers guidance as to what statutory, regulatory, or judicial authority may require or prevent the county assessor from asserting tax on the property, as of January 1, 2004, the Board of Equalization does not make decisions as to whether or not a property's use qualifies it for the welfare exemption. That function is solely within the discretion of the assessor. (See Rev. & Tax. Code, § 254.5.)

independent contractors who are currently renovating the house. The claimant intends to plant crops that residents will farm and will place animals on the property that the residents will nurture as part of their therapeutic program. About two-thirds of the land is currently planted with grape vines.

Law & Analysis

Subdivision (b) of section 4 of article XIII of the California Constitution gives the Legislature authority to exempt from property taxation property used exclusively for religious, hospital, or charitable purposes. Section 214, subdivision (a) implements the main provisions of the welfare exemption and provides, in part, that:

Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation

The term "charitable purpose" has been broadly construed by the California Supreme Court to include a wide range of activities that benefit the general public.³ The primary test is whether the activity provides a general community benefit whose "ultimate recipients are either the community as a whole or an unascertainable and indefinite portion thereof."⁴

Another fundamental requirement under section 214, subdivision (a) is that the property must be used exclusively for exempt purposes.⁵ Whether a property is used exclusively for qualifying charitable purposes is determined by an examination of the organization's activities and the use of its properties for such qualifying purposes. The Revenue and Taxation Code does not define the term "used exclusively." The California Supreme Court, however, has held that exclusive use for exempt purposes includes any use that is "incidental to and reasonably necessary for the accomplishment of the exempt purpose."⁶

For property to be eligible for the welfare exemption, the entity must be organized and operated for an exempt purpose.⁷ If the Board determines that the organization is so organized and operated, it may grant an OCC.⁸ Afterwards, the assessor may examine the use of the property to determine whether or not it qualifies for the welfare exemption. Section 254.5, subdivision (b)(1) provides in relevant part that:

The assessor shall review all claims for the welfare exemption to ascertain whether the property on which the exemption is claimed meets the requirements of Section 214 In this connection, the assessor shall consider, among other matters, whether

³ *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d 13, 22.

⁴ *Id.* at pp.19-20.

⁵ Rev. & Tax. Code, § 214, subd. (a).

⁶ *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

⁷ Rev. & Tax. Code, § 214, subd. (a).

⁸ Rev. & Tax. Code, § 254.6.

(B) The property on which the exemption is claimed is used for the actual operation of an exempt activity and *does not exceed an amount of property reasonably necessary* to the accomplishment of the exempt purpose. (Emphasis added.)

The assessor may deny a claim for the welfare exemption on a property, notwithstanding the fact that the Board has awarded a claimant an OCC.⁹

Section 214, subdivision (a)(3) requires that "[t]he 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." The Court of Appeal has interpreted section 214, subdivision (a)(3) as giving deference to an organization's interpretation of the amount of property reasonably necessary for the accomplishment of its exempt purposes:

The Legislature unquestionably has power under the constitutional provision to limit the exemption to 'any portion' of the property it may designate. Until it acts, and in the absence of any showing of subterfuge or fraud, the determination of those responsible for carrying out the eleemosynary purposes of the [organization] should be respected [as to the amount of land reasonably necessary].¹⁰

Section 5 of article XIII of the California Constitution provides in part that buildings under construction, as well as any land required for their convenient use, may qualify for the welfare exemption. Section 214.1 provides 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 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.

Section 214.2, subdivision (b) provides in relevant part that:

As used in Section 214.1, 'facilities in the course of construction' shall include definite onsite physical activity connected with construction or rehabilitation of a new or existing building or improvement, that results in changes visible to any person inspecting the site, where the building or improvement is to be used exclusively for religious, hospital, or charitable purposes.

In the present case, you state that the claimant has already satisfied the requirements for an OCC. Thus, whether the claimant's organization for and operation of agricultural and animal husbandry activities in connection with therapy programs used to treat adults with psychiatric disabilities qualifies as a charitable activity is not at issue. Because the activities for which the claimant intends to use the entire property are exempt activities and because the courts have generally judged claimants to be the best judges of the amount of property reasonably necessary

⁹ Rev. & Tax. Code, § 254.5, subd. (c)(1).

¹⁰ *Santa Catalina Island Conservancy v. County of Los Angeles* (1981) 126 Cal. App. 3d 221, 245, quoting *San Francisco Boys' Club, Inc. v. County of Mendocino* (1967) 254 Cal.App.2d 548, 553.

to conduct their own activities,¹¹ based on your representations of the use of the property, it is our opinion that the entire property may qualify for the welfare exemption pursuant to section 214, subdivision (a)(3). However, we note again that it is the responsibility of the county assessor to make any finding concerning the amount of property reasonably necessary to the accomplishment of an exempt purpose pursuant to section 254.5, subdivision (b)(1)(B) and that our opinion concerning this matter is merely advisory.

In the September 17, 2009, Letter, you suggest that the entire 10-acre property should be exempt because it is the minimum size required by local law for zoning purposes. Despite your citation to a section of the Assessor's Handbook dealing with the church exemption,¹² we are not aware of any authority stating that local zoning affects whether a property does or does not exceed the amount of property reasonably necessary to the accomplishment of an exempt purpose under section 214, subdivision (a)(3). While that fact should certainly be considered by the assessor, the relevant standard for exclusive use under section 214, subdivision (a) is whether an organization's activities are incidental to and reasonably necessary for the accomplishment of exempt purposes.¹³ You also suggested that some of the acreage surrounding the house could appropriately be used as a buffer zone, which has been found to be an exempt use of a property used for religious prayer and meditation.¹⁴ We are of the opinion that a buffer zone may be incidental to and reasonably necessary for the accomplishment of the claimant's mental health therapy activities. However, as explained below, if the claimant is not currently using the property for such activities, a buffer zone would not qualify as an exempt purpose at this time.

From your letter, it appears that the property is not currently being used for the projected mental health treatment. If this is the case, then only a portion of the property may qualify for the welfare exemption at this time. A property not in use for exempt purposes on the lien date will not qualify for the welfare exemption unless it is currently under construction.¹⁵ Section 5 of article XIII of the California Constitution and section 214.1 state that following may be exempt: ". . . facilities in the course of construction . . . together with the land on which the facilities are located as may be required for their convenient use and occupation . . ." ¹⁶ Section 214.2, subdivision (b) clarifies that 'facilities in the course of construction' shall include definite onsite physical activity connected with construction or rehabilitation of a new or existing building or improvement . . ." In this case, you state that the claimant ". . . has begun renovation of the house to accommodate its use as a residential facility."¹⁷ If this is in fact the case, the house and the portion of the land used for renovation purposes may qualify for the welfare exemption as facilities in the course of construction pursuant to section 214.1.

However, because it appears that the surrounding agricultural land is neither currently in use for exempt activities nor does it appear to be in the course of construction, this portion of the property would not qualify for the welfare exemption at this time. As the Assessors' Handbook states ". . . the welfare exemption authorized under section 4(b) of the Constitution does not

¹¹ *Santa Catalina Island Conservancy v. County of Los Angeles* (1981) 126 Cal. App. 3d 221,245, quoting *San Francisco Boys' Club, Inc. v. County of Mendocino* (1967) 254 Cal.App.2d 548, 553.

¹² *Id.*, Part II, p. 1.

¹³ See *Cedars of Lebanon v. County of Los Angeles*, *supra*, 35 Cal.2d at p. 736.

¹⁴ *Christward Ministry v. County of San Diego* (1969) 271 Cal.App.2d 805, 811-812.

¹⁵ Assessors' Handbook (AH 267), *Welfare, Church and Religious Exemptions, Part I, Welfare Exemption*, p. 27.

¹⁶ Rev. & Tax. Code, § 214.1.

¹⁷ September 17, 2009, Letter, p. 2.

apply to vacant, unused property held for future qualifying use."¹⁸ The mere growing and harvesting of grapes and other agricultural products is not an exempt activity in and of itself.

The views expressed in this letter are advisory in nature only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Andrew Jacobson

Andrew Jacobson
Tax Counsel

AJ/yg

J:/Prop/Prec/Welexqal/2010/09-206.doc

cc: Honorable Ron Thomsen
President, California Assessors' Association
Alameda County Assessor
1221 Oak Street, Room 145
Oakland, CA 94612-4288

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

¹⁸ AH 267, Part I, p. 27.