

Memorandum

To: Ms. Lisa Thompson
Manager, Property Tax
Property and Special Taxes Department (MIC:64)

Date: January 4, 2016

From: Leslie Ang
Tax Counsel
Tax and Fee Programs Division (MIC:82)

Subject: *Request for Review of Organizational Clearance Certificate Eligibility
Assignment No. 15-224*

This is in response to your request for our opinion regarding whether (Claimant) is operated for a charitable purpose and meets the requirements for an Organizational Clearance Certificate (OCC).

As explained below, based on the information received and additional research, it appears that Claimant is organized and operated for charitable purposes within the meaning of Revenue and Taxation Code¹ section 214. Therefore, if all other requirements are met, an OCC should be issued for Claimant.

Facts

Claimant is a non-profit public benefit corporation that runs five certified farmer's markets (CFMs) in County, with the goal of providing access to fresh, local, organic produce to low-income communities from small and medium-scale farmers, to support those small-scale farmers, and to educate the public about healthy food options.²

Two of the CFMs run by Claimant serve low-income residents: one is located in (A CFM), where Claimant states 56 percent of the residents are at or below the Federal poverty rate; the second is located in , adjacent to a United States Department of Agriculture (USDA) Low Income/Low Access Area, which the USDA defines as a census tract where a significant number or share of residents is more than one mile (urban) or 10 miles (rural) from the nearest supermarket.³ All of the CFMs run by Claimant accept Electronic Benefit Transfer (EBT), which is the system used in California for the delivery, redemption, and reconciliation of issued public assistance benefits.⁴

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

² Letter from Claimant's executive director, to the Board of Equalization, dated December 22, 2014 (December 2014 letter); [Claimant's website] (as of Oct. 8, 2015).

³ USDA Economic Research Service <<http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx>> (as of Oct. 8, 2015).

⁴ Examples of EBT benefits include CalFresh benefits (formerly known as Food Stamps and currently known federally as Supplemental Nutrition Assistance Program or SNAP benefits), California Food Assistance Program benefits, and cash aid benefits. (<http://www.ebtproject.ca.gov/>.)

Claimant states that it charges vendor fees at 30 percent below market rate to farmers and local businesses, and provides free spaces at the CFMs to approved non-profit organizations, community groups, and government entities for public outreach and fundraising.⁵ At the CFMs, Claimant also runs an Information Booth, a Kid's Booth, and when volunteers are available, a "Garden and Reduce, Reuse, and Recycle" Booth.

Claimant also administers several community projects to raise awareness of unmet needs relating to local food systems, described as follows:⁶

A CFM

The A CFM was originally founded by the Women, Infants, and Children program because low-income women were unable to use their vouchers to purchase fresh produce. The A CFM, which is located in a low-income community, was taken over by Claimant in 2011, and is currently being further improved by Claimant, as it aligns with Claimant's mission of providing low-income communities access to fresh produce.

Subsidies for Healthy Eating

Claimant states that it supports access to healthy eating for low-income communities by providing subsidies and providing for subsidized purchases of fresh produce. Claimant conducts approximately \$10,000 of EBT transactions every year. In 2003, Claimant opened its M CFM as the only CFM in County to accept EBTs at the time.

In 2009, Claimant administered the Market Match Program, California's healthy food incentive program, which matches customers' federal nutrition assistance benefits at farmers' markets. Since 2009, Claimant has distributed \$12,985 in Market Match incentives,⁷ serving over 1,000 low-income County residents.

In 2010, Claimant began distributing produce vouchers through door-to-door marketing, cooking demonstrations and workshops at its CFMs, and through partnerships with other organizations. In 2014, Claimant piloted the Fresh Produce Prescription program, a partnership with healthcare providers to incentivize healthy eating and focus on preventative health to fight the rise of chronic weight-related diseases.

California Family Farmer Support Program

In 2011, Claimant received \$16,000 from the USDA Farmers' Market Promotion Program (FMPP), to support Claimant's farmers. Claimant states that most Claimant's farmers are immigrants, struggling not only with small-scale farming challenges, but also with language barriers and economic constraints. Through this program, Claimant developed its Farm Scholarship Program, providing four Claimant farmers with supplies and consulting services from 2011-2013 to support their farms. In 2014, Claimant received another grant from FMPP for the same purpose.

⁵ Information Sheet attached to December 2014 letter (Claimant Information Sheet), p.1.

⁶ Claimant Information Sheet, pp. 1-5.

⁷ The Market Match incentives are funded in part by the California Department of Food and Agriculture. For more information on the program, see <http://marketmatch.org/> (as of October 2, 2015).

Edible Education for Healthy Families

In 2010, Claimant began the Edible Education program, "to expand the skill of culinary arts focused on healthy eating using fresh produce available at CFMs."⁸ It began as an outdoor classroom at the CFMs, aimed at youths, and evolved in 2012-2013 with interactive presentations and a mobile outdoor kitchen on which families learned to prepare healthy food alongside professional chefs at CFMs.

Volunteer Mentorship

Claimant partners with California State University (CSU) to receive staffing from AmeriCorp, and received a grant from the USDA in 2012, with which Claimant hosts, trains, and mentors approximately 40 to 60 volunteers annually, in building skills for nonprofit development and increasing awareness of food justice issues. Claimant's volunteers assist with manning booths at CFMs, with administrative work at Claimant's office, with the community gardens, and with special projects such as providing entertainment, fundraising, and coordinating assistance at various Claimant events.

Food Garden

With the USDA grant in 2012, Claimant and CSU assisted with building the Food Garden, to address the lack of access to healthy food in , which was identified by the USDA as a "food desert." The USDA defines "food deserts" as "urban neighborhoods and rural towns without ready access to fresh, healthy, and affordable food", noting that "[i]nstead of supermarkets and grocery stores, these communities may have no food access or are served only by fast food restaurants and convenience stores that offer few healthy, affordable food options. The lack of access contributes to a poor diet and can lead to higher levels of obesity and other diet-related diseases, such as diabetes and heart disease."⁹

To address the needs of the local "food desert," Claimant assisted in establishing the 1.5-acre Food Garden, with 80 raised planter beds, compost piles and worm composting, a fog catcher, and a "hügelkultur"¹⁰ compost display surrounded by native and drought-tolerant plants. Claimant coordinates the collaboration of the following five non-profit organizations to run the Food Garden:

- Workforce Development Services: serves adults with barriers to employment through a job-training culinary program.¹¹
- Hope Services: serves adults with developmental disabilities.¹²

⁸ Information Sheet attached to December 2014 letter (Claimant Information Sheet), p. 3.

⁹ USDA Agricultural Marketing Service, Food Deserts. <<https://apps.ams.usda.gov/fooddeserts/fooddeserts.aspx>> (as of Oct. 8, 2015.)

¹⁰ A composting process employing raised planting beds constructed on top of decaying wood debris and other compostable biomass plant materials. The process helps to improve soil fertility, water retention, and soil warming, thus benefiting plants grown on or near such mounds. (The Permaculture Research Institute, at <<http://permaculturenews.org/2012/01/04/hugelkultur-composting-whole-trees-with-ease/>> (as of Oct. 8, 2015).)

¹¹ Workforce Development Services, <<http://www. />> (as of Nov. 4, 2015).

¹² Hope Services, < [website] /> (as of Nov. 4, 2015).

- Tree and Garden Club: promotes horticulture, gardening, and conservation.¹³
- Community Hospital of _____ – Wellness Center: serves patients by focusing on health wellness and prevention.¹⁴
- Veterans Transition Center: serves veterans with disabilities transitioning from homelessness to self-sufficiency.¹⁵

In 2013, the _____ Food Garden produced over 1,000 pounds of fresh produce, distributed to garden participants associated with the above-listed non-profit organizations. Claimant raises funds for garden supplies and staffs a Claimant employee to coordinate meetings, volunteers, and the garden work schedules of the garden participants.

Law and Analysis

Community Benefit Test

Article XIII of the California Constitution authorizes the Legislature to exempt from property taxation in whole or in part "[p]roperty 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 (3) no part of whose net earnings inures to the benefit of any private shareholder or individual." (Cal. Const., art. XIII, § 4, subd. (b).) The constitutional authority for the welfare exemption is implemented by Revenue and Taxation Code section 214, which provides in relevant part that: "property used exclusively for . . . charitable purposes owned and operated by . . . corporations organized and operated for . . . charitable purposes is exempt from taxation" if all other requirements set forth in section 214 are met.

Although the Legislature has not defined what is "charitable," California courts have defined the term "charitable" in a number of cases. In *Lundberg v. County of Alameda* (1956) 46 Cal. 2d 644, the court stated that "[t]he term charity has been defined in a number of California cases as 'a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons -- either by bringing their hearts under the influence of education, or . . . by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.'" (*Lundberg, supra*, at p. 649.) California case law has held that the relief of poverty is a recognized charitable purpose. (*Estate of Heil* (1989) 210 Cal.App.3d 1503, 1510.) Further, charity is not confined solely to the relief of the needy and destitute, but comprehends "as well activities which are humanitarian in nature and rendered for the general improvement and betterment of mankind, though the recipients of such benefits may be able to pay at least in part therefor. . . ." (*Id.* at p. 650.) In *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d 13, the court held that the term "charitable" was to be broadly construed in line with previous decisions and based upon the wide and varied nature of the exemption, such that an activity was charitable if it provides a general community benefit whose "ultimate recipients are either the community as a whole or an unascertainable and indefinite portion thereof." (*Id.* at p. 20.)

¹³ Tree and Garden Club Community Page, < [website] > (as of Nov. 4, 2015).

¹⁴ Wellness Center, < [website] > (as of Nov. 4, 2015).

¹⁵ Veterans Transition Center of _____ County, < [website] > (as of Nov. 4, 2015).

Here, it appears that Claimant serves a charitable purpose by providing access to healthy, affordable fruits and vegetables through certified farmers' markets and community projects, notably reaching low-income communities that would otherwise lack such access. Claimant serves not only the general community that benefits from having increased access to fresh produce, but also the small and medium-scale local family farmers by providing an avenue to sell their produce. Finally, Claimant also educates the public about access to fresh produce and healthy eating options, through programs available at the CFMs, which are open to the public at no charge.

Many recipients of Claimant's services are low-to-moderate income individuals or non-profit organizations aimed at serving the community at large. By running two of the CFMs adjacent to low-income communities, accepting EBTs, providing subsidies for low-income individuals through the Market Match program, and distributing vouchers to families to purchase fresh produce, it appears that Claimant is increasing access by low-to-moderate income individuals to fresh produce and healthy eating options. By training volunteers and coordinating other non-profit organizations to maintain the Food Garden, as discussed above, Claimant is promoting access to and awareness of fresh, healthy produce in a designated "food desert." This is also promoted by providing free vendor spaces at its CFMs, to approved non-profit organization, community groups, and government entities.¹⁶

Claimant also appears to provide economic assistance to local, small and medium-scale family farms. The Claimant's website provides information regarding the process of applying to become a CFM vendor, and states that Claimant's goal in screening prospective CFM vendors is "to support small-scale family farmers and local businesses by providing the highest quality, locally-produced products available."¹⁷ Further, as mentioned above, Claimant has developed the Farm Scholarship Program to provide support to farmers, many of whom are immigrants, through supplies and consulting services.

Additionally, section 214, subdivision (j), which codified the holdings of *Lundberg, supra*, and *Stockton Civic Theatre, supra*, provides that charitable purposes include certain educational activities, provided that they benefit the community as a whole or an unascertainable and indefinite portion thereof. The same section defines educational activities to include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

Here, Claimant runs its Edible Education program, "to expand the skill of culinary arts focused on healthy eating using fresh produce available at CFMs."¹⁸ The Edible Education program currently uses interactive presentations and a mobile outdoor kitchen at its CFMs, to teach families how to prepare healthy meals.¹⁹ Claimant also runs information booths, which provide the public with education to garden and "reduce, reuse, and recycle."²⁰ As noted above, in 2014, Claimant piloted the Fresh Produce Prescription program, a partnership with healthcare providers to incentivize healthy eating and focus on preventative health to fight the rise of chronic weight-related diseases. Since 2003, Claimant states that community groups, which may receive free

¹⁶ [Claimant's website] /special-events/community-entertainment/ > (as of Oct. 8, 2015).

¹⁷ [Claimant's website] /farmers-vendors/selling-info/> (as of Oct. 8, 2015).

¹⁸ Claimant Information Sheet, p. 3.

¹⁹ *Ibid.*; see also Healthy Cooking Workshops and Demos, < [Claimant's website] /cooking-workshops/> (as of Oct. 8, 2015).

²⁰ Claimant Information Sheet, p. 1.

spaces at the CFMs, have conducted over 200 educational demonstrations and workshops about topics including healthy meal preparation, composting, and solar energy.²¹ These educational opportunities are open to the public, and provided by Claimant at no cost.

Therefore, through its efforts to promote availability and access to fresh produce and healthy eating by running CFMs in low-income areas, by supporting local family farmers, and by providing publicly available education about healthy eating, Claimant appears to be operating for purposes of improving health and social welfare in low-income and disadvantaged communities. In our opinion, these activities constitute a charitable purpose.

For the above reasons, in our view, Claimant serves a charitable purpose and meets the community benefit test. However, we also note that in order to receive the welfare exemption, the Assessor must ensure that the use of the property is consistent with the Claimant's stated charitable purposes.

LA:yg

J:/Prop/Prec/OCC/2016/15-224.doc

cc: Mr. Dean Kinnee (MIC:63)
Mr. David Yeung (MIC:61)
Mr. Todd Gilman (MIC:70)

²¹ [Claimant's website] > (as of Oct. 8, 2015).