STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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December 27, 2002

RE: ***Exemption of Non-profit Entity – Fundraising***

Dear Mr. :

This is in response to your letter to the state Board of Equalization, on behalf of your client, The Club of , requesting a refund of property taxes paid in County relative to property leased by your client from the County of . It appears to be your position that, because the Club is a non-profit, tax-exempt fraternal corporation, and does not use the subject property for fraternal or social purposes, its possessory interest in the leased premises should be exempt from property taxation. Based upon the facts available to us, for the reasons set forth below, we do not agree, because it does not appear that your client is a *qualified* non-profit corporation, or that the property is being used for a qualified exempt purpose.

Facts

1. You state that since tax year 1985-1986, the possessory interest tax has been levied against your client every year and paid under protest.[1] Under a lease dated June 7, 1982, the County of leased the subject property, which you refer to as the Grounds, to your client.[2]

2. According to Mr. 's Declaration, the property which is the subject of this tax is used only for fund raising activities once a year for Days over the Labor Day weekend, and in June for relief of children suffering from cancer. It is the Club's only purpose to obtain funds for charitable purposes and the property is leased from the county in order to accomplish this purpose.

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[1] You refer to a possessory interest tax "levied by the State Board of Equalization and collected by the county of ." (Declaration of Bernard) However, the Board does not levy local ad valorem property taxes. The tax is levied based upon the assessment made by the County Assessor, and, as you correctly note, collected by the County Tax Collector. Thus, any claim for refund should be filed with the Board of Supervisors. See Revenue and Taxation Code section 5096, *et seq.*

[2] Apparently two other properties were also leased to the Club of at that time, but by lease amendment dated September 22, 1987, those properties were assigned to a separate corporation, and are therefore not pertinent to this request.

3. From documents obtained from the County Assessor's Office, we are aware that your client applied for a Welfare Exemption in 2001 with respect to this property, and apparently also in at least one prior year. With respect to the 2001 Claim for Exemption, the Assessor's Field Inspection Report submitted to the Board with the Claim reported that the "primary activity the property is used for is . . . (f) fund raising."[3] Board staff denied the exemption claim, noting that "Fundraising activities [are] not considered as charitable for tax exemptions purposes."

Law and Analysis

1. IRC section 501(c)(4) organization is not qualified

The foremost and fundamental reason that the subject property is not qualified for exemption is the fact that the Clubs Organization is not a qualified nonprofit organization for purposes of Revenue and Taxation Code section 214 because it is exempt under section 501(c)(4) of the Internal Revenue Code. In that regard, section 214.8(a) provides that the welfare exemption shall not be granted to any organization unless it is qualified as an exempt organization under either section 23701d of the Revenue and Taxation Code or section 501(c)(3) of the Internal Revenue Code. (See the first page of Chapter 2 of Assessors Handbook 267, Welfare, Church and Religious Exemptions).

Moreover, the organization is required to file duplicates of a valid unrevoked letter or ruling from either the Internal Revenue Service or the Franchise Tax Board that states that the organization qualifies as an exempt organization under these statutory provisions. (Section 214.8(b)) There is a letter in the file provided by the assessor, dated Feb. 21, 2002, in which the local chapter is informed by the national organization's attorney that the chapter is exempt under section 501(c)(4), but has not been able to qualify under their corporate purposes for exemption under section 501(c)(3).

The facts indicate that the Club holds a taxable possessory in property leased from . As such, it is the owner of this interest in real property. Another requirement for exemption is that the property must be owned and operated by a qualifying nonprofit organization operated for exempt purposes. The Club also cannot meet the requirement of ownership by a qualified organization since it is not exempt under section 501(c)(3) of the Internal Revenue Code, even if use of the property for exempt purposes is asserted.

Since the organization is not a nonprofit organization under section 501(c)(3) with a corresponding tax-exempt letter, it would not ordinarily be necessary for our analysis to reach the issue of the disqualifying use of the property for fundraising. However, since this issue is advanced by the taxpayer, we address it below.

2. Fundraising is not a qualified use

[3] The Welfare Exemption is jointly administered by the State Board of Equalization and the county Assessors' offices.

Subdivision (b) of section 4 of Article XIII of the California Constitution authorizes the Legislature to exempt from property taxation:

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

Similarly, Revenue and Taxation Code section 214, subdivision (a) provides:

> (a) 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 . . .

Thus, in order to qualify for the Welfare Exemption, both the "organized and operated" requirement *and* the "used exclusively for" requirement must be present.

In 1950, the California Supreme Court held that fundraising activities which are commercial in character and in competition with business ventures do not qualify for the welfare exemption even if the proceeds are used for laudable purposes.[4] The Legislature responded by providing a limited exception to the rule established by the Court that allows an exemption for occasional fundraising activities. Sec. 214, subdivision (a)(3). However, the fact that such an exemption exists, so that a limited amount of fundraising will not disqualify the property from receiving the Welfare Exemption, presupposes that some *other*, qualifying religious, hospital, scientific, or charitable use is being made of the property so that it *otherwise* qualifies for the exemption, and proves that fundraising (since it can make the property *ineligible* for the exemption) itself cannot be a qualifying use of the property.

Here, the primary, perhaps sole use of the property in question by the Club is for fundraising. Since fundraising by itself is not a qualified charitable purpose, even if the proceeds are used for charitable donations or purposes, the property in question is not eligible for exemption.

For example, a weekly use of the property to operate a "Farmers Market", was identified in the assessor's "Property Use Report" attached to the field inspection report dated April 24, 2002. This document indicated a weekly $50 rent paid by the Farmers Market. This use is not exempt since it is done solely for revenue generating purposes and although the proceeds are used for exempt purposes, it does not serve to qualify the property so used for the exemption. (*Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729) Moreover, this weekly operation of a Farmers Market is an ongoing commercial use of the property, open to the public and in competition with tax paying entities (farmers/stores selling produce). This use is disqualified from the exemption under both judicial and Board precedent. (*YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760; Board decisions in the Monterey Bay Aquarium and Crystal

[4] *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729; *YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760.

Cathedral cases; Chapter 4 of Assessors' Handbook, Section 267, Welfare, Church and Religious Exemptions April 2002.

It should be noted that properties owned by qualifying nonprofit (section 501(c)(3)) organizations can qualify for the welfare exemption even if they allow use of their property by section 501(c)(4) organizations under section 214(a)(3)(D), but that provision is not applicable here. We have researched the legislative history of this provision, which applies to property *owned by* section 501(c)(3) organizations. Its purpose was to "preserve the welfare exemption for churches and other qualifying organizations which allow community groups to meet on their property," specifically groups such as the American Assn. of Retired Persons (AARP), which is exempt under section 501(c)(4) and uses property owned by qualifying 501(c)(3) organizations. Thus, this provision would not serve to qualify property owned by the Club.

Therefore, for all of the above reasons, in our view, the Board staff and the Assessor properly denied the claim for the Welfare Exemption.[5] The views expressed in this letter are only advisory in nature. 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/ Daniel G. Nauman

Daniel G. Nauman
Senior Tax Counsel

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cc: Hon.
Assessor, County

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis – MIC:70
Ms. Glenna Schultz, MIC:61

[5] Apparently, an issue previously discussed was whether the property was used for fraternal or social purposes, which would also be cause for denying the Welfare Exemption claim. However, you point out that, in fact, other property, and not Grounds, is used by the Club for these purposes. We see no evidence that the denial of the 2001 claim was based upon these grounds, and assume that this is no longer an issue.