

(916) 445-8485

September 29, 1977

Mr. (Redacted)

Attention: Mr. (Redacted)
Exemption Supervisor

Dear Mr. (Redacted):

This is in response to your August 5, 1977, letter wherein you advised that you have denied the welfare exemption with respect to a taxable possessory interest in land to the University Students' Cooperative Association. The Association provides low-cost student housing in its building on land owned by the Regents of the University of (Redacted) and meets all the requirements of section 214.

We have previously had occasion to consider the question of whether a possessory interest held by a qualified welfare claimant in property owned by a governmental entity is eligible for the welfare exception. Assuming the property itself is exempt because of such government ownership, and assuming that the claimant-user and its use of the property satisfied all the requirements for the exemption, we concluded that such an interest could be exempt:

As the California Constitution mandates that all (private) property be taxed unless eligible for a specific exemption, we must identify the property subject to the mandate. Section 103 gives us the general definition, and Section 104 more specifically defines "real estate" or "real property" to include "The possession of, claim to, ownership of, or right to the possession of land; i.e., a possessory interest. This interpretation has been adopted in such cases as Georgia v. County of Mendocino (1972) 340 F. Supp. 1061.

Having decided that a possessory interest is property for property tax purposes, is it "owned" by the claimant-user so as to satisfy the "owned and operated" requirement of Section 214? Although "owned" can have different meanings depending on the context and purpose of a particular statute in which it is used, it generally includes a claim or interest in property though less than a fee and even encompasses the interest of a holder of an imperfect or incomplete title possession of property "... is treated as property, which may be purchased and sold and for recovery of which an action may be maintained." (40 Cal. Jur. 2d pp. 286, 294) Unless it results in frustration of legislative intent, there is no reason for concluding other than that a person in

possession is the owner of a possessory interest which is property for property tax purposes.

Obviously, the intent of the welfare exemption is to confer a benefit on those authorized to claim it. The reciprocal of that is the intent that those not qualified for the exemption not obtain indirectly what they are not entitled to obtain directly. Were we to grant exemption of a possessory interest in property for which the fee owner could claim no exemption, we would be clearly violating legislative intent. (Ohrbach's, Inc. v. County of Los Angeles (1961) 190 cal. App. 2d 575) Likewise, if we were to grant exemption to a possessory interest in property, the fee to which is exempted under another statute intended to encourage the use of the property for a certain purpose, and the existence of the possessory interest prevents fulfillment of that purpose, we would be in error. Such a result hardly seems possible 'When property owned by a governmental entity and devoted to public use is used by a qualified welfare claimant whose purpose is also to provide a benefit to the public. It is our conclusion that considering a possessory interest as property owned by a qualified welfare claimant and eligible for the welfare exemption does not frustrate legislative intent, and that such an interest should be exempt.

Not all possessory interests should be exempted, however: only those qualifying as taxable possessory interests as defined in Board Rule 21(b) (Cal. Admin. Code) should be so treated.

With respect to the several points set forth in your letter,

1. The Assessor can find no authority in the Constitution, statutes or welfare handbook to allow a welfare exemption on the taxable possessory interest.

In addition to the above, the court in English v. County of Alameda, 70 Cal. App. 3d 226, has stated, in part, concerning "property" as used in section 214:

"It thus clearly appears that the possessory interests existing in land or improvements constitute but a part or ingredient

of the property, and the latter as a broader notion includes by definition the possessory interests as well. Therefore, giving a plain meaning to the language used in the statute, as we must, the word "property" must be deemed to encompass the totality of rights composing property including possessory interests."

2. The welfare handbook specifies both the owner and operator roust file and qualify for the exemption.

As the owner of the possessory interest in the property and as the operator of the property, the Association would be the organization to file and qualify for the exemption.

3. Section 261 requires ownership of record on the lien date in the office of the recorder in the county in which the property is located.

Recordation of the agreement whereby the Association is permitted to use the Regents' land would appear to satisfy this requirement.

4. Sections 222.5 and 231 allow the Assessor to grant the welfare exemption only for specific operators or users.

While specific language in section 214 to the effect that property, as used therein, includes possessory interests in publicly owned land would be determinative and would have eliminated the need for your inquiry, we do not believe that the absence of such language precludes the conclusion that such an interest can be exempt. Again, we refer to our analysis and to English v. County of Alameda, supra. The result is that exempt property of a governmental entity, to the extent that it is owned and operated by a qualifying welfare claimant whose property also is exempt, remains exempt.

In conclusion, cursory review discloses that we have issued a Been Net: P.P. and Poss. Int. finding with respect to land owned by the City of San Jose and used by the American Red Cross in conjunction with its operation of a blood center.

Very truly yours,

J. Kenneth McManigal Tax Counsel

JKM:fp

bc: Mr. Jack F. Eisenlauer (W. Grommet)

DAS File

Legal Section