STATE OF CALIFORNIA

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October 2, 2000

Honorable Dick Frank
San Luis Obispo County Assessor
County Government Center, Room 100
San Luis Obispo, CA 93408-2070

Attn: LeAnne Meinholt

Re: Questions on Welfare Exemption and Use of Church Property by Outside Organizations
Assessor's Parcel Number
Assessor's Parcel Numbers

Dear Ms. Meinholt:

I am responding to your letter of March 3, 2000 seeking our opinion on specific uses of exempt church property. Please forgive the delay. Before responding to the numbered questions, I wanted to clear up a misunderstanding conveyed in your first paragraph: "It has been our understanding that organizations that have a 501(c)(4) [letter] are not allowed to meet on exempt property unless they are a veteran's organization." As explained in my September 2, 1999 letter to you, under section 214(a)(3)(D), meetings no more frequent than one per week held by organizations meeting the requirements of section 214(a)(1)-(5) and having an Internal Revenue Code section 501(c)(3) **or 501(c)(4)** income tax exemption letter or a Revenue and Taxation Code section 23701d, 23701f, or 23701w income tax exemption letter will not interfere with the availability of the exemption. The section is not limited to veterans' organization meetings.

Is Lions Club considered a fraternal organization?

The Lions Club, as I understand it, was historically considered a fraternal organization, and therefore not eligible for the welfare exemption. (Rev. & Tax. Code section 214(a)(5).) However, if a membership organization drafts its Articles of Incorporation and organizational documents to demonstrate that its primary purpose is charitable and that its activities will benefit the community at large rather than only its own membership, it could be eligible, like any other organization, to apply for charitable status with the IRS under IRC section 501(c)(3) and/or with the Franchise Tax Board under section 23701d. If it received an exemption letter from the IRS or FTB, it would potentially be eligible for the welfare exemption on its property if all other requirements – including use of the property -- are met. You will need a copy of the club's current Articles of Incorporation and tax exemption letter, if any, to answer this question.

Would any organization which appears to be fraternal, but which has a section 501(c)(4) tax letter, be considered exempt if it meets on exempt property? Under what circumstances?

I assume you want to know whether meetings at the church no more than once a week by such an organization would interfere with the church's welfare exemption. (Whether the organization itself is considered exempt is a matter for the IRS.) So long as a section 501(c)(4) organization which meets the requirements of section 214(a)(1)-(5) uses exempt property for meetings of the kind described in section 214(a)(3)(D), use of the property for those meetings will not operate to disqualify the church from receiving the welfare exemption. As to use of properties for meetings generally, see the February 27, 1991, Letter to Assessors No. 91-15, Welfare Exemption – Occasional Use by Other Organizations, copy enclosed.

In your letter, you refer to page 6 of Assessors' Handbook Section 267, which states that Lion's Club meeting places are taxable, but clinics and dispensaries may be exempt. As the section heading indicates, this comparison, one of several, is intended to distinguish between organizations generally not within charitable purposes and others which may be within such purposes. Thus, property owned and used by a Lions Club for its meetings would be taxable. However, non-interfering use of exempt property for meetings of the kind described in section 214(a)(3)(D), to which this portion of the letter pertains, is based upon the satisfaction of less restrictive criteria, as discussed. See also, pages 226 and 27 of the Handbook.

It is our understanding that the primary purpose of organizations such as the Lions Club is to raise funds. Please discuss why a fundraising organization that meets to discuss fundraising can qualify for exemption when meeting, but not when conducting the actual fundraising activity.

It cannot. As indicated, for section 214(a)(3)(D) to be applicable, a church could only allow a Lions Club to meet on its property if the club had I.R.C. section 501(c)(3) or 501(c)(4) or Revenue and Taxation Code section 23701d, 23701f or 23701w tax status, which I don't believe the Lion's Club does, although it is my understanding that some formerly fraternal organizations in some communities have been changing their focus away from membership activities toward charitable activities and obtaining the requisite tax letters. A Lion's Club with the specified tax letter from the IRS or FTB, would be a qualifying organization for purposes of holding occasional fundraising activities on exempt property under section 214(a)(3)(A)(ii). However, because allowing "fundraising meetings" by other organizations can jeopardize the property owner's welfare exemption under section 214(a)(3)(D) if a Lion's Club's primary purpose is to raise funds, and its meetings could be characterized as "fundraising meetings", a church would be jeopardizing its welfare exemption by permitting Lion's Club meetings to take place on its property.

Questions relating to September 2 letter about Church:

1. **Could there be uses by the church that are not qualifying even though they are occasional" (e.g., a political debate?)**

Yes, there could, but a political debate or discussion of ballot propositions would probably be qualifying uses if they were incidental to the church's religious or charitable educational purposes and did not serve to benefit any person in violation of section 214(a)(4). A fundraiser for a politician, however -- or any activity to benefit any other individual for that matter -- would clearly not qualify. Neither would a Tupperware party or any other commercial venture. See, e.g., Honeywell Information Systems, Inc. v County of Sonoma (1974) 44 Cal.App.3d 23. Nothing which is not "incidental" to the church's exempt purposes is permissible on otherwise qualifying property, although, as the court noted in Fellowship of Humanity v. County of Alameda (1957) 153 Cal.App.2d 673, 689, "if the court once holds that the property generally qualifies for the exemption, it will be extremely liberal in holding that some incidental use does not take it out of the exemption".

2. (a) Can an owner and/or operator of an exempt property host/conduct fundraising events more than once a week if each event is sponsored by a different qualified outside organization?

(b) Would this use be considered occasional?

(a) No. The term "occasional" refers to the frequency of use of the exempt property, not the frequency of use by a particular organization raising funds.
(b) No. "Occasional", as defined in section 214(a)(3)(B)(i), "means use of the property on an irregular or intermittent basis…" and more than once a week would certainly not qualify as "irregular or intermittent", regardless of how many organizations are involved.

3. (a) Could a qualifying outside organization have a fundraising event once a week as long as it is not more than once a week? Would this use be considered occasional?

(b) Would the organization have to file for the welfare exemption?

(a) No. As explained above, once a week is not "irregular or intermittent" and, therefore, it would result in denial of the exemption for the property.
(b) Filing for the welfare exemption would be required to use the property every week for anything other than a meeting, but that filing would not cure the problem stemming from use of the property for fundraising.

4. Could a qualified outside organization have a regular schedule of events at an exempt property if the events were once a week or less? Would it have to file for the welfare exemption?

Yes and yes. Assuming the events are qualifying uses, if the frequency amounts to more than "irregular and intermittent" or weekly meetings, the outside organization must file for exemption as an operator of the property.

5. (a)Could Church have different fundraising events that benefit their church more than once a week?

(b)How many times a year could they have a fundraising event and still qualify for exemption?
(c)Would this be considered incidental or occasional use?

(a) Not on a regular weekly basis. See above. More than once a week would not be "occasional" as defined in section 214(a)(3)(B)(i).
(b) Because is no quantitative definition of the term "occasional" in the statute or regulations, we cannot answer your question in the abstract. As we have noted in the Assessors' Handbook, annual fundraising events certainly qualify and anything more frequent would be up for consideration "particularly where that activity is commercial in character and in competition with business enterprises. " (AH 267, page 45.)
(c) The term "incidental" is not really applicable to fundraising, which has its own requirements per section 214(a)(3)(A). See Chapter 4, Fundraising, of AH 267, Welfare, Church and Religious Exemptions, and Cedars of Lebanon Hospital v. Los Angeles County (1950) 35 Cal.2d 729.

6. Is a concert or musical scheduled every month considered occasional or incidental? Every six months? Every year?

A concert or musical could be "incidental" but it's not "occasional" if it is held regularly every month. Therefore, if the concert or musical is a fundraising event it cannot be held every month and whether every six months is permissible would depend on the how commercial in character and competitive the concerts are with other business operations in the area. Once a year would be considered occasional. (See AH 267, p. 45) If, however, the concert or musical is presented by the church as part of its ministry or "incidental" to the charitable purpose of the church, there would be no constraints on the frequency with which it is held. A concert or musical presented by another qualifying organization every month would require that the organization file for the exemption as an operator.

7. If a qualifying organization met for two to four weeks continuously, but did not meet at any other time during the year, would that use be considered occasional or incidental? Would it be appropriate to divide the number of days in the year a qualifying organization uses a property by the weeks in a year in order to determine if they qualify under R&T 214(a)(3)(D)?

This is something that the legislature did not provide for specifically. However, an organization using property to such an extent could be considered to be a part-time operator of the property, and needs to file as such, particularly if its activities are displacing church activities to some extent. Or, as we advised Church, , in June of 1992, copy to you, such a one time use, not interfering with a church's activities, could be considered an incidental use (not necessitating a filing by the organization as an operator).

8. What are the guidelines for a church to "sponsor" a group? Is it merely a verbal assurance by the church, or must certain qualifications be met, such as a contract, etc.? (E.G. A basketball team with its own identifying name, which formerly was charged $2500 a year for the use of the church's gym, now is "sponsored" by the church. What documentation would be required? What if the church "sponsored" them, but continued to charge the $2500 a year?)

A written contract is not required for a church to sponsor activities on church property. "Sponsorship" of an activity is simply presentation of the activity as a church activity. A church can sponsor basketball games as a church activity, in which any proceeds from the games are paid to the church.

If another organization has a team and seeks to raise funds for its team or itself, however, it can use church property only for "occasional" games and only if it qualifies on its own under 214(a) (Section 214(a)(3)(A)(ii) and (a)(3)(C).) A qualifying organization using the church for more than "occasional" games must file and receive its own exemption as an operator.

As I noted in my previous letter, charging rent does not constitute "fundraising" for the qualifying owning organization. A church may lease space to a qualifying organization but any leasing arrangement should not be "intentionally profit making or commercial in nature" (AH 267); that is, the rental charged must not exceed the ordinary and usual expenses of maintaining and operating the property being used.

9. If a city league wanted to use a church's gym for practices and games, would that be considered exempt because it is a use by a government, or would the league have to file for exemption? If the use was more than once a week? If the use was once a week or less?

A city could lease a church's gym without jeopardizing the church's welfare exemption but only if the activity for which it was using the gym is an activity that, if conducted by the owner, would qualify the property for exemption. (Rev. &Tax. Code section 214.6.)

The church would have to file a lessor's exemption claim affirming the requirements of section 214.6(b)(1) and (2) are met.

10. A qualified outside organization uses the church for a concert, and local for-profit corporations donate money. In return, their corporate logo appears on the posters/advertisements for the concert. All of the funds raised are for the benefit of the qualifying organization.

(a) Is this a qualifying use? Would this be qualifying use if it were a church concert?

(b) Is there a difference between having corporate logos on a poster and having donor's names in the concert programme? Please discuss the differences/ similarities. Would a programme stating donors' names be considered non-qualifying?

(a) This is a qualifying use as long as either the church or the qualified outside organization is sponsoring the concert (i.e., presenting the concert as an activity of the church or the qualifying outside organization.)

(b) It has been our view that the mere distribution of the program and posters on the property, with donor names and/or company logos, does not constitute a use of the property that "benefit[s] any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession" in violation of section 214(a)(4.)

11. On page 27 of AH267, the handbook states "Property exempt under Section 214 cannot be used or operated to benefit any private person through the distributions of profits…" If the owner of the for-profit organization co-sponsors a fundraising event at a church qualify [sic] for exemption, and the proceeds are to benefit a local child who has cancer, would that be a non-qualifying use, or would that be considered incidental or occasional?

Fundraising proceeds are not "profits" subject to the 214(a)(4) prohibition against private inurement. If the fundraiser is sponsored (or co-sponsored) by the church as a church activity in furtherance of the church's ministry, it would qualify under section 214(a)(3)(A)(i). If, however, it is sponsored by an outside organization, the use would be non-qualifying unless the outside organization also was a qualifying organization.

Use of property by a for-profit organization, whether for fundraising or otherwise, would disqualify an otherwise qualifying property, regardless of the ultimate beneficiary of the funds or reason for use. Section 214 requires use by only community chests, funds, foundations, or corporations organized and operated for religious, hospital, scientific, and/or charitable purposes

12. If some homeowners in a neighborhood form a group to discuss beautification and safety issues, and the group meets once every two weeks on church-owned property, would this be a qualifying use? Would the group have to have a 501(c)(3) tax letter? Could the church "sponsor" them? What must be involved in the "sponsorship"?

If the "group" is an organization that has filed with the assessor a valid unrevoked tax letter stating that it qualifies as exempt under IRC section 501(c)(3) **or 501(c)(4)** or Revenue and Taxation Code section 23701d, 23701f, or 23701w, and if discussion of neighborhood beautification and safety issues is incidental to the organization's primary activities, meetings held no more than once per week will not interfere with the church's welfare exemption. If the organization does not have a tax letter, however, the meetings would

have to be sponsored by the church as a church activity in order to qualify. (See Answer to Question 8 , above.) A "group" of individuals is not a community chest, fund, foundation, or corporation, etc. (See Answer to Question 11, above.)

13. At what point is a non-profit organization considered qualifying because it "lessens the burden of government"?

There is no minimum quantitative test of how much the burdens of government must be lessened in order to qualify an organization as "charitable." As you know, section 214 requires use of property for both religious, hospital, scientific and/or charitable purposes and activities before property can be eligible for the exemption. In the case of Lundberg v. Alameda County (1956) 46 Cal.2d 644, the Supreme Court stated that lessening the burdens of government can be a charitable purpose. (Section 214(a).) Once it is concluded that property is used for charitable purposes, it must then be determined that the property is being used for the actual operation of an exempt religious, hospital, scientific and/or charitable activity or activities. (Section 214(a)(3).) Whether the activity "lessens the burden of government" is a question that must be answered by considering all the facts of the situation.

I hope this letter has been helpful despite the fact that we cannot always supply a formula for resolution of a situation that requires consideration of multiple factors. If you would like to discuss these issues further, you are welcome to call me at (916) 327-2455.

Sincerely,

/s/ Susan Scott

Susan Scott
Tax Counsel

SAS:lg
Precedent/Welexqal/00/27SAS.doc

Enclosures
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