

**M e m o r a n d u m**

**To:** Mr. Mike Harris (MIC:64)  
Principal Property Appraiser

**Date:** October 17, 2012

**From:** J.K. McManigal, Jr.  
Senior Tax Counsel

**Subject:** *A*, Inc. – *Request for Review of Organizational Clearance Certificate Eligibility Assignment No. 12-097*

This is in response to your request that we review the November 5, 2010, claim and related documents and information submitted in support thereof to determine whether A, Inc. (Claimant) meets the charitable purpose requirements for the welfare exemption and should be issued an Organizational Clearance Certificate (OCC).<sup>1</sup> (Rev. & Tax. Code, § 254.6.)<sup>2</sup> For the reasons hereinafter set forth, Claimant is organized and operated for a qualifying charitable purpose. Therefore, an OCC should be issued.

### **Facts**

According to the November 5, 2010, claim, Claimant was incorporated in August of 2008.<sup>3</sup> Claimant answered Question 9 regarding its activities, in part, as follows:

A ("A") is a non-profit organization dedicated to promoting contemporary art in the San Francisco/Bay Area.

A selection of A's contemporary art collections have [has] been exhibited in various Bay Area venues, including Stanford University's Cantor Center for Visual Arts (Cantor Center) and the CCA Wattis Institute for Contemporary Arts in San Francisco (CCA Wattis Institute).

A has also partnered on exhibitions at the Yerba Buena Center for the Arts, and the Berkeley Art Museum and Pacific Film Archive.

With the intention of generating diverse cultural discourses and offering opportunities to young artists, curators, and writers, A works in collaboration with local art institutions in offering its Residency Programs and the

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<sup>1</sup> Because this is the only issue raised in your request, we assume that Claimant otherwise qualifies for an OCC.

<sup>2</sup> All statutory references are to the Revenue and Taxation Code, unless otherwise specified.

<sup>3</sup> Claimant's 2008 Certificate of Incorporation had no statement of irrevocable dedication and an unacceptable dissolution clause; however, subsequent amendments corrected those deficiencies.

101 Curatorial Fellowship. In addition, A also conducts exchange programs with its Paris-based affiliate, Foundation.

It also states in Note A – *Nature of Activities of Claimant* to its audited 2008 and 2009 Financial Statements:

The Foundation is dedicated to promoting modern and contemporary art through the constitution of art collections and display of its collections in local art institutions, as well as nationally and internationally. Parts of the collection are shown in various San Francisco Bay Area venues. [¶] ... [¶]

The Foundation also conducts an artist in residence program.<sup>4</sup>

Finally, website information submitted with the claim stated:

With the intention of generating diverse cultural discourses and offering opportunities to young artists, curators, and writers, A works in collaboration with local art institutions in offering its Residency Programs and the 101 Curatorial Fellowship. . . .

Claimant's Executive Director's July 26, 2011, responses to Staff's November 18, 2010, Finding Sheet describe Claimant's operations in more detail. They state, in part, as follows:

**1. Provide explanatory narrative detailing specific information as to how the activities of your organization are charitable in nature and benefits the community of California public. Provide a description of programs and services offered, and indicate whether any of these services are offered at reduced costs or free. List museums, by name and location which your organization loans art works to.**

A is a non-profit organization dedicated to promoting contemporary art in the San Francisco Bay Area including exposure of California artists within the international art scene through residencies and exhibitions. With the intention of generating diverse cultural discourses and offering opportunities to young artists, curators, and writers, in addition to purchasing and displaying relevant art with a strong focus on young California artists (the "101 Collection" named after California highway route 101), A works in collaboration with local art institutions in offering its Residency Programs and the 101 Curatorial Fellowship.

A operates as a hub, connecting our programs with those of the Yerba Buena Center for the Arts, San Francisco Art Institute, CCA Wattis Institute, and Berkeley Art Museum involving curators and contributing to the their programs.

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<sup>4</sup> 2009 Note A only.

In 2009, A purchased a condominium at B Street in San Francisco for the express purpose of providing short-term living and work space for the Residents and Curatorial Fellows, as well as others associated with A's programs (e.g. non-local presenters at A events etc.).

Additionally, in late 2010 (construction completed in 1Q 2011), A purchased real estate at Street<sup>5</sup> in San Francisco (operating as "K") for the express purpose of hosting free weekly art programs and for providing a free library of difficult-to-find global art magazines, both advertised and open to the public at large.<sup>6</sup>

In an unique initiative between A, the CCA Wattis Institute, and CCA's Graduate Program in Curatorial Practice, A's 101 Curatorial Fellowship aims at broadening the interpretation and dissemination of the 101 Collection. Graduating students from the CCA's Graduate Program in Curatorial Practice are invited to apply for the Fellowship by submitting proposals for an exhibition of works in the 101 Collection, to be presented free of charge to the public at large, in the CCA Wattis Institute's galleries over the following year. This Fellowship enables a student to spend a third year at CCA, realize their first curated project in a public art institution, and conduct research around the artists and artworks featured in the 101 Collection. The Fellowship is currently supporting its third student: . . . .

A selection of A's contemporary art collections have been exhibited in various Bay Area venues, which are open and free to the public, including the Cantor Center, the CCA Wattis Institute, the San Francisco Art Institute, the residence of the Consulate General of France in San Francisco, as well as the Orange County Museum of Art.

A has also partnered on international and national exhibitions at the Yerba Buena Center for the Arts, and the Berkeley Art Museum and Pacific Film Archive, the Dia Art Foundation, ArtPace, Istanbul Biennale.

**2. Provide list of all art owned by organization in 2008, 2009, 2010 and list those art works on loan to museums in 2008, 2009, 2010; further provide location where art works are held, stored, displayed, etc when not on loan to museums.**

Please see attached listing of A's art collection in order of date purchased, together with location where currently held and where loaned/displayed to date, both past and present.

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<sup>5</sup> According to information subsequently received, property is at corner of 20<sup>th</sup> Street and Folsom Street. Addresses of Claimant's 3 units on first floor are 3285, 3289 and 3295 20<sup>th</sup> Street, not Bryant Street. The property is also known as 2405 Folsom Street and 2401 Folsom Street, 2401 Folsom Street being "the location of the main entrance to the museum space" for the display of artwork. See Claimant's October 10, 2011, letter and memorandum, parts of Attachment G. This property is hereinafter referred to as 3295 20<sup>th</sup> Street.

<sup>6</sup> Also, Claimant's Inventory Schedules listed several of its works of art displayed at its "Museum Space," 3295 20<sup>th</sup> Street.

When not on loan, the Foundation's art work is held in storage at C  
, located at Street in San Francisco.

**3. Provide address of real property held, and the organizational activities conducted at that location (situs). List all individuals by name, dates of stay and purpose for stay, who resided at real property in 2008, 2009, 2010.**

- Street, Unit , San Francisco – residency condominium acquired Oct 2009:

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- Street, San Francisco – Office & Programming space acquired August 2010 (operating as "K ")  
- weekly art program (known as K 's «Wednesday night series») shared with the public free of charge (podcasts available for viewing at <http://> ; copies of program newsletters are enclosed), and the Saturday reading room (collection of rare international art magazines)

A also invites one San Francisco Bay Area artist every year for a residency in Paris, hosted by its affiliate Foundation in Paris (hosting includes living quarters and monthly stipends, together with introductions and collaboration with Paris artists, enthusiast etc.). To date, two artists have been sponsored, both of whom are represented in the 101 Collection: . . . .

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### **Law and Analysis**

Section 254.6, subdivision (a) states that an organization that intends to claim the welfare exemption shall file with the Board a claim for an OCC. Subdivision (b) of section 254.6 states that Board staff shall review each claim to ascertain whether the organization meets the requirements of section 214 and shall issue a certificate to a claimant that meets the requirements.

Claimant's specific purpose, according to its First Amended And Restated Certificate of Incorporation Article THIRD is "the public display of modern and contemporary art in its museum and other museums throughout the world, and engaging in any lawful charitable and educational acts or activities for which it may be organized." Properties of organizations organized and operated for museum purposes, or for library purposes, have long been considered eligible for the welfare exemption. Stats. 1979, Ch. 1188, in effect September 29, 1979, amended the second sentence of the second paragraph of section 214, subdivision (a) to state that, "... the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property."

As stated in the Board's November 13, 1979, Letter to Assessors No. 79/199, Welfare Exemption – Museums and Libraries,<sup>7</sup> in this regard:

Section 214 now provides the welfare exemption to property owned by a religious or charitable organization and used for museum or library purposes. Free public libraries and free museums continue to be exempt under Section 202(b) of the Revenue and Taxation Code. If a library is not a public library and/or a library or museum charges admission, the welfare exemption may be applicable if all the requirements of Section 214 of the Code (i.e., articles of incorporation, irrevocable dedication, tax letter, financial documents, etc.) are met. (Emphasis in original.)

Thus, Assessors' Handbook section 267, Part 1, Welfare Exemption, Chapter 3, Specific Requirements for Use of Property, states at page 42:

#### **MUSEUMS AND PUBLIC LIBRARIES**

Property used for free public libraries and free museums is exempt by the Constitution. Libraries and museums that charge admission may qualify for the welfare exemption, if their properties are owned and operated by organizations meeting all the requirements of section 214. Property owned by museums and public libraries are not precluded from receiving the welfare exemption even though free public libraries and free museums are specifically exempt in section 202(a)(2). A library or museum under construction and not yet open to the public is not exempt under section 202, but may qualify for the welfare exemption. (*Citations omitted.*)

Furthermore, the legal staff's December 1, 2006, letter upon which Property Tax Annotation No. 880.0099 is based pertains to the eligibility of museum property for the welfare exemption. As stated on page 3 of the letter:

A qualifying organization's (San Diego Aircraft Carrier Museum's) property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities. The welfare exemption may be claimed for the portion of the *Midway* used exclusively for exempt purposes; i.e., those portions of the *Midway* that are not used by private party special events.<sup>8</sup>

As to the purpose of engaging in lawful charitable and educational acts or activities for which claimant may be organized, it is claimed that Claimant is dedicated to promoting contemporary art in the San Francisco/Bay Area, with the intention of generating diverse cultural discourses and offering opportunities to young artists, curators, and writers. Further, Claimant purchases and displays relevant art with a focus on young California artists, for example, the 101 Collection, at its "K" property, Street, and at other museums and

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<sup>7</sup> A copy of the November 13, 1979, Letter to Assessors, upon which Property Tax Annotation No. 880.0140 is based, is attached.

<sup>8</sup> The portion of the Midway used for special events commercial in character was not eligible for the welfare exemption. (See also the 1988 Board Decision regarding *The Monterey Bay Aquarium Foundation*.)

properties; and it hosts free weekly art programs and provides a free library of difficult-to-find global art magazines at its "K" property.

Section 214, subdivision (j) states:

For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, "educational purposes" means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and do not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities 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.

As stated in AH 267, Part 1, Chapter 3, *Specific Requirements for Use of Property*, at page 36:

#### **CHARITABLE ACTIVITIES INCLUDE SOME EDUCATIONAL ACTIVITIES**

[¶] ... [¶] The Legislature enacted section 214(j) which codifies the community benefit test for determining whether educational activities are charitable. Educational activities within the charitable purpose of section 214 are those that benefit the community as a whole or an unascertainable and indefinite portion thereof. Such educational activities 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.

The promoting of contemporary art in the San Francisco/Bay Area, the display of artwork at its "K" property and at other qualifying museums, and the weekly art programs and magazine collection at its "K" property are educational activities of the kind contemplated in section 214, subdivision (j).

#### *Assessor's Review of Claimant's Activities*

Pursuant to section 254.5, once a claimant has been issued an OCC, the assessor is to consider the claimant's welfare exemption claim and the availability of the exemption for claimant's property. In this case, the assessor must determine whether Claimant's use of its "K" property as a museum, a library, and for art programs and activities was sufficient use for purposes of the welfare exemption such that the property could be eligible for exemption. He must also determine whether the lending of its artwork to other museums or organizations qualifies that artwork for the exemption, and whether storage of artwork qualifies as use.

In these regards, we note that the loan or display of works of art to persons other than qualifying museums or qualifying religious, hospital, scientific, or charitable organizations would disqualify such works of art from the welfare exemption. As to the storage of Claimant's works of art, section 214, subdivision (a)(3) requires that property be used for the actual operation of an exempt activity and not exceed an amount of property reasonably necessary to the

accomplishment of the exempt purpose. Property that is vacant, unused, or held for future use is thus, not eligible for exemption. See *Fredericka Home For the Aged v. San Diego County* (1950) 35 Cal.2d 789; *First Baptist Church v. Los Angeles County* (1952) 113 Cal.App.2d 392; and *Christward Ministry v. San Diego County* (1969) 271 Cal.App.2d 805. However, the legal staff has been of the opinion that a qualifying museum's works of art, those on display at the museum and those stored at the museum or at another qualifying organization's property awaiting exhibition space at the museum for display, are eligible for the welfare exemption. As to a museum's works of art stored elsewhere, however, such works of art should not be eligible for the welfare exemption. For such works of art to be eligible for exemption, the requirements of section 217, the works of art exemption, should have to be met.

For the Street property used as housing, the assessor must consider welfare exemption decisions pertaining to the eligibility of housing for the welfare exemption, Property Tax Rule 137, and AH 267, Part 1, Chapter 5, to determine whether Claimant's uses of its condominium were qualifying uses for purposes of the welfare exemption.

Finally, the yearly "residency-in-Paris" program hosted by Foundation in Paris should not be a consideration in the determination of the availability of the welfare exemption for Claimant's properties if, as appears to be the case, Foundation is "hosting" such program.<sup>9</sup>

JKM:yg

J:/Prop/Prec/OCC/2012/McManigal/12-097.doc

Attachment

cc: Mr. David Gau MIC:63  
Mr. Dean Kinnee MIC:64  
Ms. Ladeena Ford MIC:64  
Mr. Todd Gilman MIC:70

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<sup>9</sup> July 26, 2011, letter from Claimant's Executive Director: "... (hosting includes living quarters and monthly stipend, together with introductions and collaboration with Paris artists, enthusiast[s] etc.)."