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OPINION

Of

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No. CV 78/58

NOVEMBER 3, 1978

THE HONORABLE RAY T. SULLIVAN, JR., COUNTY COUNSEL OF THE COUNTY OF RIVERSIDE, has requested an opinion on the following question:

Is a nonprofit hospital corporation that has qualified for the welfare exemption of Revenue and Taxation Code section 214 subject to general property taxes measured by the value of hospital equipment "leased" to it by a national banking corporation?

The conclusion is:

A nonprofit hospital corporation that has qualified for the welfare exemption of Revenue and Taxation Code section 214 is not subject to general property taxes measured by the value of hospital equipment "leased" to it by a national banking corporation.

ANALYSIS

We have been informed that a nonprofit hospital, qualified for the welfare exemption of Revenue and Taxation Code section 214,[1] has "leased" tangible personal property in the form of a hemolizer blood testing machine from a national banking corporation. The question presented is whether the hospital is subject to general property taxes measured by the value of the machine.

[1] All section references hereafter are to the Revenue and Taxation Code.

To answer the question requires an examination of several constitutional provisions and numerous statutes. Preliminarily, however, we must consider whether the machine is the subject of a true lease or a disguised conditional sales agreement.

It is often difficult to distinguish between a true lease (bailment for hire) and a finance lease (conditional sale or secured transaction), and no precise formula has been devised for separating the two types of contractual arrangements. (See generally, DeKoven, Leases of Equipment (1978) 12 U.S.F. L. Rev. 257, 255-263.) Basically, a true lease provides exclusive possession of property for a limited period of time, while a finance lease provides the transfer of complete ownership at some future point in time. A finance lease is usually intended if at the time of entering into the agreement, (1) the parties have a fixed intention to buy and sell, and (2) the entire obligation to pay arises, payments being on a deferred basis, or (3) the "lessee" is under an economic compulsion to exercise the "purchase" option. (County of Sacramento v. Assessment Appeals Bd. No. 2 (1973) 32 Cal. App. 3d 654, 667.)

As between the bank and the hospital, a true lease arrangement is indicated by the general terms[2] used in the agreement and by the limited (five years) transfer of possession of the machine without an option to purchase. A finance lease is indicated by the hospital's fixed obligation to pay an amount in excess of the purchase price, as well as its bearing the risk of loss and being responsible for maintenance repair, insurance, and property taxes on the machine.

In keeping with the marked reluctance of the California courts (see, e.g. Puritan Leasing Co. v August (1979) 16 Cal. 3d 451, 461; County of Sacramento v. Assessment Appeals Bd. No. 2, supra, 32 Cal. App. 3d 654, 668-670; Lagiss v. County of Contra Costa (1963) 223 Cal. App. 2d 77, 85-90) in finding a conditional sales contact where the terms used in the instrument are those of a "lease," we conclude that the agreement between the bank and hospital is a true lease.

Ordinarily, a determination that property is the subject of a true lease rather than a finance lease would shift the burden of the property tax from the "purchaser" to the "lessor". In this case, however, such determination will affect our analysis but will not change our ultimate conclusion concerning the imposition of the tax. As we shall explain, neither the bank nor the hospital is liable for property taxes on the machine whether "owned" by the bank or by the hospital.

Two general principles in the field of California property taxation are that all property, unless otherwise exempt, is taxable(Cal. Const., art. XIII, § 1 (a); § 201; Sea-Lane Service, Inc. v. County of Alameda (1974) 12 Cal. 3d 772, 779; English v. County of Alameda (1977) 70 Cal. App. 3d 226, 232) and that property is taxable to its "true owner." (§§ 405, 611; 33 Ops. Cal. Atty. Gen. 179, 179 (1959); 5 Witkin, Summary of Cal. Law (8th ed. 1974) Taxation, § 102, pp. 4084-4086; Ehrman and Flavin, Taxing California Property (1967) §§ 190-192, pp. 170-171).

[2] As examples, the contract is entitled "personal property lease" and the payments re denominated "rent".

In a finance lease or conditional sales agreement, the "true owner" is considered to be the purchaser; even though legal title to the property remains in the seller for purposes of security, he is not considered to have a table interest in the property. (Sherman v. Quinn (1948) 31 Cal. 2d 661, 663; Eisley v. Mohan (1948) 31 Cal. 2d 637, 642-643; County of Sacramento v. Assessment Appeals Bd. No. 2., supra, 32 Cal App. 3d 654, 663.) Conversely, in a true lease arrangement, the lessor is considered to be the "true owner" and subject to the tax. (See County of Sacramento v. Assessment Appeals Bd. No. 2, supra, 32 Cal. App. 654, 665-666; Ohrbach's, Inc. v. County of Los Angeles (1961) 190 Cal. App. 2d 575, 581.)

Since we have concluded that the machine in question is the subject of a true lease, it would follow that the bank, as the lessor, would be liable for the property taxes. Banks, however, pay a tax measured by their net income in lieu of certain other taxes, including ad valorem personal property taxes. (Cal. Const., art. XIII, § 27; §§ 23181-23182.)

Property taxes on the machine must therefore be assessed, if at all, against the hospital. As the lessee, the hospital has lawful possession of and a possessory interest in the machine. While possessory interests in personal property could be subject to tax, the Legislature has not so provided as they have with possessory interests in real property. The administrative burden of separating out and evaluating interests in personal property is thus avoided, and such property is taxed in California as a complete entity or not at all. (General Dynamics Corp. v. County of L.A. (1958) 51 Cal. 2d 59, 64-65; County of Sacramento v. Assessment Appeals Bd. No. 2., 32 supra, 32 Cal. App. 3d 654-665; Burhans v. County of Kern (1959) 170 Cal. App. 2d 218, 224-225.)

If the hospital is not subject to a property tax measured by the value of its possessory interest in the machine, the question becomes whether it might be "substituted" for the bank and be taxable on the entire value of the equipment. The argument is as follows: (1) the subject of the property tax is the property rather than the interests therein, (2) unlike other exemptions (see, e.g., Cal. Const., art. XIII § 3 (a), (d)), the bank's exemption does not exempt the property per se but rather only prevents the tax from being collected against the bank, (3) the bank's personal exemption is not transferable, and (4) property that is not taxable to one party may be taxable to another.

In the normal lessor-lessee relationship, the ultimate responsibility for the property tax depends upon the contractual agreement between the parties. (See Valley Fair Fashions, Inc. v. Valley Fair (1966) 245 Cal. App. 2d 614, 617; Keesling, Property Taxation of Limited Interests (1959) 47 Cal. L. Rev. 470, 476-477.) Besides usually being liable under the lease, as here, the lessee presumably bears the burden of the property tax through his rental payments even if he is not expressly obligated for the taxes under the terms of the lease. It may be argued, therefore, that the lessor's legal exemption from the tax should not affect that which is typically a responsibility of the lessee.

The statutory authority for assessing to the lessee of personal property the entire value of the property in his possession is found in section 405, the first two paragraphs of which are:

> "(a) Annually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date.

"(b) The assessor may assess all taxable property in his county on the unsecured roll jointly to both the lessee and lessor of such property."

While the language of section 405 is exceedingly broad, we must interpret it according to standard principals of statutory construction. The cardinal rule is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (Select Base Materials v. Board of Equal. (1959) 51 Cal. 2d 640, 645; accord, Cossack v. City of Los Angeles (1974) 11 Cal. 3d 726-732.) The obvious design of a statute should not be sacrificed to a literal interpretation of its language. (Cossack v. City of Los Angeles, supra, at p. 733; Rickie v. Tate Motors, Inc. (1971) 22 Cal. App. 3d 238, 243.) The various parts of a statute or other statutes relating to the same subject matter must be construed together and harmonized by considering the statutory framework as a whole. (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal. 3d 227, 230; Steilberg v. Lackner (1977) 69 Cal. App. 3d 780, 785.)

The California courts have reasonably construed section 405 and its predecessors by narrowing its seemingly broad language. (See General Dynamics Corp. v. County of L.A., supra, 51 Cal. 2d 59, 66; C. C. Moore & Co., Engineers v. Quinn (1957) 149 Cal. App. 2d 666, 670-671; Douglas Aircraft Co. v Byram (1943) 57 Cal. All. 2d 311, 316-317.) The statute has never been used to collect from the possessor or lessee of personal property that which could not be legally collected from the true owner or lessor because of an exemption from tax; rather it has been utilized to facilitate collection where the true owner was liable for the tax but unknown or inaccessible as a practical matter. (See S. & G. Gump Co. v. San Francisco (1941) 18 Cal. 2d 129, 131: RCA Photophone, Inc. v. Huffman (1935) 5 Cal. App. 2d 401, 407, disapproved on another point in T. M. Cobb Co. v. County of Los Angeles (1976) 16 Cal. 3d 606, 621: S. W. Straus & Co. v. Los Angeles Co. (1932) 128 Cal. App. 386, 390-391; Title Guaranty Etc. Co. v Los Angeles (1906) 3 Cal. App. 619, 621.)

Restricting the assessment of possessors or lessees of personal property to situations where the true owner is legally liable is consistent with the previously stated general scheme of personal property taxation and with section 611, 612, and 23182. Section 611 provides that if the name of an absent owner of personal property is known to the assessor, "the property shall be assessed to such owner." Harmonizing sections 405 and 611 requires the conclusion that the possessor or lessee should be assessed only where the true owner is liable but unknown or is illegally attempting to avoid the tax.

Section 612 provides that when a person is assessed as a bailee, his representative designation must "be added to his name, and the assessment entered separately from his individual assessment." Since a true lease is a bailment for hire, the lessee should be assessed under section 405 as the bailee of the property in accordance with section 612. Harmonizing the two statutes requires the conclusions that the lessee is liable for the tax in his representative capacity and his assessment is wholly dependent upon the lessor being legally obligated for the tax. (See General Dynamics Corp. v. County of L.A., supra, 51 Cal. 2d 59, 653.)

Moreover, the bank's exemption under section 23182 is unlike many other property tax exemptions in that the personal property tax is replaced by another type of tax. Because of this alternative taxing procedure, it cannot be claimed that the bank enjoys a competitive advantage in the leasing of personal property. Sections 405 and 23182 are

harmonized by concluding that the bank's exemption under the latter statute should be extended to its personal property in the hands of its lessees so as to avoid double taxation and promote the alternative taxing system established by the Legislature pursuant to constitutional authorization.

The conclusion that the bank's personal property is exempt even though it is in the possession and control of another party is supported by the administrative interpretation of the relevant statutes by the State Board of Equalization (Board). Pursuant to section 401.5, the Board has instructed county assessors that: "Personal property owned by a bank . . . is exempt regardless of its use." (Cal. Assessors' Handbook 503, p. 85 (Oct. 8, 1974).) This interpretation is entitled to great weight in ascertaining the meaning of the legislative enactments. (Culligan Water Conditioning v. State Bd. Of Equalization (1976) 17 Cal. App. 3d 86, 92-93; English v. County of Alameda, supra, 70 Cal. App. 3d 226, 240.)

Not only, however, is the hospital exempt from personal property taxes on the machine because of the bank's status as the true owner and the latter's exemption, but the hospital would be exempt even if it were deemed to be the true owner. While this conclusion supports the foregoing analysis of section 405, it is also applicable to finance leases or conditional sales agreements under which the hospital would be the true owner.

In California, property owned and operated by a hospital and used exclusively for hospital purposes is exempt from property taxes if certain requirements are met. (Cal. Const., art. XIII, §§ 4 (b), 5; § 214.) In the factual situation presented, the hospital and equipment meet all of the statutory requirements except, arguably, that of section 214 (6), which states as follows:

"The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes."

In virtually every true lease or conditional sales transaction, the property is subject to repossession by the lessor or seller "upon the liquidation, dissolution or abandonment of the" lessee or purchaser. If the lessor or seller is not a "fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes," it may be argued that section 214 (6) precludes allowance of a property tax exemption whenever a qualifying organization leases or conditionally purchases property from such an entity.

As with the interpretation of section 405, we must follow the applicable and controlling principles of statutory construction. First, we note that the general legislative purpose of section 214 is to provide for the well-being of the immediate beneficiaries of the institutions (in this case the hospital patients) and to benefit the public at large by reducing the burden of the state to care for and advance the interests of its citizens (English v. County of Alameda, supra, 70 Cal. App. 3d 226, 239-240; John Tennant Memorial Homes, Inc. v. City of Pacific Grove (1972) 27 Cal. App. 3d 372, 382.)

The specific purposes of section 214 (6) are to prevent the motivation of self-interest in the use of the exempt property and to prevent private persons from receiving the fruits of the property without duly having paid taxes on it. (Pacific Home v. County of Los Angeles (1953) 41 Cal. 2d 844, 852; Chestwood Ministry v. County of San Diego (1969) 271 Cal. App. 2d 805, 811; Comment, The California Welfare Exemption (1968) 41 So. Cal. L. Rev. 844, 847.)

The purposes of section 214 (6) can be effectuated without requiring that the property be frozen permanently and irrevocably in exempt usage of ownership. (Pasadena Hospital Assn. v. County of L.A. (1959) 35 Cal. 2d 779, 785-786; 8 Ops. Cal Atty. Gen. 72, 73 (1946); Cal. Assessor's Handbook 267, p. 22 (Dec. 7, 1977).) The inquiry by the California courts concerning compliance with subdivision (6) has centered on the powers of the organization in question, as defined in its articles of incorporation, to use the property solely for exempt activities. (See. E. g., Stockton Civic Theatre v. Board of Supervisors (1967) 66 Cal. 2d 13, 22-23; Pacific Home v. County of Los Angeles, supra, 41 Cal. 2d 844, 849; St. Francis Hosp. v. City & County of S.F. (1955) 137 Cal. App. 2d 321, 328-329; See also § 214.01.)

Here, the hospital's use of the machine is strictly limited to exempt activities under the provisions of its articles of incorporation. Were the machine returned to the bank under either a finance lease or conditional sales agreement, no "benefit" would inure to the bank since it would lose a corresponding amount of money. Because the bank would be exempt from property taxes in any event, none of the purposes of section 214 (6) would be contravened by the possible return of the machine to the bank.

To hold that a qualifying organization under section 214 is taxable on all property conditionally purchased by it because of the property's possible return to the seller would defeat the obvious intent of the statute without advancing any other public interest requiring a contrary interpretation. It is our conclusion, therefore, that property may comply with the requirements of section 214 (6) although returnable under a finance lease or conditional sales agreement to the seller.

In summary, a hospital that is qualified under section 214 is not subject to general property taxes measured by the value of hospital equipment "leased" to it by a bank since the bank is exempt from the tax under section 23182 and the hospital is exempt under section 214.

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