

Memorandum



To : Mr. Verne Walton

Date : March 3, 1983

From : Lawrence A. Augusta

Subject: Request for Legal Review and Response:
 (San Mateo County)

This is in response to your memorandum of January 13, 1983, requesting our opinion on whether Section 271 of the Revenue and Taxation Code applies to property leased by a church. You make reference to a conflict between paragraph (a)(1) and (a)(3) of Section 271. This issue was raised by Mr. James A. Bach, attorney for Iglesia Bautista Independiente in his letter to Bill Minor of December 14.

It has been our consistent position that Section 271 requires ownership of the property by the church, and the property in question would not be eligible for the church exemption for 1982-83. I see no conflict between paragraphs (a)(1) and (a)(3) of Section 271. Both paragraphs require ownership by the organization notwithstanding the issue raised about the meaning of the word "acquired."

Article XIII, Section 3(e) grants an exemption to property used exclusively for religious worship (the "church" exemption). Article XIII, Section 4(b) authorizes the Legislature to grant an exemption to property which is used exclusively for religious, hospital or charitable purposes and which is owned or held in trust by qualifying organizations (the "welfare" exemption). The Revenue and Taxation Code specifies procedures for claiming these exemptions.

Generally, the status of property for purposes of property taxation is determined as of the lien date. (Revenue and Taxation Code Section 405, Dodge v. Nevada National Bank, 109 F. 726, East Bay MUD v. Garrison, 191 Cal. 680.) Thus, property will be granted exemption for the forthcoming fiscal year if it meets the requirements for the exemption on the lien date. Section 271 provides an exception to this general rule. That section provides a procedure which permits a granting of the exemption when the property is acquired under three circumstances:

(1) When the property is acquired after the lien date but before the first day of the fiscal year, and the organization is otherwise fully qualified;

(2) When the property is acquired after the lien date but before the first day of the fiscal year, but the organization was not in existence on the lien date;

(3) When the property is acquired after the beginning of the fiscal year whether or not the organization was in existence on the lien.

Thus, the variations go to when the property was acquired and whether the organization was in existence, not to whether the property was owned or leased. The entire pattern of Section 271 reflects a requirement that there be ownership by the organization. Each subparagraph refers back to what would have been the status of the property had it been owned by the organization on the lien date.

There is nothing in the section to suggest that it applies to leases. Throughout the section the words "acquired" and "owned" are used. If the Legislature had intended to include leases, they would have specifically referred to leases. See, for example, Sections 206.1, 206.2, 214.6, and 215.5. In fact, case law, while not strictly on point, would indicate that once the status of leased property is determined on the lien date, the fact that it is later leased to an exempt entity does not change its taxability. See Ohrbach's Inc. v. County of Los Angeles (1961) 190 Cal. App. 2d 575 and Rothman v. County of Los Angeles (1961) 193 Cal.App. 2d 522.

There is a further reason we believe the provisions of Section 271 require ownership. There has never been any dispute that property exempt under the welfare exemption, Article XIII, Section 4(b) and Section 214 of the Revenue and Taxation Code, must be owned in order for it to qualify for exemption. Since 271 applies equally to welfare exemption and church exemption property, it cannot possibly refer to property that is merely leased.

There is another issue raised by Mr. Bach's letter which I believe requires comment. He refers to the fact that the exemption would be denied and that there would be a \$250 late filing penalty. There is no \$250 late filing penalty if an exemption is denied. If an exemption were granted, the amount of the exemption would be reduced by 10% of the taxes not to exceed \$250 as a reimbursement to the county for the cost of processing a late form. However, there is no penalty in the case of the Iglesia Bautista Independiente.

Payment of the property taxes where an exemption is not available is a matter to be determined by the lessor and lessee at the time the lease is entered into. Section 206.2 of the Revenue and Taxation Code provides that where an exemption is granted, the benefits of the property tax exemption shall inure to the benefit of the church either through a reduction in the rental payment or refund of such payments. It is not applicable if no exemption is granted.

A handwritten signature in cursive script, appearing to read "J. A. Roberts". The signature is written in black ink and is positioned to the right of the main text block.

LAA:jlh

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Ken McManigal
Mr. William Grommet
Mr. Peter Brautigam
Legal Section