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450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 322-6083
FAX (916) 323-3387
www.boe.ca.gov

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January 29, 2004

**Re: Revenue and Taxation Code section 202 –
Free Museum Exemption Use Requirement**

Dear Mr. :

This is in response to your December 9, 2003, letter to Ms. Mary Ann Alonzo, Senior Tax Counsel, wherein you inquired concerning the use requirement of Revenue and Taxation Code section 202(a)(2), the free museum exemption. As hereinafter indicated, for purposes of the exemption, “museum” means a building the predominant purpose of which is to house and display objects of lasting value. Although other uses are not precluded, the building must be primarily used as a museum. It would follow then, that “property used for free museums,” as used in section 202(a)(2), would encompass properties the predominant purpose of which is to support “museum(s)”, as defined.

For the reasons hereinafter set forth, in our view, the portion of the leased land upon which your client’s museum is located may or may not be eligible for the free museum exemption; the portion thereof used for parking is not eligible for the exemption. Of course, the free museum exemption is administered solely by county assessors, and it will be the county assessor of the county in which the property is located who will make the final determinations.

Facts

According to your letter, your client owns and operates a museum which has been found eligible for the welfare exemption (Revenue and Taxation Code section 214, et. seq.). As your client does not own the underlying land, it is seeking exemption of the leased land under Article XIII, section 3, subsection (d) of the California Constitution and Revenue and Taxation Code section 202(a)(2), the free museum exemption:

“... They leased the underlying ground and had parking on this land. The parking on this land was being used by the Museum and they provided an operator to collect monies for non-museum patron parking (e.g. the patrons of the museum and for whomever decided to park and pay).”

Analysis

Article XIII, section 1 of the California Constitution sets forth the general principles of property taxation in California. Those properties which are exempt from property taxation are enumerated, in large part, in Article XIII, section 3. Among exempted properties, subsection (d) of section 3 lists “[p]roperty used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.” Section 202(a)(2) is the implementing statute exempting “property used for libraries and museums that are free and open to the public.” Note that subsection (d) of section 3 and section 202(a)(2) exempt properties “used” for free libraries and free museums and, therefore, include properties leased and used for free libraries and free museums. While subsection (d) of section 3 and section 202(a)(2) exempt properties used for free libraries and free museums, in order to be eligible for the exemption, the properties must be so used on the lien date.

A. Property Used for Museums that are Free and Open to the Public

“Property used for museums that are free and open to the public” was construed by the Court of Appeal in *Fellowship of Friends v. Yuba County* (1991) 235 Cal. App. 3d 1190. In that case, a religious organization collected, as part of its beliefs, fine art and other artifacts at its academy on its rural “Renaissance” property. On deciding to open the collection to the public, the collection was displayed in designated rooms comprising approximately 60 percent of the total floor space but unsegregated from the rest of the academy. Other uses of the academy were for the living area of taxpayer’s founder, accommodations for security personnel, and activities, such as dinners, lectures, music recitals and weddings.

The academy was open two days a week, by appointment; limited advertising of the academy to the public as a museum existed; and no signs directed the public to the academy as a museum or were placed on the academy to identify it as a museum. Over three years, the collection attracted less than 300 public visitors per year.

Taxpayer claimed exemption for the portion of the academy housing the collection in those years as a free public museum pursuant to subsection (d) of section 3 and section 202(a)(3); and when the county denied its claims, it paid applicable taxes and filed a suit for refund. The trial court agreed that the exemption was inapplicable, holding that the taxpayer had failed to establish that the “predominant use” of the property was for public museum purposes.

On appeal, the Court of Appeal affirmed, holding that “museum,” as used in subsection (d) of section 3 of Article XIII, means a building the predominant purpose of which is to house and display objects of lasting value. That definition did not preclude other uses, but it required

use as a museum to be primary. Since evidence of taxpayer's limited hours, appointment policy, isolated location, and lack of publicity suggested only a limited use of the property as a museum, the exemption was inapplicable.

It would follow that "property used for ... free museum(s)"¹ as used in section 202(a)(2), would encompass properties the predominant purpose of which is to support "museum(s)", as defined.

B. Portion of Property Underlying Museum

Although the museum has been found eligible for the welfare exemption, for the portion of the property underlying the building to be eligible for the free museum exemption, the building itself would have to be eligible for/meet the requirements for the free museum exemption. That is, the building would have to be primarily used as a museum, and the museum would have to be free and open to the public on a regular basis. In such case, that portion of the property underlying the building also would be primarily used for the museum and hence, eligible for the free museum exemption. If the museum does not meet the requirements for the free museum exemption, the portion of the property underlying the building would not be eligible for the exemption.

C. Portion of Property Used as Parking Lot

Similarly, for this portion of the property to be eligible for the free museum exemption, the building itself would have to be eligible for/meet the requirements for the free museum exemption. In addition, this portion of the property would have to be primarily used for museum parking to be eligible for the exemption. We infer from your letter (operator in place to collect monies – park and pay parking) that this portion of the property is not primarily used for museum parking, but the county assessor would be able to make this determination. In addition, however, even if it were concluded that the building were eligible for/meets the requirements for the free museum exemption and that this portion of the property is primarily used for museum parking, this portion of the property would not be eligible for the free museum exemption because of the charges for parking thereupon. It has been our longstanding construction of the free museum exemption, as well as the free public library exemption, that no part of property or properties used for commercial purposes can be eligible for the exemptions.

Conclusion

The free museum exemption is administered solely by county assessors. Thus, it is the county assessor of the county in which the property is located who will make the final determination as to whether any portion of the leased land is eligible for the free museum exemption.

¹ Thus, the definition of "property used for ... free museum(s)" is separate and distinct from that of "property used exclusively for public schools, etc." (Revenue and Taxation Code section 202(a)(3)) and from that of "property used exclusively for religious, hospital, scientific, or charitable purposes, etc." (Revenue and Taxation Code section 214). (Emphasis Added.)

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board of Equalization based upon present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ James K. McManigal, Jr.

James K. McManigal, Jr.
Senior Tax Counsel

Enclosure

JKM;lg

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cc:

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70



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1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 445-4982

January 15, 1992

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No. 92/04

TO COUNTY ASSESSORS:

WELFARE EXEMPTION FOR MUSEUMS

A recent Third District Court of Appeal decision affirmed a Superior Court decision in the case of Fellowship of Friends, Inc. v. County of Yuba that property claimed to be exempt as a museum must be used primarily as a museum.

In this case, the claimant is a religious organization that owns approximately 1,400 acres of property known as "Renaissance" in Yuba County. As part of its beliefs, the organization collects fine art and other artifacts to preserve them for future generations and to change the viewer's emotional and spiritual state.

The art collection is housed on claimant's property in Yuba County in a building known as the Goethe Academy. The art objects are displayed in designated rooms on the first floor, comprising approximately 60 percent of the total floor space, but these rooms are not segregated from the rest of the Academy. The founder of the organization resided in a portion of the Academy, and the rooms he used as his living area were not part of the tour for museum visitors. The basement area also accommodated several other people who resided on the premises for indefinite periods of time and assisted in the maintenance and security of the property. While the Academy was closed to the general public, except in connection with the display of art works, many other Fellowship activities took place there and on the grounds, including group dinners, lectures, concerts, music recitals, and weddings.

Initially, because of security concerns and limited personnel, claimant required visitors to make appointments in order to visit the Academy during open hours, although staff attempted to accommodate drop-in visitors. During the first year for which the exemption was claimed, the museum was open to the public two days a week by appointment only. During the second and third years, the appointment only policy was discontinued, but the museum remained closed to the public five days out of the week.

Claimant advertised the art display in a local quarterly publication, prepared a video of the "museum," published two articles in an international art magazine, and placed a listing in the Yellow Pages under "Museums." There were no signs directing the public to the "museum" and no signs on the building itself to identify it as a museum.

Records presented to the trial court indicate the Academy's art display attracted approximately 300 guests per year, of which 60 percent were Fellowship members the first year, 20 percent of visitors were members in the second year, and 7 percent were members in the third year.

The claimant asserted the primary use of the property is as a public museum/religious academy with the incidental use as a parsonage. The claimant requested the exemption for about 63 percent of the Academy, or the portion open to the general public, plus 100 percent of the approximately 3.1 acre parcel on which the Academy is located which showcases a rose garden that is also open to the public.

The trial court found that the use of the Academy for purposes other than a museum did not preclude award of the exemption, nor did the other uses interfere with the property's use as a museum. However, the trial court found that the property was not used principally as a museum and the exemption must be denied.

The claimant argued that the trial court erred in construing the term "museum" to require the property use be "primarily" or "predominantly" as a museum. The appellate court agreed with the trial court that ". . . a museum is a building whose 'predominant purpose' is to house and display objects of lasting value. Property used 'for a museum' must be used primarily to house and display objects of lasting value. This does not preclude other uses, but requires the use as a museum to be primary."

Furthermore, a museum is not a property that merely warehouses works of art; a museum exhibits the works. ". . . as between the function of a museum as a repository and its display function, clearly the latter is of paramount importance for purposes of the exemption."

In summary, a museum is a place specifically designated for the display and storage of artifacts or objects of art that is open to the public during its normal operating hours, and the public is aware that such is the use of the property. The predominant use of the property is as a museum, although other uses are permitted. And, finally, the display of the art objects is more important than the storage function since the purpose of the exemption is to encourage the display of art and other items of value to the public.

TO COUNTY ASSESSORS

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January 15, 1992

If you have any questions, please contact our Exemptions Unit at (916) 445-4982.

Sincerely,

A handwritten signature in cursive script that reads "Verne Walton".

Verne Walton, Chief
Assessment Standards Division

VW:eh
AL-33-0270S