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November 2, 2001

JAMES E. SPEED
Executive Director

Honorable Raymond Jerland
Humboldt County Assessor
825 5th Street
Eureka, CA 95501

Attn: Ms. Lori McCrigler
Senior Auditor-Appraiser

**Re: *Business Property Assessment - Homeowners' Exemption
Personal Effects and Household Furnishings Exemption***

Dear Mr. Jerland:

This is in response to your September 26, 2001, letter to Mr. Larry Augusta wherein you advised that your office was in the process of removing a homeowners' exemption from a summer vacation home that has been rented from early June to early September each year, and you requested our opinion as to the assessability of the furnishings/business property therein and the rationale therefor. For the reasons hereinafter set forth, in our view, the furnishings/business property is assessable under general assessment provisions and is not exempt from property taxation pursuant to Revenue and Taxation Code section 224, Personal Effects and Household Furnishings, since that section specifically states that "personal effects, household furnishings, and pets," which are exempted by the section, do not include, among other things, "personalty held or used in connection with a trade, profession or business."

Analysis

Article XIII, section 1 of the California Constitution states that unless otherwise provided by this Constitution or the laws of the United States, (a) all property is taxable and shall be

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assessed at the same percentage of fair market value. Revenue and Taxation Code section 201 similarly states that all property in the State, not exempt under the laws of the United States or of this State, is subject to taxation under this code. Thus, unless an exemption from property taxation exists that applies to furnishings/business property of the kind concerning which you inquired, the furnishings/business property is assessable and taxable.

Revenue and Taxation Code section 224 provides a limited exemption for household furnishings:

"The personal effects, household furnishings, and pets of any person shall be exempt from taxation."

As the exemption is for property for a person's personal and household uses, it does not include property used for trade or business purposes, including furnishings used in vacation rental homes. This is specifically stated in the second paragraph of section 224, which provides that the phrase "personal effects, household furnishings and pets" does not include, among other things, "personally held or used in connection with a trade, profession or business." Accordingly, section 224 does not exempt the furnishings/business property from taxation.

Neither are we aware of any other statute or of any case law which would preclude assessment and taxation of the furnishings/business property under the circumstances. Thus, the property is subject to assessment and taxation under Article XIII, section 1 and section 201.

Had section 224 merely provided that "the personal effects, household furnishings, and pets of any person shall be exempt from taxation", we could conclude that the property remained eligible for the exemption because its primary use was for the homeowners' personal and household uses. Such a conclusion would be based upon Fellowship of Friends, Inc. v Yuba County (1991) 235 Cal. App. 3d 1190, wherein the court of appeal construed Article 3, section 3(d) of the California Constitution and Revenue and Taxation Code section 202, subdivision (a)(2), the free museum exemption: "museums that are free and open to the public." The court held that for purposes of the exemption, the term "museum" meant a building the predominant purpose of which is to house and display objects of lasting value, although other uses are not precluded, as long as the building is primarily used as a museum. Unlike section 224, which has a prohibition for use of "personalty held or used in connection with a trade, profession or business," however, section 202, subdivision (a)(2) did not and does not have a prohibition against use of a property for other than a museum. A copy of the court's decision is enclosed for your information and review.

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

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Very truly yours,

/s/ James K. McManigal, Jr.

James K. McManigal, Jr.
Tax Counsel IV

Enclosures

JKM:lg
Precedent/GenExemp/01/18jkm.doc

cc: Mr. David Gau, MIC:64
Mr. Lloyd Allred, MIC:64
Ms. Jennifer Willis, MIC:70