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Executive Secretary

September 16, 1987

Honorable Robert Shellenberger
San Joaquin County Assessor
24 South Hunter Street Stockton, CA 95202

Attention: David Leonard, Chief
Assessment Standards Division

Dear Mr. Leonard:

This is in response to your letter of August 28, 1987, requesting advice on the proper interpretation of Health and Safety Code section 1523. You asked whether section 1523 prevents the property tax assessment of personal property used in a licensed community care facility serving six or fewer persons.

Section 1523 was first enacted by Chapter 1203 of the Statutes of 1973 as part of the California Community Care Facilities Act which provided for the licensure and regulation of certain defined types of care facilities. As part of the regulatory scheme, the operation of a community care facility is prohibited unless it is licensed in accordance with the provisions of the act. (Health and Safety Code section 1508)

As originally enacted by Chapter 1203, section 1523 required the payment of a fee for the license. The fee provisions of section 1523 have been amended a number of times. Although the version of the section as amended by Chapter 91 of the Statutes of 1978 provides for no fee, the most recent version, as amended by Chapters 1016 and 1120 of the Statutes of 1986 provides a schedule of fees depending upon the type and capacity of the facility. As originally enacted by Chapter 1203, section 1523 has contained language prohibiting the imposition by a local jurisdiction of "any business license, fee, or tax <u>for the privilege of operating</u> a facility licensed under this chapter which serves six or fewer persons". (<u>Emphasis added</u>) In its most recent form, section 1523 includes this prohibitory language in subdivision (a) of the section, dealing with the imposition of a fee for the issuance or renewal of a license.

Another portion of the California Community Care Facilities Act, which as added by Chapter 891 of the Statutes of 1978, deals with local regulation of residential care facilities. These provisions include section 1566.2 which contains a similar, but not identical, prohibition against local fees or taxes, etc. imposed upon residential facilities which serve six

or fewer persons. The section 1566.2 prohibition contains a specific exception for local property taxes, however. Attached for your information is a copy of a recent letter to the Shasta County assessor determining that section 1566.2 does not prevent the assessment of property taxes on either real or personal property used in the operation of a community care facility serving six or fewer persons.

We conclude that like section 1566.2, the prohibition in section 1523 against local licenses, fees or taxes for the privilege of operating a facility is not applicable to taxes imposed upon either real or personal property pursuant to section 1 of article XIII of the California Constitution or the provisions of Division 1 of the Revenue and Taxation Code. At the outset we note the statutory connection between the provisions of subdivision (a) of section 1523, as amended in 1986, which both impose residential facility license fees as a condition for licensure and prohibit similar local charges made for the privilege of operating a licensed facility. This arrangement of the Code indicates a legislative intent to occupy the field in this area. Having imposed a state fee for the privilege of operating the facility, the Legislature has indicated its intent to limit such fees to the state level and to not permit local government to impose similar charges whether they be designated a business license, a fee, or a tax.

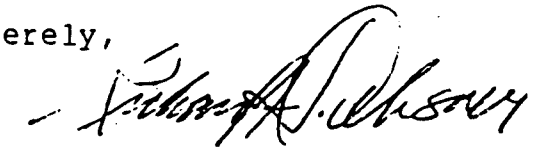
It is also apparent that property taxes imposed pursuant to section 1 of article XIII of the California Constitution and the provisions of Division 1 of the Revenue and Taxation Code are not taxes imposed for the privilege of engaging in specified types of conduct. Rather these provisions impose a general tax on all property according to value. As discussed in the attached letter, section 1 of article XIII provides that all property is taxable and shall be assessed at the same percentage of fair market value. Further, it provides that all property so assessed shall be taxed in proportion to its value. The California courts have recognized that the provisions of section 1 are self executing. In General Dynamics Corp. v. County of San Diego (1980) 180 Cal.App.3d 132, 137, the court stated that although the mechanics of property taxation are embodied in the enabling legislation, the fundamentals of equal taxation at full value are mandated by this provision of the constitution. The county assessor's power and duty not to allow anyone to escape a just and equal assessment is derived directly from these provisions. This power is enforceable even without the enactment of the statutory authorizations found in Division 1 of the Revenue and Taxation Code. It is apparent that the tax on real and personal property mandated by the provisions of section 1 are not license fees or other charges predicated on the privilege

of engaging in business or other gainful activity. Thus, the Legislature did not intend to include them within the prohibition set forth in section 1523.

The Legislature's intent may be also derived from an examination of section 1566.2 which expressly recognizes the propriety of the application of local property taxes to residential facilities serving six or fewer persons. It is apparent that the Legislature understood that such residential facilities are, in fact, subject to local property taxation. This supports the conclusion that the Legislature did not intend the section 1523 prohibition against local privilege taxes to apply to property taxes. Otherwise, there would have been no need to refer to local property taxes in section 1566.2. Further, when the Legislature enacted section 1523, it understood that the narrow reference to a local business license, fee or tax for the privilege of operating a licensed facility was too narrow to include local property taxes. When it added section 1566.2, some five years later, however, the Legislature recognized that the broader prohibition against any business taxes, etc., could be given a wider interpretation and it was appropriate, therefore, to clarify its intent by specifically explaining that the property remained subject to local property taxes. For these and the other reasons discussed above, we conclude that the section 1523 prohibition does not apply to local property taxes assessed pursuant to section 1 of article XIII of the California Constitution and the related provisions of Division 1 of the Revenue and Taxation Code.

I hope you will find the foregoing analysis helpful. Please call me if I can be of further assistance. For your information, I understand that the Department of Social Services has advise Ms. Carillo that it is not able to express an opinion on the question discussed above.

Sincerely,



Richard H. Ochsner
Assistant Chief Counsel

RHO/rz
Attachment
cc: Honorable Virginia A. Loftus w/att.
Shasta County Assessor
Ms. Suzanna Halfon w/att.
Department of Social Services
Mr. Gordon P. Adelman w/att.
Mr. Robert Gustafson w/att.
Mr. Verne Walton w/att.
0978H

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Executive Secretary

August 21, 1987

Dear Virginia:

This is in response to your telephone request for advice regarding the effect of Health and Safety Code section 1566.2 on county taxes imposed as a result of your assessment of tangible personal property.

As added by Chapter 891 of the Statutes of 1978, section 1566.2 provides:

> "A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject. Nothing in this section shall be constructed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1566.3, local bond assessments, and other fees, charges, and assessments to which other single-family dwellings are likewise subject. Neither the State Fire Marshall nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to State law or regulation or local ordinance, with respect to residential facilities which serve six or fewer persons." (Emphasis added.)

Section 1566.2 is part of article 7 (commencing with section 1566) dealing with local regulation of residential care facilities. Section 1566 declares the policy of the Legislature to encourage the development of needed residential care facilities. The purpose of section 1566.2 is apparently to avoid the imposition on residential care facilities of discriminatory business taxes, fees or charges with are not applicable to other single-family dwellings. The language of the section makes it clear, however, that this prohibition does

not prevent the imposition of local ad valorem property taxes and other normal fees necessary to support the governmental services provided to the residential care facility. The question presented is whether county taxes arising from the assessment of tangible personal property fall within the term "local property taxes" for purposes of section 1566.2. We conclude that they do.

We presume that there is no question that the county taxes imposed on real property fall within the reference to "local property taxes" found in section 1566.2. If that is the case, then it should be recognized that ad valorem county taxes are imposed upon both real and personal property pursuant to the same provisions of the California Constitution and the Revenue and Taxation Code. For example, section 1 of article XIII of the California Constitution states that, unless otherwise provided, all property is taxable and shall be assessed at the same percentage of fair market value and taxed in proportion to its value. Section 2 of article XIII makes specific reference to personal tangible property and grants the Legislature express authority to provide for its taxation, classification or exemption. Section 3 of article XIII contains a list of exemptions from property taxation. Included in the list are specific references to buildings and land (subdivisions (e) and (f)) as well as references to personal property, such as household furnishings and personal effects not held or used in connection with a trade, profession or business, (subdivision (m).) Thus, it is clear that the constitutional provisions for the ad valorem taxation of property in California encompass both real and tangible personal property in a single tax system.

This pattern is also reflected in Division 1 of the Revenue and Taxation Code (commencing at section 50) which contains the statutory provisions relating to the taxation of property. For purposes of Division 1, "property" is defined as "all matters and things, real, personal, and mixed, capable of private ownership." (Section 103.)

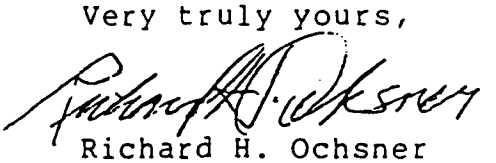
Section 201 of the Revenue and Taxation Code provides, in effect, that all property not otherwise exempt is subject to taxation under the code. As defined in section 103, this means that all "property," including both real and personal property, are subject to taxation. Following section 201 is a long series of sections exempting various specifically described types of property. In some cases, the exemptions apply to real property and in others they apply to personal property. Others apply to both real and personal property. These exemptions also demonstrate that the local ad valorem property tax is a single tax system which applies to both types of property.

Finally, section 405 mandates that the assessor annually assess "all taxable property" in the county, except State- assessed property. Again, the definition in section 103 makes it clear that the reference to "property" applies to both real and personal property. Further, the California Supreme Court has long recognized that this section applies to both real and personal property. See Sherman v. Quinn (1948) 31 Cal.2d 661 at 664.

The provisions cited above make it clear that for purposes of the California Constitution and Division 1 of the Revenue and Taxation Code, there is one ad valorem property tax system which applies to both real and personal property. For this reason, we conclude that the reference to "local property taxes" in Health and Safety Code section 1566.2 includes both taxes imposed upon personal property as well as taxes imposed upon real property.

I hope you will find the foregoing analysis helpful. Please call me if I can be of further assistance.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
0658D

cc:

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CINDY RAMBO
Executive Director

August 1, 1989

No. 89/58

TO COUNTY ASSESSORS:

ASSESSMENT OF PERSONAL PROPERTY IN RESIDENTIAL FACILITIES

Section 1566 of the Health and Safety Code declares the policy of the Legislature to encourage the development of needed residential care facilities and deals with local regulation thereof.

Section 1566.2, a part of Article 7 (starting with Section 1566) provides:

> "A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1566.3, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshall nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to State law or regulation or local ordinance, with respect to residential facilities which serve six or fewer persons."

For the purposes of this section, "family dwellings," includes, but is not limited to, single-family dwellings, units in multi-family dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

Recently, we became aware that while real property assessments of these facilities are routinely enrolled, some county assessors are exempting the personal property as household furnishings under Section 224 of the Revenue and Taxation Code.

Ad valorem taxes are imposed upon both real and personal property pursuant to the same provisions of the California Constitution and the Revenue and Taxation Code. As noted above, Section 1566.2 reads, "Nothing in this Section shall be construed to forbid the imposition of local property taxes." Therefore, while the personal possessions of the tenants are exempt under Section 224, the personal property of the owner or operator of the facility should be reported and assessed in the same manner as other business organizations in the state.

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

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
AL-28-0072E

STATE OF CALIFORNIA

630.0001

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JOHN CHIANG
State Controller

KRISTINE CAZADD
Executive Director

March 12, 2012

Mr.

Re: Request for Legal Opinion – Assessment of Small Residential Care Facility
Assignment No.: 11-300

Dear Mr. :

This is in response to your November 11, 2011, letter wherein you inquired further concerning the assessment of a residential care facility's (RCFE) business personal property and levy of business personal property taxes thereupon. You stated that you run a six-bed care facility in County and believe that your RCFE should be exempt from business personal property taxes pursuant to Health and Safety Code sections 1566.2 and 1566.3. For the reasons stated below, we disagree and continue to believe that such facilities are subject to business personal property taxes.[1]

Legal Analysis

Health and Safety Code sections 1566.2 and 1566.3 are found in Division 2, Licensing Provisions, Chapter 3, California Community Care Facilities Act, Article 7, Local Regulation.

Section 1566.2 states in relevant part:

> A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by section 1566.3, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject.

Section 1566.3, subdivision (a) states in relevant part:

[1] We understand that you have an appeal pending before the County Assessment Appeals Board. We contacted , Auditor Personal Property Supervisor in the County Assessor's Office, who indicated that their office had no further information to add.

> Whether or not unrelated persons are living together, a residential facility that serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

You argue that section 1566.2 applies only to local real property taxes, and does not apply to business property taxes since residences do not pay business property taxes. You also argue that section 1566.3 defines an RCFE as a residence for all purposes.

As you know, Board's staff's interpretation of section 1566.2's prohibition against certain taxes and fees upon residential facilities serving six or fewer persons has been that it does not extend to imposition of local property taxes.[2] You argue that "local property taxes" means only local *real* property taxes. As explained in the backup letters to Annotation 630.001 (copies of which were previously sent to you) in our view, local property taxes are taxes imposed upon both real and personal property pursuant to provisions of the California Constitution and the Revenue and Taxation Code.[3] As well, we refer you to the California State Legislature's Revenue and Taxation Reference Book 2010 (August 2010) wherein the property tax base is described as consisting of both real and tangible personal property.[4]

Turning to section 1566.3, subdivision (a), as indicated, the section and subdivision are found in Article 7, Local Regulation, of Chapter 3, California Community Care Facilities Act. The provisions in Article 7 generally pertain to the types of local regulation which may or may not be imposed upon the described care facilities. Section 1566.3 refers to laws, zoning ordinances, local ordinances, conditional use permits, etc. dealing with health and safety, building standards, environmental impact standards, etc. Nothing in the section, including subdivision (a), refers to taxes. Further, the specific language in subdivision (a) upon which you rely is, by its own terms, limited to laws and zoning ordinances relating to the residential use of property pursuant to Article 7.[5] Thus, while a residential care facility cannot be considered a business run for profit for purposes of regulatory local ordinances, section 1566.3, subdivision (a) does not support the conclusion that such a facility cannot be considered a business for purposes of taxation, including property taxation.[6]

Further with respect to the taxation of personal property, including business personal property, Article XIII, section 2 of the California Constitution provides the Legislature with the power to provide for the taxation of all forms of tangible personal property and to clarify such personal property for differential taxation or for exemption. As to the latter, the Legislature has exempted business inventories and personal effects and household furnishings among others (See Rev. & Tax. Code §§ 219 and 224).[7] These provisions demonstrate that when the Legislature intends to exempt a specific type of property from local property taxation, it is able to do so in

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[2] This was explained in a November 7, 2011, letter to you which attached copies of August 21, 1987, and September 16, 1987, Letters (Annotation No. 630.0001), and a December 4, 2000, Letter (Annotation No. 515.0010).

[3] Division 1 of the Code.

[4] Copies of Section 4 and Section 12 thereof are enclosed for your review.

[5] Thus, it is not applicable to construction, application, etc. of other articles in Chapter 3, to other Health and Safety Code Chapters, or to other California Codes, including the Revenue and Taxation Code.

[6] While Article 7 has been amended over the years, section 1566.3 continues to omit any reference to taxes and to limit its application to Article 7.

[7] Division 1, Part 2, Chapter 1, Article 1 of the Code.

clear and express terms. Even though there have been many amendments to Article 1 of the Code and even several to section 224 itself since section 224 was added to the Code in 1968, there is no exemption from local property taxation for business personal properties of residential care facilities. To the contrary, section 224 continues to provide that "personal effects, household furnishings, and pets" does not include personalty held or used in connection with a business.[8] In sum, we conclude that nothing in section 1566.3, subdivision (a) prevents the imposition of local property taxes pursuant to Division 1 of the Revenue and Taxation Code with respect to business personal property of a RCFE.

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. Therefore, they are not binding on any office, or any person or public entity.

Sincerely,

/s/ J. K. Mcmanigal, Jr.

J.K. McManigal, Jr.
Senior Tax Counsel

JKM:yg
J:/Prop/Prec/Personal Prop/2012/11-300.doc

Enclosure

cc: Honorable
County Clerk, Recorder, and Assessor

Ms.
Auditor Personal Property Supervisor

Mr. David Gau (MIC:63)
Mr. Dean Kinnee (MIC:64)
Mr. Mike Harris (MIC:64)
Ms. Ladeena Ford (MIC:64)
Mr. Todd Gilman (MIC:70)

[8] Our understanding has been that persons operating residential care facilities claim depreciation, expenses, etc. for income tax purposes. Unless such facilities are considered businesses, such persons would not be able to do so.