880.0072

880.0072 **Co-ownership.** Real property transferred by will to a welfare organization and a college as joint owners is not eligible for the welfare exemption or the college exemption. Both of these exemptions are exclusive use exemptions; ownership alone is not sufficient. While the welfare exemption does require ownership, it also requires use for exempt purposes and activities and may not be applied in a manner that would result in enlarging the college exemption. C 10/29/86.

916/323-7715

October 29, 1986

Mr. R
Tax Co
Room 1
San Fr

Dear :

This is in response to your October 14, 1986, letter to Mr. Richard H. Ochsner wherein you inquired concerning the availability of the college exemption and welfare exemption from property taxation under the following circumstances:

> The decedent died in Monterey County on July 8, 1981, leaving a will and an estate that included a parcel of improved real estate in San Francisco County. Unfortunately, her executor failed to notify the San Francisco County Assessor of the change in ownership thereof because of her death. The terms of the will made specific bequests of money to named individuals and gave the residue of the estate to Mills College in Alameda County and to the Monterey County Society for the Prevention of Cruelty to Animals in equal 50 percent shares. The executor conducted a public sale and sold the San Francisco real estate in August of 1983, and the purchaser recorded his deed in September of 1983. The recordation of that deed was the first notice to the San Francisco County Assessor that the property had changed ownership.
>
> Assessments were made against the decedent's estate for the years 1982 and 1983 and enrolled on the unsecured roll for 1984, but by the time the assessments were transferred to the Tax Collector and the taxes billed, the estate had been closed. The San Francisco County Assessor then corrected the roll to name Mills College and Monterey County Society for the Prevention of Cruelty to Animals, the beneficiaries under the will, as the assessees, and the Tax Collector billed them for the taxes.

Per your letter, Mills College contends that it is entitled to the college exemption (Revenue and Taxation Code section 203) and Monterey County SPCA contends that it is entitled to the welfare exemption (Revenue and Taxation Code section 214). They assert that at the instant of the decedent's death, her

Equal Act

interest in the property devolved to them, tax-exempt entities, subject only to temporary possession by the executor for purposes of administration. Therefore, no tax is due by virtue of the aforementioned exemption statutes.

We agree that upon the decedent's death in 1981, her interest in the property passed to Mills College and to Monterey County SPCA at that time for change in ownership purposes. See Property Tax Rule No. 462(n)(3), copy enclosed. We do not agree that the taxes billed to Mills College and to Monterey County SPCA are not owing merely because of Section 203 and Section 214, however.

Article XIII, Section 3(e) of the California Constitution, the "college exemption," provides that property <u>used</u> exclusively for educational purposes by a nonprofit institution of higher education is exempt from property taxation. Section 203 provides that the college exemption is as specified in Article XIII, Section 3(e) and defines "educational institution of collegiate grade."

Article XIII, Section 4(b) thereof, the "welfare exemption," provides that the Legislature may exempt from property taxation property <u>used</u> exclusively for religious, hospital, or charitable purposes <u>and</u> <u>owned</u> or held in trust by corporations or other entities that are organized and operated for those purposes, etc. This the Legislature has done by enacting Revenue and Taxation Code sections 214 and following, which sections exempt only property used exclusively for religious, hospital, scientific or charitable purposes.

As can be seen, both the college exemption (totally) and the welfare exemption (in part) are use exemptions; that is, for property to be eligible for the college exemption it must be used exclusively for educational purposes by a nonprofit institution of higher education, and for property to be eligible for the welfare exemption it must be used exclusively for religious, hospital, scientific or charitable purposes. Thus, property merely owned by a college, by a charitable corporation, or by a college and a charitable corporation is not exempt from property taxation.

Accordingly, unless the property was actually used by Mills College and/or another college exclusively for educational purposes of collegiate grade for the years 1982 and/or 1983, the property was not eligible for the college exemption. If the property were actually used by Mills College and/or another college exclusively for educational purposes of collegiate grade, that portion of the property so used or the entire property, if so used, could be eligible for the college exemption for the corresponding year or years since only exclusive use, not such use and ownership of property, is

required for that exemption. Of course, a claim or claims for the college exemption would have to be filed in San Francisco County, and all the requirements for exemption would have to be met for the exemption to be granted to the property.

If the property were used by both Mills College and/or another college and by Monterey County SPCA jointly for the years 1982 and/or 1983, the property was not eligible for the college exemption of for the welfare exemption. This is because use of the property by Monterey County SPCA would preclude exclusive use of the property for educational purposes of collegiate grade, as Section 203 requires, and because use of the property by Mills College and/or another college would preclude exclusive use of the property for religious, hospital, scientific or charitable purposes, as Section 214 requires.

If the property were used only by Monterey County SPCA for the years 1982 and/or 1983, the property was still not eligible for the welfare exemption. This is because the welfare exemption is both an ownership and a use exemption, that is, in addition to requiring that property be used exclusively for religious, hospital, scientific or charitable purposes, Article XIII, Section 4(b) and Section 214, require that property be owned and operated by organizations organized and operated for religious, hospital, scientific or charitable purposes. A college is typically organized and operated for educational purposes of collegiate grade, not for religious, hospital, scientific or charitable purposes. Additionally, Section 214 specifically states that the section shall not be construed to enlarge the college exemption. Such would be the result, however, were a nonprofit institution of higher education, allowing other organizations which were not colleges to use its property such that its property was not eligible for the college exemption, to have its property considered eligible for the welfare exemption. Thus, for this reason also, when owned by Mills College and by Monterey County SPCA, the property was not eligible for the welfare exemption.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM/rz
Enclosure
cc: Mr. Richard H. Ochsner
bc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton
Mr. William L. Grommet
Legal
0245H