STATE OF CALIFORNIA

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Executive Director

February 6, 1998

[illegible]

[illegible]

Dear [illegible]

This is in response to your letter dated May 2, 1997 to Assistant Chief Counsel Larry Augusta of the State Board of Equalization concerning a possible partial property tax exemption for taxable possessory interests in property owned by the Novato Financing Authority, the Marin Valley Mobile Country Club mobilehome park in Novato, California. You have requested our opinion as to whether Revenue and Taxation Code section 214 would provide a partial exemption from property taxes on any taxable possessory interests in that mobilehome park in light of the ownership/management/occupant structure you relate; whether or not it would make any difference if the park property were leased to the nonprofit entity (PAC) you represent rather than having the management responsibilities delegated to it; and whether the exemption provided for in Revenue and Taxation Code section 236 is applicable in a situation where some of the residents are not low income, but are of moderate and above-moderate income. Our apologies for the delay in our response.

As is set forth in more detail below, we conclude that the welfare exemption provided by Section 214, subdivision (g) is not made unavailable by virtue of the fact that the nonprofit entity that you represent is not the fee simple owner of the park in question; however, as an operator of the park property by virtue of the Delegation Agreement, PAC, as a mutual benefit corporation, would not be a qualifying nonprofit corporation for purposes of Section 214 and hence, its taxable possessory interest in the property would not be exempt. We further are of the opinion that if the property were leased to PAC, as opposed to having the management responsibilities delegated to it, PAC would in all likelihood be the operator of the property and its taxable possessory interest in the property would still not be exempt. Finally, it is our opinion that the exemption provided for in Section 236 would not be applicable if some of the residents in the property are not of low income.

You state that you represent the Park Acquisition Corporation of Marin Valley ("PAC"), a non-profit corporation whose members are the residents of the mobilehome park. You advise that:

The ownership/management structure of the park is as follows:

> The Novato Financing Authority ("NFA"), a joint powers authority of the City of Novato and the Redevelopment Agency of the City of Novato, acquired the park in March of 1997. The funds for the purchase were provided from two bond issues. The Redevelopment Agency is pledging $130,000 per year to act as security for the subordinate bonds. In return for its pledge, the Redevelopment Agency has required the execution of a Housing Assistance Pledge Agreement that sets forth certain affordability requirements applicable to the operation of the mobilehome park. The Housing Assistance Pledge Agreement is a deed restriction as described in Section 214(g)(2)(A) and the funds that might be necessary to pay property taxes will, if possible, be used to maintain the affordability of, or reduce the rents otherwise necessary for, the units occupied by lower income households as defined in Section 50079.5 of the Health and Safety Code.
>
> The NFA has entered into a Delegation Agreement with the PAC wherein the PAC hires the manager and oversees the day to day operations, subject to review and approval by the NFA. (See attached.)
>
> The leases for the mobilehome spaces are between the residents and the management company, which is hired by the PAC pursuant to the Delegation Agreement. (See attached.)

The occupants of the park are primarily very low and lower income residents with a few in the moderate and above ranges. The park is limited to residents who are 55 years in age or older.

Your first question is whether Section 214 provides a partial exemption from property taxes in light of the above facts, and in particular does the above structure meet the "owned and operated by" requirement of that section.

As you know, subdivision (g) of section 214 provides in part:

> Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, ... meeting all of the requirements of this section, ... shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which any of the [stated] criteria are applicable...

When presented with situations such as that described by you, in which the fee ownership of the property is in government rather than in the non-profit entity operating the property, the Courts have rejected the "contention that the term 'owned' as used in section 214 is limited in meaning to ownership of a fee simple to the exclusion of a possessory interest." *Tri-Cities Children's Center, Inc. v. Board of Supervisors* (1985) 166 Cal.App.3d 589, 592-93. The *Tri-Cities* Court went on to conclude that "Construing the term 'owned' to include a possessory interest is consistent with the legislative intent behind section 214, especially when the leased property is used exclusively for charitable purposes." *Id.* at 593 (footnote omitted).

Therefore, to the extent that a qualifying nonprofit corporation owns a possessory interest in government property at which it operates rental housing otherwise qualified as set forth in subdivision (g) of Section 214, it will have met the "owned and operated" requirement contained therein. Moreover, to the extent that property is exempt from property taxation under the provisions of this section as to a qualifying nonprofit corporation, it is our opinion that the possessory interests of the residents who actually occupy the property would not be assessable. *English v. County of Alameda* (1977) 70 Cal.App.3d 226.[1]

As you know, however, the requirements of Section 214, subdivisions (a) and (g) are multiple, concerning both the operation and use of the property as well as the characteristics of the operator claimant. Unfortunately, mutual benefit corporations are not qualifying nonprofit corporations that meet the requirements for exemption.

A review of the Delegation Agreement between PAC and the Novato Financing Authority, which you enclosed with your letter, indicates that PAC is a non-profit *mutual benefit* corporation. Your letter states that PAC's members are residents of the mobilehome park. Mutual benefit corporations (Corp. Code §§ 5110 et seq), as opposed to non-profit *public benefit* corporations (Corp. Code §§ 7110 et seq.), do not meet the requirements of a corporation "organized and operated for religious, hospital, scientific, or charitable purposes" for purposes of Section 214. Such corporations are formed principally for the mutual benefit of their members (fraternal organizations, tennis clubs) or for the mutual benefit of all those engaging in a particular type of business (trade associations) or activity (automobile clubs) and run afoul of organizational requirements for the exemption. Section 214, subds. (a), (a)(2) and (a)(4). Importantly also, "a corporation all of the assets of which are irrevocably

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[1] We have assumed for purposes of this opinion that PAC has a possessory interest in the property by virtue of the Delegation Agreement. This is not necessarily so. Under an arrangement where the management responsibilities are merely delegated to the PAC, and the PAC then, essentially, hires a manager, there is the possibility that the PAC and the manager could be the agents of the NFA, and thus not the owners of a possessory interest. Rev. & Tax Code § 107, subd. (a)(1); *Scott-Free River Expeditions, Inc. v. County of El Dorado* (1988) 203 Cal.App.3d 896, 911. This is so even though the agreements characterize the relationship as that of "independent contractors." *City of Los Angeles v. Meyers Bros. Parking System, Inc.* (1975) 54 Cal.App.3d 135, 138. However, we note that the Delegation Agreement specifically provides that the Agreement does not constitute, and the parties do not intend it to create, the relationship of principal and agent.

If it were determined that the PAC and the property manager were the agents of NFA, the effect would be that the occupants of the park are leasing spaces directly from the NFA, and, of course, would themselves own possessory interests which are potentially taxable. As there would be no owner meeting the requirements of Section 214 under this circumstance, the exemption provided for in that section would not be applicable to those possessory interests.

dedicated to charitable, religious, or public purposes and which as a matter of law or according to its articles or bylaws must, upon dissolution, distribute its assets to a person or persons carrying on a charitable, religious, or public purpose or purposes may not be formed under [the Nonprofit Mutual Benefit Corporation Law]."Corp. Code § 7111. Thus, neither does a mutual benefit corporation meet the requirements of subdivision (a)(6) of Section 214:

> (6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

Thus, as an operator of the park property by virtue of the Delegation Agreement, PAC would not be a qualifying nonprofit corporation for purposes of Section 214 and hence, its taxable possessory interest in the property would not be exempt.

Turning now to your second question, whether the above analysis would be any different if the NFA leased the property to PAC rather than delegating the management responsibilities to it, PAC would in all likelihood be the operator of the property, and its taxable possessory interest in the property would still not be exempt. On the other hand, were PAC to reincorporate as a nonprofit public benefit corporation and to operate as a charitable entity, based upon *Tri-Cities, supra,* which involved a lease from a public entity to a qualifying nonprofit entity, then its taxable possessory interest could be eligible for exemption.

Finally, you ask whether Section 236 might be applicable if the property were leased for 35 years or more to the PAC, or whether the presence of moderate and above-moderate income residents would preclude the application of that section. As you undoubtedly observed, Section 236 provides an exemption for certain property "which is used exclusively and solely for rental housing and related facilities for tenants who are persons of low income..." (Emphasis added.)[2] In our view, this language is clear and unambiguous, and requires that the property be rented exclusively and solely to tenants who are persons of low income, as defined. See our interpretation of Section 236 in our March 21, 1989 Letter to Assessors No. 89/22, copy enclosed. Moreover, there are clear parallels between the language of Section 236 and that of subdivisions (f) and (g) of Section 214. That the Legislature knows how to create "partial exemptions", and that it elected not to allow partial exemption treatment of the Section 236 exemption, is made clear by the fact that Section 214, subds (f) and (g), contain explicit entitlement to partial exemptions, and that the Legislature did not carry similar provisions into Section 236 when that section was enacted in 1988. Thus we must conclude that, under the hypothetical you propose, the application of the exemption provided by Section 236 would be precluded by the presence of moderate and above-moderate income residents.

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[2] In determining which of the options may be more appropriate for your client, you may wish to review an opinion of the Legislative Counsel of California, dated July 14, 1988 (#18257), in which he finds this exemption unconstitutional as beyond the exemptions granted or permitted by the California Constitution.

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.

Sincerely,

Daniel G. Nauman
Tax Counsel

DGN:jd
property/predednt/welexact/98001.dgn

Enclosure

cc: Honorable Joan Thayer
Marin County Assessor

Mr. Dick Johnson, MIC:63
Mr. Rudy Bischof, MIC:64
Ms. Jennifer Willis, MIC:70