



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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DOUGLAS D. BELL
Executive Secretary

December 30, 1987

Mr.

Dear Mr. :

This is in response to your December 2, 1987, letter concerning Corporation; its plan to develop housing for elderly persons and/or families, presumably as the legal owner of the project/property; and the availability of the welfare exemption from property taxation as provided for by section 214 and following of the Revenue and Taxation Code.

As you know, section 214(f) provides, among other things, that property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to section 202 of Public Law 86-372 (12 U.S.C. § 1701q), as amended, section 231 of Public Law 73-479 (12 U.S.C. § 1715v), or section 236 of Public Law 90-448 (12 U.S.C. § 1715z), and owned and operated by religious, hospital, scientific or charitable funds, foundations or corporations meeting all of the requirements of the section shall be deemed to be within the exemption. It provides further that property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or which is not financed by the federal government pursuant to section 202 of Public Law 86-372, section 231 of Public Law 73-479, or section 236 of Public Law 90-448, shall not be entitled to exemption unless the property is used for housing and related facilities for low- and moderate-income¹ elderly or handicapped families. Property

¹As used in section 214(f), "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by section 50093 of the Health and Safety Code.

10/11/87

which would otherwise be exempt pursuant to section 214(f), except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, is entitled to a partial exemption.

Accordingly, unless the housing will be section 202, section 231, or section 236 housing, or unless supplemental care or services designed to meet the special needs of the elderly residents are provided, the low- and moderate-income provisions of section 214(f) will be applicable.

As to supplemental care or services, in previous years in which the Board has granted the exemption to corporations which have developed housing for elderly persons and/or families, the sponsoring corporation, in addition to being the legal owner of the property, has undertaken activity programs for residents, provided aid for the ill, or provided transportation services. Although the Board has not adopted any specific requirements that would constitute a minimum element of charitable care that must be provided to qualify a project as exempt, it has indicated that the following activities would suffice:

1. Providing meals or some basic instruction in the preparation of meals or some educational activities designed to make tenants aware of the need for balanced meals.
2. Providing assistance in shopping for food on the basis of need.
3. Providing assistance in locating and providing clothing and household furnishings.
4. Providing companionship through a social program.
5. Visiting tenants who are ill.
6. Providing housework on a temporary basis for tenants who are ill.
7. Providing referral assistance when professional help is needed.
8. Providing emergency transportation for tenants to various facilities throughout the community.
9. Providing special attention at the time of death in the family.

Thus, if activities such as these were provided, the low- and moderate-income provisions of section 214(f) would not be applicable.

As for other requirements of section 214, the Corporation would have to be organized and operated for charitable purposes, and it could not be organized or operated for profit (section 214(a)(1)). No part of its net earnings could inure to the benefit of any private shareholder or individual (section 214(a)(2)). And its property would have to be irrevocably dedicated to charitable purposes, and upon its liquidation, dissolution or abandonment, its property would have to inure to the benefit of a fund, foundation or corporation organized and operated for an exempt purpose or purposes (sections 214(a)(6) and 214.01).

Concerning tax letters, section 214.8 provides in pertinent part:

"(a) Except as provided in section 213.7 and 231, the 'welfare exemption' shall not be granted to any organization unless it is qualified as an exempt organization under either section 2370ld of this code or section 501(c)(3) of the Internal Revenue Code of 1954. This section shall not be construed to enlarge the 'welfare exemption' to apply to organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954 but not otherwise qualified for the 'welfare exemption' under other provisions of this code.

* * *

"(b) For purposes of subdivision (a), an organization shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor duplicate copies of a valid, unrevoked letter or ruling from either the Franchise Tax Board, or in the alternative, the Internal Revenue Service, which states that the organization qualifies as an exempt organization under the appropriate provisions of the Bank and Corporation Tax Law or the Internal Revenue Code."

As the Corporation is in receipt of a section 501(c)(3) letter, such would meet the requirements of this section.

When organizational requirements are met, it is then necessary for the Corporation to establish that its property is actually used for an exempt activity or activities in order for it to receive the exemption. Thus, the Corporation's property must be used for the actual operation of the charitable activity and

Mr.

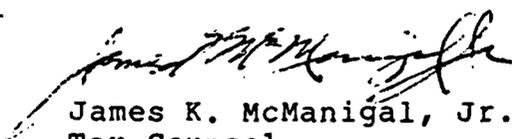
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must not exceed an amount of property reasonably necessary to the accomplishment of the charitable purposes (section 214(a)(3)), its property must not be used to benefit anyone through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of his or her business or profession (section 214(a)(4)), and its property must not be used for fraternal, lodge, or social club purposes (section 214(a)(5)).

In conclusion, the welfare exemption requires an annual filing by the claimant with annual review by this Board and by the county assessor. Thus, until such time as a claim for exemption and all supporting documents are filed by the Corporation and reviewed by the Board's staff, we cannot make a final determination. Assuming that all the requirements for the exemption are met, however, including those of section 214(f), the Corporation's property will be eligible for the exemption.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM/rz

cc: Mr. Donald L. Kroger
Alameda County Assessor