

Memorandum

To: Lisa Thompson
Supervising Property Appraiser

Date: May 12, 2005
Reissued August 22, 2005

From: Mary Ann Alonzo
Senior Tax Counsel

Subject: *Welfare Exemption Qualification of [REDACTED], Inc.*

This is in response to your request of September 2, 2004, for a legal opinion concerning the qualification of [REDACTED], Inc. for the welfare exemption. The organization filed a claim with the Board for an organizational clearance certificate on March 12, 2004. As will be discussed in detail below, R [REDACTED] is a qualifying organization under section 214, subd. (a) of the Revenue and Taxation Code.¹ Accordingly, an organizational clearance certificate should be issued to this claimant.

Factual Background

R [REDACTED], Inc. (R [REDACTED]) was incorporated in California as a nonprofit public benefit corporation on March 22, 2001. R [REDACTED] is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. (Section 214.8, subd.(a)) R [REDACTED]'s Articles of Incorporation state that, the corporation is organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. (Article 4.A.) The articles also state that "the specific purpose of this corporation is to preserve affordable housing, including the development and preservation of affordable mobilehome park/manufactured housing community living." (Article 2.B.)

The organization's name, "[REDACTED], Inc." is misleading to the extent that it is construed to mean that the mobile home park is actually owned by the residents. R [REDACTED]'s claim for an organizational clearance certificate (Form BOE-277) states that the organization is involved in the acquisition, rehabilitation, operation and management of mobilehome parks to preserve affordable housing for low and moderate income persons. The organization functions as either a "consultant" for residents who seek to acquire ownership of the mobile home park in which they live, or as a direct purchaser that purchases a park and leases spaces to mobile home owners. R [REDACTED]'s first mobile home park purchase was the [REDACTED] Mobile Home Park in [REDACTED] California on October 10, 2003. R [REDACTED] rents the spaces in the [REDACTED] Mobile Home Park to the residents under a standard 12-month lease or a long-term lease, at the tenant's option. R [REDACTED], as the legal owner of the park, also is responsible for paying the monthly mortgage payments and proper management and maintenance of the park. R [REDACTED] employs a full-time resident manager, who operates the property in accordance with direction provided by the R [REDACTED] Board members, with input from the tenants' homeowners' association.

¹ All section references are to the Revenue and Taxation Code unless otherwise specified.

Law and Analysis

Whether R's purpose, is that of preserving affordable housing for mobile homeowners, qualifies for exemption under the charitable purposes aspect of the welfare exemption.

As noted above, R's Articles of Incorporation state that, the corporation is organized and operated exclusively for charitable purposes. (Article 4.A.) Section 214, subd. (a) provides exemption for property used exclusively for religious, hospital, scientific or charitable purposes owned and operated by organization, which are organized and operated for those purposes, if certain requirements are met. R's articles also state that its "specific purpose is to preserve affordable housing, including the development and preservation of affordable mobile home park/manufactured housing community living." (Article 2.B.) Section 214 or other provisions of the Revenue and Taxation Code do not define the term "charitable." Over the years, the California Supreme Court has broadly construed the charitable purposes aspect of the welfare exemption to include a wide range of activities that benefit the general public. In *Lundberg v. Alameda County* (1956) 46 Cal.2d 644, 649, the Court observed that, "[t]he term 'charity' has been defined in a number of California cases as 'a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education, or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.'" Later, in *Stockton Civic Theatre v. Board of Supervisors*, (1967) 66 Cal.2d 13, the Court held that "charitable" was to be broadly construed in line with previous decisions and based upon the wide and varied nature of the welfare exemption, and concluded that "'charitable' encompasses a wide range of activities beneficial to the community." In our view, R's ownership and operation of the Mobile Home Park benefits not only the current lower-income mobile home park residents, but the broader community. Persons in the City of are benefited through R's provision of affordable housing. The park is available for rental to median and lower-income households with a family member the requisite age of 55 years, who either own a mobile home, or have the means to purchase a mobile home.

As noted above, the charitable purposes aspect of section 214 also has been construed by the judiciary to include certain purposes and activities that lessen the burdens of government. (*Lundberg v. Alameda County, supra*). In *Lundberg* and in subsequent cases which have construed "lessening the burdens of government" as within the charitable purposes aspect of the exemption, the organizations had assumed a necessary function performed by the government: *Lundberg v. Alameda County*, private school in lieu of public school; *Fifield Manor v. Los Angeles County*,² private homes for the elderly in lieu of public homes; *John Tenant Memorial Homes v. City of Pacific Grove*,³ private retirement home in lieu of public home. For the past several decades, the provision of affordable housing has been a governmental function under federal and state statutory law.⁴ Consistent with the foregoing judicial precedent, we conclude

² (1961) 188 Cal. App. 2d 1.

³ (1972) 27 Cal.App.3d 372.

⁴ The federal Department of Housing and Urban Development (HUD) has had this role, although it's programs for providing such housing has changed over the years. HUD previously constructed publicly-owned and operated

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that R is organized for charitable purposes as it provides affordable housing that benefits the community, and/or it performs a necessary governmental function that lessens the burdens of government. As such, R is qualified for exemption within the charitable purposes aspect of Section 214, subd. (a).

Finally, you have asked whether R's function of assisting mobile home park residents to purchase their park is disqualifying in light of the Board's prior legal opinions that certain resident-owned affordable housing is not eligible for exemption.⁵ It should be noted that the factual and legal grounds for denying exemption to those claimants are not present in this case. We conclude, therefore, that even if R accomplishes its purpose of preserving affordable housing in some instances by assisting residents to purchase their mobile home parks, it does not cause disqualification of the organization from the exemption.

Conclusion

For the reasons discussed above, R is a qualifying organization which should be issued an organizational clearance certificate at your earliest convenience. If you have further questions regarding this matter, please do not hesitate to contact me at 324-1392.

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lower income housing, now it provides low-interest loans, loan guarantees and other such incentives to developers that will build and operate privately-owned affordable housing.

⁵ See Annotation No. 880.0420 C 3/7/90. See also opinion letter dated March 26, 2004 to Mobile Home Park Cooperative, Inc. concerning resident-owned and operated limited equity housing cooperative.