



STATE OF CALIFORNIA

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No. 92/30

April 9, 1992

TO COUNTY ASSESSORS:

WELFARE EXEMPTION: PROPERTY UNDER CONSTRUCTION

Chapter 897, Statutes of 1991 (Senate Bill 997) became effective January 1, 1992. This statute amends Section 214.2 by adding subdivision (b) concerning the definition of "facilities in the course of construction" for property whose use upon completion of construction will qualify for the welfare exemption. The statute also adds Section 532.2 to provide for escape assessments in the event construction is abandoned or the use upon completion of construction does not qualify for the welfare exemption.

Section 214.2(b) is added to the Revenue and Taxation Code to read:

"(b) As used in Section 214.1, "facilities in the course of construction" shall include definite onsite physical activity connected with construction or rehabilitation of a new or existing building, to be used exclusively for religious, hospital, or charitable purposes. Activity as described in the preceding sentence having been commenced and not yet finished, unless abandoned, shall establish that a building is "under construction" for the purposes of Section 5 of Article XIII of the California Constitution. Construction shall not be considered abandoned due to reasonable causes and circumstances beyond the assessee's control, that occur notwithstanding the exercise of ordinary care and the absence of willful neglect." (emphasis added)

Section 532.2 is added to the Revenue and Taxation Code, to read:

"532.2. Notwithstanding Section 532, the assessor may assess as escaped property any property for which a welfare exemption was granted while that property was in the course of construction, as defined in Section 214.2, if either of the following occurs:

"(a) Construction is abandoned.

"(b) Upon completion of the construction, the property is used other than exclusively for religious, hospital, or charitable purposes."

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Section 3 of the law states the Legislature finds and declares that the amendments made by this act do not constitute a change in, but are declaratory of, existing law. This provision may generate a few filings for exemption for prior years.

Section 214.2(b) results from a specific situation. In 1986 an organization purchased a building that needed construction and restoration to make it safe and functional. After purchase, the building was boarded up and blocked off from public entrance, but no further construction activity was initiated for approximately four years due to lack of funding. The 1987 claim for exemption was denied by the Board due to lack of construction activity, and claims were not filed for the next three years. By the 1991 lien date, construction had commenced and a claim was filed and granted.

It is our view the amendment to Section 214.2 provides for a significant departure from current policies on construction and expands the definition of facilities in the course of construction, even though the legislation states the changes are declaratory of existing law.

First, while the previous Section 214.2 specified that demolition is included within the meaning of "facilities in the course of construction," this measure expands the definition to include "definite onsite physical activity connected with construction . . ." This change, made to provide exempt status for a specific property, creates a potential for abuse of the exemption. Assessors will find it difficult to overcome an organization's assertion that a building was actually in the course of construction under this statute. For example, the parking of a tractor on the premises or the posting of a construction warning sign could be argued to constitute "definite onsite physical activity."

Second, construction may not be considered abandoned even though activity ceases due to lack of funding or any other "reasonable causes and circumstances beyond the assessee's control." This change revises prior assessment practices wherein the exemption was suspended regardless of the reason for discontinuing construction.

The addition of Section 532.2 codifies existing practices with regard to assessments, including escape assessments, of property where construction is abandoned or if the property is used for nonexempt purposes following the completion of construction.

If you have any questions concerning this statute, please contact our Exemption Unit staff at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:ebv
AL-35-0557E