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April 1, 1988

Mr. John J. Lynch  
Los Angeles County Assessor  
500 West Temple Street  
Los Angeles, CA 90012-2770

Attn.: James B. Peatman, Director  
Ownership, Exemptions and Mapping

Dear Mr. Lynch:

This is in response to your February 17, 1988, letter wherein you requested our opinion as to the applicability of Revenue and Taxation Code section 271(a)(1) or (a)(3), Property acquired after lien date, which states that provided an appropriate and timely application for exemption is filed, any tax or penalty or interest thereon:

"(1) Imposed upon ~~property~~ owned by any organization qualified for the college, cemetery, church, religious, exhibition, veterans' organization, or welfare exemption which is acquired by such organization during a given calendar year, after the lien date but prior to the first day of the fiscal year commencing within that calendar year, when the property is of a kind which would have been qualified for the college, cemetery, church, religious, exhibition, veterans' organization, or welfare exemption if it had been owned by the organization on the lien date, shall be canceled or refunded."

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"(3) Imposed upon property acquired after the beginning of any fiscal year by an organization qualified for the college, cemetery, church, religious, exhibition, veterans' organization, or welfare exemption and the property is of a kind which would have qualified for an exemption if it had been owned by the organization on the lien date, whether or not that organization was in existence on the lien date, shall be canceled or refunded in the proportion that the number of days for which the property was so qualified during the fiscal year bears to 365." (Emphasis added)

EXW Act

After setting forth the following situations:

1. An organization meeting the requirements of section 214, Welfare Exemption, purchases vacant land on June 22, 1986. Shortly thereafter on August 3, 1986, the organization starts trenching/commences construction of its new office building on the property, which building when completed would be used for an exempt purpose and activity and, hence, be eligible for the exemption.
2. An organization meeting the requirements of section 207, Religious Exemption, and receiving the exemption for religious worship on its Parcel No. 1 purchases adjacent Parcel No. 2 on October 27, 1986. Shortly thereafter on November 18, 1986, the organization starts using Parcel No. 2 in conjunction with Parcel No. 1 for religious worship. From 1980 through September 30, 1986, Parcel No. 2 was a retail hardware store.

you state that in your opinion, emphasized portions of the subsections would disqualify the properties acquired "because both properties are not of a kind that would have qualified for exemption because neither property was in exempt use as of March 1, as required by sections 207 and 214."

To the contrary, however, as Ms. Dottarar and Mr. Minor of our Assessment Standards Division have informed you, our construction of those portions of the subsections has been and is that they apply to acquiring organizations' uses of the properties, not to the uses made of the properties by the former owners thereof, and that where acquiring organizations' uses of the properties are made immediately upon acquisition or shortly thereafter and are qualifying uses with respect to the corresponding exemption requirements, section 271(a)(1) or (a)(3), as the case may be, is applicable. As explained in Mr. John Knowles' May 31, 1974, letter to Mr. Howard Whitcomb:

". . . Section 271(c)<sup>1</sup> only provides relief for property that would have been exempt had it been owned by the organization on the lien date. All property tax exemptions mentioned in this section require in addition to ownership

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<sup>1</sup>Typographical error in referring to section 271(c) rather than section 271(a).

by certain organizations that the property be put to certain uses. Therefore, if an organization acquires property, it must put it to the required use (or commence construction as to some of the exemptions) within a reasonable time in order to qualify for relief. . . ."

A copy of that letter is enclosed for your information and review.

Additional support for this construction is that if section 271 were intended to apply only to properties "in exempt use as of March 1," there would be little, if any, need for the section since the owners of properties "in exempt use as of March 1" would, no doubt, have filed timely or late claims for exemption for the properties which, once granted, would remain in effect the entire fiscal year.

Finally, this construction is consistent with the Legislature's intent in enacting article 2.5, including section 271, of chapter 1, part 2, division 1 of the Code by Statutes of 1971, chapter 303 to relieve organizations and properties meeting exemption requirements from property taxes. As stated in section 11 of Statutes of 1971, chapter 303:

"This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

"The Legislature has attempted to deal in a variety of ways with the recurring problem of churches, colleges, and other organizations which inadvertently fail to file the affidavits required for property tax exemptions in a timely manner. Even the small percentage of tax required by Section 277 or 278 of the Revenue and Taxation Code can impose a substantial and unexpected burden on some of those organizations and severely impair their ability to adequately carry out their functions. This act will remedy the situation by enacting a fair and comprehensive system of refunds and cancellations for such exemptions. In so doing, the public policy of the state as expressed in the Constitution will be entirely fulfilled and the state as a whole will benefit. In order to provide this remedy at the earliest possible time, it is necessary that this act take effect immediately."

With respect to the first situation you mentioned then, assuming an appropriate and timely application for exemption filed pursuant to section 271(a)(1), the land would be eligible

Mr. John J. Lynch

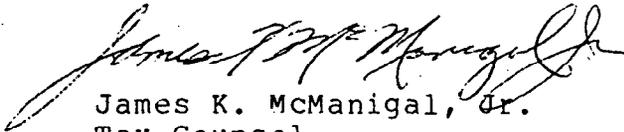
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for exemption thereunder if the trenching/ construction of the building were deemed to have commenced shortly after acquisition. In our view, trenching/ construction begun on August 3 upon land acquired the previous June 22 has commenced shortly after acquisition.

With respect to the second situation, assuming an appropriate and timely application for exemption filed pursuant to section 271(a)(3), Parcel No. 2 would be eligible for exemption thereunder if the use of Parcel No. 2 were deemed to have commenced shortly after acquisition. In our view, use on November 18 of property acquired the previous October 27 constitutes use shortly after acquisition.

Very truly yours,



James K. McManigal, Jr.  
Tax Counsel

JKM/rz