



STATE OF CALIFORNIA

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Executive Director

September 2, 1999

Honorable Dick Frank
San Luis Obispo County Assessor
County Government Center, Room 100
San Luis Obispo, CA 93408-2070

Attn:

Re: *Church Welfare Exemption Claim*
Assessor's Parcel Number

Dear Ms. :

I have been asked to respond to a letter from you dated April 8, 1999, in which you requested a written response to a series of questions and sub-questions relating to Church (UCC) and the property tax welfare exemption. Since Pete Gaffney of the Property Tax Department has discussed the questions with of your office, rather than attempt to again respond to them, I have set forth general principles relating to the "owned and operated," "exclusive use" and "actual operation" requirements as they apply to the types of organizations and activities at issue. In addition, I will refer you to specific portions of the recently updated Assessor's Handbook Section 267, Chapter 3 on Use of Property (pp. 21-28), and Chapter 4 on Fundraising (pp. 39 – 54).

According to your letter, UCC has been qualified as an organization eligible for the welfare exemption, and church property is used by a number of outside organizations for meetings, presentations and fundraising events throughout the year.¹ With no information regarding the design of the facility, we are assuming that the activities of the outside organizations do not interfere with the primary religious activities of the church.

Before getting into an analysis of the types of organizations and activities at issue, we need to note a problem with the information you sent. You have listed the organizations according to whether they meet the requirements of Revenue and Taxation Code section 214(a)(3)(D), the provision relating to "meetings" by outside organizations. Because a number of the events appear to be fundraisers, compliance with the more stringent section 214(a)(3)(A) is necessary for those organizations and activities/events. Moreover, although your materials did not specify whether or not each activity or event was a UCC activity or event, we note that uses of church property by nonqualifying organizations as part of or in conjunction with UCC activities or events are not nonqualifying uses, as long as they are incidental to qualifying church use and do not result in

¹ We will not address the operation of the bookstore as Mr. Gaffney informs us that the exemption was denied on that portion of the property.

private inurement or competition with commercial enterprises. (See *YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760; *Fellowship of Humanity v. County of Alameda* (1957) 153 Cal.App.2d 673, 699; *Peninsula Covenant Church v. County of San Mateo* (1979) 94 Cal.App.3d 382.) On the other hand, uses of church property by non-qualifying organizations for non-UCC activities or events results in the property or portions thereof being ineligible for the exemption.

We recommend the following analytic approach to properties owned by an exempt organization at which multiple activities and events are conducted by outside organizations:

Owned and Operated – If an outside organization makes use of exempt property on a frequent and regular basis, it is an operator of the property, and is required to file its own exemption claim and to meet all the requirements for exemption in order for the property to remain exempt. (See AH 267, pp. 11-13) An exception is that if the use is a “meeting” no more than once per week and the organization qualifies under section 214(a)(3)(D), that use is excluded from consideration.

Occasional activities and events by others that do not constitute “operation” of the property should be analyzed for **incidental use**, or under the **fundraising** or **meeting** provisions of section 214.

Incidental Use – To retain exemption based on “incidental use”, such UCC incidental use must be directly connected with, essential to, and in furtherance of the primary use, except that an occasional use not within an organization’s exempt purposes and activities is not disqualifying.

Occasional uses by others that do not constitute “operation” of the property must still be qualifying uses, and the organizations using the property must be qualifying organizations meeting all the requirements for the exemption in order for the property to remain exempt.

Fundraising Activity – Such activity “occasionally” conducted by qualified organizations meeting all the requirements of section 214(a) and having an Internal Revenue Code section 501(c)(3) income tax exemption letter will not interfere with the availability of the exemption. (Rev. & Tax. Code section 214(a)(3)(A)).

Meetings – Meetings no more frequent than one per week held by organizations meeting the requirements of section 214(a)(1)-(5) and having an Internal Revenue Code section 501(c)(3) or **501(c)(4)** income tax exemption letter or a Revenue and Taxation Code section 23701d, 23701f, or 23701w income tax exemption letter will not interfere with the availability of the exemption. (Rev. & Tax. Code section 214(a)(3)(D)).

ANALYSIS OF SPECIFIC ACTIVITIES BY OUTSIDE ORGANIZATIONS

Owned and Operated

As noted above, if an outside organization makes use of exempt property on a frequent and regular basis, it is an operator of the property, and is required to file its own exemption claim and to meet all the requirements for exemption in order for the property to remain exempt. (See AH 267, pp. 11-13). An exception is that if the use is a "meeting" no more than once per week and the organization qualifies under section 214(a)(3)(D), that use is excluded from consideration.

According to Pete Gaffney, the only organization which has filed and qualified as an operator of the UCC property or a portion thereof is a child development center which is not mentioned in your letter. If there are other outside organizations using the property on a regular basis,² they would also have to file and qualify as operators of the property they use in order for the said property to remain exempt. Use of the property on a regular basis by nonqualifying organizations or nonqualifying uses of the property on a regular basis by qualifying organizations would result in the property or portions thereof being ineligible for the exemption.

For example, if UCC was providing the Russian language classes as part of its program or activities, UCC would be the owner-operator, and use of the portion of the property for the classes could be a qualifying use as long as it did not result in private inurement or competition with commercial enterprises. If another organization were providing the classes, it might or might not be regarded as an operator of the property, since the property was being used on a regular basis for only 2 months rather than for twelve months. In any event, the organization and its activities would have to be qualifying for the property to remain exempt. If the individual was providing the classes and was not functioning as an employee or agent of UCC or another qualifying organization, the availability of the exemption for the property would be impacted because the exemption applies to use by religious, hospital, and charitable funds, foundations, and corporations, not individuals.

Assuming that there are no other users of the property on a regular basis, occasional users and uses of the property should be analyzed as to whether the organizations and uses qualify -- including incidental use, Section 214(a)(3)(A) fundraising use, and Section 214(a)(3)(D) meeting use.

² Except for section 214(a)(3)(D) meeting uses, hereinafter discussed.

Incidental Use

The statutory term “exclusive use” (section 214(a)) has been interpreted by the courts to mean not only primary but also certain types of incidental use as well. To retain exemption based on “incidental use”, such UCC incidental use must be directly connected with, essential to, and in furtherance of the primary use” (*Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23, 28.)³

Occasional presentations and programs that are incidental to UCC’s primary use will not disqualify UCC’s property as long as they are UCC activities or events and there has been no private inurement or commercial competition. Therefore, UCC itself or under contract with others can provide occasional UCC presentations and programs incidental to UCC’s primary use, as long as there is no private inurement or competition with commercial enterprises. (See *YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760; *Fellowship of Humanity v. County of Alameda* (1957) 153 Cal.App.2d 673, 699; *Peninsula Covenant Church v. County of San Mateo* (1979) 94 Cal. App.3d 382).

Occasional uses of UCC’s property by other organizations that do not constitute “operation” of the property must still be qualifying uses, and the organizations using the property must be qualifying organizations meeting all the requirements for the exemption in order for the property to remain exempt. Thus, a nonprofit charitable organization’s use of UCC’s property or a portion thereof would not impact upon the exemption if the user organization meets all of the requirements for the exemption and its use or uses of the property are qualifying uses.

For example, the following events, if sponsored by UCC or a qualifying outside organization, could be considered qualified “incidental use,” and those with the asterisks could also qualify as permissible “meetings” under section 214(a)(3)(D) (see below):

- Xmas Food Baskets
- Divorce Support Network series*
- Women for Sobriety meetings*
- Vocal Arts Ensemble Choir Workshop
- CODA co-dependency treatment program series*
- Peace presentation
- Free Jazz Concert

³ An exception is that occasional uses not within an organization’s exempt purposes and activities are not disqualifying. (*Fellowship of Humanity v. County of Alameda* (1957) 153 Cal.App.2d 673, 699.

Fundraising

Although concerts and theatrical performances can be incidental to exempt purposes, the courts have determined that fundraising events that are not themselves exempt purposes or uses are not incidental solely because they raise funds for use for exempt purposes. (*Cedars of Lebanon Hospital v. Los Angeles County* (1950) 35 Cal. 2d 729) However, the legislature has added a special provision in section 214(a)(3)(A), allowing exempt property to be used for fundraising in circumstances that meet all of the following restrictions:

1. when fundraising activity is conducted by “qualified” organizations, namely organizations meeting all the requirements of section 214(a) and having a 501(c)(3) tax letter from the I.R.S.
2. for “occasional,” namely “irregular and intermittent,” use; and
3. when proceeds are used to further the qualified organization’s exempt activities. (See AH 267, pp. 39-50.)

In addition, the fundraising activities must not generate unrelated business taxable income (UBIT). (See AH 267, pp. 50-54.)

Occasional fundraising concerts and musicals, which are sponsored by UCC and/or another 501(c)(3) organization, will not disqualify the church property or portion of the property so used as long as all proceeds go to exempt activities of UCC or the other qualified organization.

For example, the following events appear to qualify as fundraisers under section 214(a)(3)(A) if the sponsoring or co-sponsoring organizations have met all the requirements of section 214(a) and filed their 501(c)(3) tax letters (and tax returns, if necessary) with the assessor, as required by section 214(a)(3)(C):

- Chamber Orchestra concert
- The Sounds of Broadway Concert
- Gypsy Musical

Other events appear to have been events of non-qualifying organizations, for example, Love-Jean Production MLK Cultural Event; Chris Williamson & Tret Fure Concert; Human, Human Concert; Greg Brown Concert; and Robert Earl Keene Concert. Uses by nonqualifying organizations are disqualifying uses, both because the organizations are not qualifying organizations and because, on a case by case basis, the organization’s use of the property or portion thereof may not be a qualifying use.

Several of your questions relate to an apparent confusion between fundraising and charging rent to outside organizations and individuals to use the space. (Questions #4, 5, 6, and 8.) The statute permits “fundraising activities,” which does not include the passive function of renting property. Although a qualifying organization is free to charge rent to qualifying organizations that

make qualifying uses of exempt property, and although that charge can even exceed operating expenses without interfering with the availability of the exemption, the organization is not permitted to engage in intentionally profit-making activity of a commercial nature. (See *Christ the Good Shepherd Lutheran Church of San Jose v. Mathiesen* (1978) 81 Cal.App.3d 355, 365; *Santa Catalina Island Conservancy v. County of Los Angeles* (1981) 126 Cal.App.3d 221.). Renting the property to non-qualifying organizations, however, would preclude exemption of the property or portion of the property rented, regardless of whether the non-qualifying organization's uses were qualifying or nonqualifying and/or whether the rent proceeds were used for UCC's exempt purposes.

Meetings

In section 214(a)(3)(D) the legislature created another exception to the exclusive use requirement by allowing qualified organizations to hold **weekly** meetings on exempt property without jeopardizing the owner's exemption on the property. To qualify to hold weekly meetings, an organization can be tax exempt under **either** Internal Revenue Code section 501(c)(3) or 501(c)(4) or Revenue and Taxation Code section 23701d, 23701f or 23701w and need meet the organizational requirements only of section 214(a)(1) through (5).

The events listed as "meetings" in all three sections would all appear to qualify under section 214(a)(3)(D), with the exception of Overcenter for Holistic Healing, whose single meeting, if it were a UCC presentation with no private inurement or competition with commercial enterprises, may very well be "incidental" to the UCC's primary use or, at the very most "de minimus." (*Fellowship of Humanity v. County of Alameda* (1957) 153 Cal.App. 2d 673, 699.)

I hope this letter has been of some help to you. If you would like to discuss the issues further, you are welcome to call me at (916) 327-2455.

Sincerely,

/s/ Susan Scott

Susan Scott
Tax Counsel

SAS:jd

property/precedent/welexact/1999/04sas

cc: Mr. Larry Augusta
Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
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