



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE 916-255-2148 • FAX 916-323-3387
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

January 16, 2008

Mr.
Law Offices of

**Subject: *Foundation – Claim for Organizational Clearance
Certificate – Tax Letter Requirement***

Dear Mr. _____ :

This is in response to your April 11, 2007, letter to Ms. Ladeena Ford of the Board's County Assessed Properties Division concerning Revenue and Taxation Code¹ section 214.8 and the N.T.L.² portion of the March 8, 2007, Finding Sheet in the name of the

Foundation (Foundation) indicating that the Foundation's claim was incomplete. It stated in relevant part:

Please provide a current tax-exempt status letter issued by IRS (section 501(c)(3)) & CA Franchise Tax Board (FTB) (section 23701(d).) Your submission by IRS (section 501(c)(4)) & FTB (section 23701(f)) are not acceptable.

According to your letter, the focus of section 214.8 should be on the nonprofit organization's qualification under the substantive criteria of section 501(c)(3) of the Internal Revenue Code (IRC), not the Internal Revenue Service's recognition of status by an IRC section 501(c)(3) income tax exemption letter and not the Franchise Tax Board's recognition of status by a section 23701d income tax exemption letter. As hereinafter explained, it has been our longstanding construction of section 214.8, codified since 1986, that for an organization to establish that it is exempt from income tax as required by section 214.8, subdivision (a), the organization must file with the Board either a copy of a valid, unrevoked Franchise Tax Board letter or ruling stating that the organization is tax-exempt under section 23701d of the code, or a copy of a valid, unrevoked Internal Revenue Service letter or ruling stating that the organization is tax-exempt under section 501(c)(3) of the Internal Revenue Code.

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

² Welfare Exemption: No tax letters under section 23701d of the Revenue and Taxation Code or section 501(c)(3) of the Internal Revenue Code of 1954.

Your Letter- An Actual Tax-Exempt Letter is Unnecessary.

IRS Confirmation of Deductibility of Contributions to Foundation as Charitable Contributions. There is one unique aspect of the Foundation which demonstrates that its activities are charitable, even though the Foundation is classified under IRC section 501(c)(4) for federal income tax purposes. Generally, only donations to 501(c)(3) organizations are tax deductible. On the other hand, 501(c)(4) organizations are generally not eligible to receive tax-deductible contributions. Under certain circumstances, though, contributions to 501(c)(4) organizations are tax-deductible to the donor. . . .

* * *

The Foundation Benefits the Community as a Whole. The California Supreme Court has broadly construed the charitable purpose aspect of the welfare exemption to include a wide range of activities which benefit the general public. *Stockton Civic Theatre v. Board of Supervisors*, 66 Cal.2d 13 (1967). Under *Stockton*, to be exempt under Section 214 of the Revenue and Taxation Code the charitable activity must benefit the community as a whole or an unascertainable and indefinite portion thereof. The Foundation's purpose is to assist the District, which serves 21,850 students in grades 7-12. . . .

The legal importance of the federal and state exemption letters under IRC Section 501(c)(3) and Revenue and Taxation Code Section 23701(d) will now be examined, under three California decisions which have addressed this issue.

The most relevant of the three cases is an unpublished opinion, *Synanon Church v. County of Tulare*, 182 Cal.App.3d 890 (1985). The *Synanon* court examines the meaning of Section 214.8. . . .

In *Synanon*, the IRS found that the church was not federally exempt under section 501(c)(3). Summary judgment was granted against the church on the grounds that the trial court did not have authority to decide questions of federal law at variance with the final adverse ruling of the IRS absent some judicial stay or overruling by the Federal Courts.

The *Synanon* Court reversed the trial court and held that 'qualification' in Revenue and Taxation Code Section 214.8 refers to exempt status under the substantive criteria of Internal Revenue Code Section (501(c)(3), not Internal Revenue Service recognition of the status. . . . The *Synanon* opinion is not citable.

A second case with similar facts is *City and County of San Francisco v. Carpenter Funds Admin. Office*, 162 Cal.App.3d 896 (1984). A local tax ordinance specifically exempted 'any organization described in [26 U.S.C.

§§ 501(c), 501(d), or 401(a)], as qualified by [26 U.S.C. §§ 502, 503 and 504,].’ A nonprofit organization sought to take advantage of this exemption even though it had never sought nor obtained formal exemption under 26 U.S.C. § 501(c)(9), as a voluntary employees’ beneficiary association. The nonprofit never applied for the exemption because it paid no federal taxes because its revenues equaled its expenses. The Court held that the local ordinance exempted organizations that are ‘described’ in certain sections of the Internal Revenue Code. Nothing in the ordinance required action by the IRS before the Court could make its determination.

The third case, *Alcoser v. San Diego County*, 111 Cal.App.3d 907(1980) involved a vocational training school operated under a trust created by a labor union and construction industry employers who were parties to a collective bargaining agreement who claimed a welfare exemption. . . .

The *Alcoser* trial court excluded the tax determination letters from the IRS under Internal Revenue Code Section 501(c)(3) and from the Franchise Tax Board under Revenue and Taxation Code Section 23701(d) and ruled that the school was ineligible for the welfare exemption. The Court of Appeal affirmed the denial of the exemption and held that school was operated primarily to benefit the union and the employers. The Court further held that there was no evidence showing what relevance the school’s exemption from income taxes had with respect to its eligibility for the welfare exemption under Section 214.

Analysis/Discussion

The first paragraph of Section 214.8, as added by Stats. 1973, Ch. 5, in effect February 28, 1973, operative March 1, 1973, for the then March 1, 1973, lien date, is substantially the same as the current version of the first paragraph of Section 214.8, subdivision (a):

Except as provided in Sections 213.7 and 231, the ‘welfare exemption’ shall not be granted to any organization which is not qualified as an exempt organization under Section 23701d 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.

From the inception of section 214.8, the phrase, “organization which is not qualified as an exempt organization under Section 23701d of this code or Section 501(c)(3) of the Internal Revenue Code of 1954” was, and has been, construed to mean an organization which was not in receipt of a section 23701d income tax exemption letter issued by the Franchise Tax Board or in receipt of an IRC section 501(c)(3) income tax exemption letter issued by the Internal Revenue Service. Conversely, an organization qualified as an exempt organization under section 23701d or under IRC section 501(c)(3) was, and is, an organization in receipt of a section 23701d income tax exemption letter or in receipt of an IRC section 501(c)(3) income tax exemption

letter. Thus, the Board’s October 1973 Assessors’ Handbook 267³, Welfare Exemption, provided the following in this regard:

e. Income Tax Exemption Limitation

Except as provided in Sections 213.7, 214.8, and 231, the welfare exemption shall not be granted to any organization which is not qualified as an exempt organization under Section 23701d of the Revenue and Taxation Code or Section 501(c)(3) of the Internal Revenue Code of 1954. (p. 24)

* * *

3. Preparation of the Claim

If the owner and operator of the property are not the same, each must execute and file a separate claim and give the information requested in Sections A and B.

a. Section A – Information on the Organization

The constitution and statutes require, first, that the owner, and also the operator if other than the owner, meet certain requirements and, secondly, that the operation of each property meet certain requirements. . . (p. 37)

* * *

An organization filing for the first time must file two certified copies of the articles of incorporation if incorporated,

Also, the initial filing should contain proof of income tax exemption, in letter form, under Section 23701d of the Revenue and Taxation Code or Section 501(c)(3) of the Internal Revenue Code of 1954.

b. Section B – Information on the Property (p. 38)

* * *

In 1986, Stats. 1986, Ch. 1457, in effect January 1, 1987, added a new subdivision (b) to section 214.8 to include the income tax exemption letter requirement:

(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,

³ Assessors’ Handbooks may be relied upon by the courts in interpreting property tax questions and have been accorded great weight in this regard. *Carlson v. Assessment Appeals Board 1* (1985) 167 Cal.App.3d 1004; *Prudential Insurance Co. v. San Francisco* (1987) 191 Cal.App.3d 1142.

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.

Thereafter, in 2003, as part of the statutory changes altering the administration of the welfare exemption, Stats. 2003, Ch. 471, in effect January 1, 2004, substituted the present subdivision (b) of section 214.8 for the former subdivision (b), above:

(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 a valid organizational clearance certificate issued pursuant to Section 254.6.

At the same time, former subdivision (b) of section 214.8 was added to new section 254.6 as subdivision (c)(3) thereof:

(c) Any claim of any organization that files for an organizational clearance certificate for the first time shall be accompanied by the claimant's corporate identification number, mailing address, and all of the following documents:

* * *

(3) A copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or, in the alternative, the Internal Revenue Service, that 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.

Finally, the Board's October 2004 Assessors' Handbook 267, Welfare Exemption, continued to provide that the organization must be in receipt of a section 23701d income tax exemption letter or an IRC section 501(c)(3) income tax exemption letter:

MUST QUALIFY AS AN EXEMPT ORGANIZATION UNDER 501(C)(3) OR 23701D

The welfare exemption shall not be granted to any organization which is not qualified as an exempt organization under section 23701d of the Revenue and Taxation Code or section 501(c)(3) of the Internal Revenue Code, unless specifically excluded from this requirement. . . .

To prove that the organization is exempt from federal income tax or state franchise and income taxes as required by section 214.8(a), the organization must file with the Board a copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or the Internal Revenue Service stating the organization is tax exempt under the appropriate section of the Revenue and Taxation Code or the Internal Revenue Code.

The Board reviews the tax exemption letter with the organization's claim for an 'Organizational Clearance Certificate'. (p. 18)

And the claim preparation section of AH 267 continued to so provide:

Tax Exemption Letters

An organization must include a copy of an unrevoked federal or state tax exemption letter with claim form BOE-277. The unrevoked tax exemption letter may be either from the Internal Revenue Service or Franchise Tax Board, stating that the organization is exempt under their respective provisions of law (Internal Revenue Code section 501(c)(3), Revenue and Taxation Code section 23701d). (pp. 97, 98)

Thus, it has been our longstanding position that, in order to qualify for exemption under section 214, an organization must be qualified under IRC section 501(c)(3) or under section 23071d, and it must present a letter from either the Internal Revenue Service or the Franchise Tax Board that documents that fact.

Response to Your Letter

As to the portions of your letter with the headings IRS Confirmation of Deductibility of Contributions to Foundation as Charitable Contributions and The Foundation Benefits the Community as a Whole, they are not persuasive since they pertain, in large part, to the Foundation's activities and whether the Foundation's activities are qualifying activities for purposes of section 214. Section 214, subdivision (a)(3) is the use/activity provision pursuant to which an organization's use of its property is examined. Once an organization is in receipt of an acceptable tax letter or letters (section 214.8) and other organizational requirements are met, it must be established that an organization's activities are qualifying religious, hospital, scientific, or charitable activities under section 214, subdivision (a)(3) in order for the property, or a portion of the property, to be eligible for exemption.

As to the court cases to which you referred, in addition to being decided prior to the enactment of subdivision (b) of section 214.8, as you noted in your letter, *Synanon Church v. County of Tulare, supra*, was depublished and hence, the opinion is not citable.⁴

City and County of San Francisco v. Carpenter Funds Admin. Office, supra, is not persuasive since that case interprets a local tax ordinance, not section 214.8. Furthermore, that case is distinguishable based upon the language being construed: "any organization described in . . ." (emphasis added), as opposed to the language of section 214.8 which states "any organization unless it is qualified as an exempt organization under . . ." (emphasis added.) As stated above, an organization qualified as an exempt organization for purposes of section 214.8 is an organization in receipt of a section 23701d income tax exemption letter or in receipt of an IRC section 501(c)(3) income tax exemption letter.

As to *Alcoser v. San Diego County, supra*, it is distinguishable also in that in that case, Alcoser/The Trust was trying to use The Trust's income tax exemption letters not to show that

⁴ California Rules of Court, Rule 8.1115, subdivision (a).

the requirement of section 214.8 had been met but rather, as evidence of The Trust’s charitable purposes and activities, which the court rejected:

- (2) The court refused, as hearsay, two letters offered in evidence by The Trust as official records in support of its claim⁵. . . .

Regardless of the correctness of the court’s ruling no prejudice resulted. The [income tax] status conferred could only have been based on the self-serving tax-exempt purpose language of the trust agreement since the school had not then begun full operation. Further, no evidence was submitted to show what relevance the income tax exemptions given have to the right to the property tax exemption requested here. If relevant at all, the letters are of insignificant evidentiary weight and would not affect the result of this case. (p. 913)

Section 214.8 was not at issue in the case, since The Trust had already received an IRC section 501(c)(3) income tax exemption letter and a section 23701d income tax exemption letter.

Very truly yours,

JKM:pb
Prop/Prec/OCC/07-162.jkm.doc

Enclosure

cc: Honorable
County Assessor

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70
Ms. Lisa Thompson	MIC:64

⁵ The Trust contends its training school is operated for the benefit of the general community or an “unascertainable and indefinite portion thereof” thus qualifying for the welfare exemption granted under Revenue and Taxation Code section 214 to property used exclusively for charitable purposes. (p. 911)