


STATE BOARD OF EQUALIZATION

ASSESSMENT STANDARDS DIVISION
 450 N Street, MIC: 64, Sacramento, California
 (P. O. Box 942879, Sacramento, CA 94279-0064)

Telephone: (916) 445-4982
 FAX: (916) 323-8765

February 7, 1996

JOHAN KLEHS
 First District, Hayward
 DEAN F ANDAL
 Second District, Stockton
 ERNEST J DRONENBURG, JR.
 Third District, San Diego
 BRAD SHERMAN
 Fourth District, Los Angeles
 KATHLEEN CONNELL
 Controller, Sacramento

BURTON W OLIVER
 Executive Director

No. 96/07

TO COUNTY ASSESSORS:

APPLICATION OF PARAGRAPH (3) OF SUBDIVISION (a) OF
SECTION 271 OF THE REVENUE AND TAXATION CODE

This letter is in response to a recent inquiry concerning the application of paragraph (3) of subdivision (a) of Section 271 of the Revenue and Taxation Code (all references to statutory provisions are to the Revenue and Taxation Code unless otherwise indicated) as it relates to personal property. The issue is how to treat personal property that is acquired after the lien date by qualified welfare organizations or by certain other organizations for property tax purposes. The question is two-fold: (1) whether personal property on the secured roll is entitled to pro rata exemption and (2) whether personal property on the unsecured roll is exempt pursuant to Section 271, subdivision (a) (3). To better clarify these matters, we will address them as they affect the secured roll and the unsecured roll.

SECURED ROLL

Section 109 defines secured roll as that part of the roll containing state assessed property and property the taxes on which are a lien on real property sufficient, in the opinion of the assessor, to secure payment of the taxes.

The secured roll includes the following types of property:

- (A) All taxable land and improvements privately owned in fee.
- (B) All land and secured improvements being purchased under contract of sale from a public agency, such as the Department of Veterans Affairs.
- (C) All assessable personal property owned by owners of either (A) or (B) above, where such land is sufficient security for the taxes on the personal property in the opinion of the assessor, and the personal property is either located upon the real property on the lien date (Section 2189) or is secured by means of the "certificate" procedure (Section 2189.3).

Section 2189 provides that real property may be used as security for personal property taxes when the personal property is located on the real property and is assessed to the person who owned the real property on the lien date. As used therein, "located" means the actual physical location of the personal property. Section 2189.3 provides for securing personal property to real property owned by the same person in the same county at different locations, in certain instances.

The property taxes on lands, improvements, and personal properties on the secured roll are liens against the lands assessed (Section 2187). A property tax has the effect of a judgment against the person (Section 2186), and a lien created by a property tax has the effect of an execution duly levied against the property subject to the lien (Section 2193). As noted in Cal. Jur. III, Volume 51, Property Taxes, Section 125, In General, however, the property tax is a judgment only in the sense that it is the final determination of the amount of public burden to be borne by the property on which it is charged, and there is no personal obligation on a landowner to pay the taxes on his land; payment can be enforced only by sale of the land.

Prior to 1969, welfare organizations and certain other organizations that acquired secured roll properties subject to liens after the beginning of any fiscal year took the properties subject to those liens and, for all practical purposes, became liable for payment of any unpaid taxes, in lieu of sale of the properties for such taxes. To remedy these situations, the Legislature enacted former Revenue and Taxation Code Section 271.4, Statutes of 1969, Chapter 88, in effect May 20, 1969, which provided in part:

“When property is acquired after the beginning of any fiscal year by an organization qualified for the college, cemetery, church, exhibition, orphanage, or welfare exemption, and the property is of a kind which would have qualified for an exemption if it had been owned by such organization on the lien date, whether or not the organization was in existence on the lien date, the tax and any penalty or interest imposed thereon shall be canceled in the proportion that the number of days for which the property was so qualified during the fiscal year bears to 365. . . .”

Likewise, Section 3 of the same statute provided similar and retroactive relief to organizations qualified for the church exemption that acquired secured roll properties after the March 1, 1968, lien date and prior to October 5, 1968. Section 4 of this statute provided:

“Some organizations qualified for the church exemption pursuant to Sections 206 and 206.1 of the Revenue and Taxation Code purchased property during the 1968 calendar year, after the lien date for that year, which property was taxed for the fiscal year 1968-69, although it would have been exempt from taxation for that year by reason of the church exemption had it been acquired prior to such lien date. If required to meet such tax obligation, the ability of such organizations to function effectively will be seriously impaired to the great detriment of our state. This act will remedy that situation, and in so doing, the public policy of the state for the exemption of property owned by religious organizations, as expressed in Section 1-1/2 of Article XIII of the Constitution, will be subserved and the state as a whole will benefit.”

Section 271, subdivision (a) (3), which is substantially the same as former Section 271.4, currently provides as follows:

“(a) Provided that an appropriate application for exemption is filed on or before the first day of March of the calendar year next succeeding the calendar year in which the property was acquired, any tax or penalty or interest thereon- . . .

(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.”

Thus, the Legislative intent continues to be that secured roll properties acquired by welfare organizations and certain other organizations after the beginning of a fiscal year and subject to property taxes for that year should not be subject to, but rather should be relieved from, property taxes during the periods they are owned by the welfare organizations and other organizations.

As was the case with former Section 271.4, Section 271, subdivision (a) (3) refers to “property”, which includes all matters and things, real, personal, and mixed, capable of private ownership (Section 103). “Real property” includes the possession of, claim to, ownership of, or right to the possession of land (Section 104, subdivision (a)) and improvements (Section 104, subdivision (c)). “Personal property” includes all property except real estate or real property (Section 106).

Accordingly, Section 271, subdivision (a) (3) applies to secured roll personal properties as well as to secured roll lands and improvements acquired by welfare organizations and certain other organizations after the beginning of a fiscal year and subject to property taxes for that year, and all are entitled to prorata exemption thereunder, assuming that all the requirements for exemption are met.

Please note there is no exemption on personal property if the welfare or other qualified organization acquires real property but not the personal property between the lien date and the date the assessment roll is delivered to the county auditor (usually July 1). In such instances, the personal property is placed on the unsecured roll and is not a lien on the real property. Thus, the owner of the personal property on the lien date assessment will be liable for the taxes.

UNSECURED ROLL

Section 109 defines the unsecured roll as that part of the roll containing property that is not on the secured roll. It includes the following types of property:

- (A) Foreign improvements.
- (B) Taxable possessory interests.
- (C) Personal property which is not located on an assessee's land on the lien date and which has not been secured by the certificate procedures authorized by Section 2189.3.

Unlike property taxes on lands, improvements, and personal properties on the secured roll, the Revenue and Taxation Code does not specifically provide that a tax on personal property constitutes an automatic lien on the property assessed. Absent such a provision, property taxes on personal properties on the unsecured roll are not liens on the properties assessed. It is settled law in California that the lien of a property tax exists only by virtue of statute and that taxes are not a lien on the property assessed unless expressly made so by statute (T.M. Cobb Company v. County of Los Angeles (1976) 16 Cal. 3d 606). And as indicated above, while upon assessment personal property taxes may under certain circumstances constitute an automatic lien on real property belonging to the owner of the personal property (Sections 2189 and 2189.3), the lien is on the real property, not on the personal property.

Accordingly, property taxes for personal properties on the unsecured roll are the obligations of the persons to whom those properties are assessed on the lien date, and welfare organizations and other organizations that acquire unsecured roll personal properties, whether before or after the beginning of a fiscal year, do not take them subject to any liens and hence, do not become liable for payments of any unpaid property taxes with respect to those properties. Thus, circumstances that give rise to the application of Section 271, subdivision (a) (3) do not exist, and resort thereto is neither contemplated nor necessary in such instances.

CONCLUSION

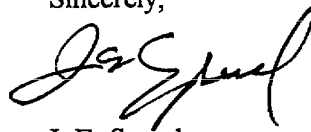
(1) Section 271, subdivision (a) (3) applies to personal properties on the secured assessment roll as well as to lands and improvements acquired by welfare organizations and certain other organizations after the beginning of a fiscal year and subject to property taxes for that year, and all are entitled to prorata exemption thereunder, assuming that all the requirements for exemption are met.

February 7, 1996

(2) Property taxes for personal properties on the unsecured assessment roll are the obligations of the persons to whom those properties are assessed on the lien date, and welfare organizations and other organizations that acquire personal properties on the unsecured assessment roll, whether before or after the beginning of a fiscal year, do not take them subject to any liens and hence, do not become liable for payments of any unpaid property taxes with respect to those properties. Thus, circumstances that give rise to the application of Section 271, subdivision (a) (3) do not exist, and resort thereto is neither contemplated nor necessary in such instances.

We hope the information in this letter is helpful. If you have any questions concerning the welfare exemption and qualifying organizations, please contact our Exemption Section at (916) 445-4982. If you have questions concerning this letter please contact our Technical Services Section at (916) 445-4982.

Sincerely,



J. E. Speed
Acting Deputy Director
Property Taxes Department

JES:mg:jm

LTA-mg.doc