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TO COUNTY ASSESSORS:

CELL TOWERS ON PROPERTY OF RELIGIOUS ORGANIZATIONS

We have received an increasing number of inquiries regarding religious organizations that lease a portion of their property for wireless communication tower (cell tower) sites. The cell towers are typically installed on the roof of a main worship center, embedded in an item such as a steeple or cross, in the parking lot, or elsewhere on the grounds. The inquiries are seeking an opinion on whether religious organization property leased to telecommunication companies for the installation of cell towers still qualifies for exemption under Revenue and Taxation Code section¹ 206 (church exemption), section 207 (religious exemption), or section 214 (welfare exemption).

As explained in further detail below, the portions of the religious organization property that are leased as cell tower sites would not qualify for the church, religious, or welfare exemptions. However, disqualification of the exemption for the portion of the property leased as a cell tower site does not, by itself, jeopardize the organization's qualification for exemption on the remaining portions of the property that are used exclusively for religious worship (church exemption), for religious worship and the operation of a school of less than collegiate grade (religious exemption), or for religious purposes (welfare exemption).

Law and Analysis

There are three property tax exemptions available for property used for religious purposes:

- Church exemption
- Religious exemption
- Welfare exemption

The church exemption² applies to property used exclusively for religious worship. The only requirement that must be satisfied is that the primary use of the property is for religious worship, and that all other uses are incidental and reasonably necessary uses supportive of the primary religious worship use.

The religious exemption³ applies to property owned and operated by religious organizations that use their property exclusively for religious worship, preschools, nursery schools, kindergartens,

¹ All section references are to the Revenue and Taxation Code unless otherwise indicated.

² California Constitution, article XIII, sections 3(f) and 5; section 206.

³ Section 207.

schools of less than collegiate grade, or for both schools of collegiate grade and schools of less than collegiate grade (but excluding property used solely for schools of collegiate grade). This exemption applies when the religious organization/owner uses its property for both a place of worship and a school.

As relevant to the cell tower issue, the welfare exemption⁴ applies to property used exclusively for religious purposes by a qualifying nonprofit entity, if the property is owned and operated by a qualifying nonprofit entity.⁵ The definition of *religious purposes* as used for the welfare exemption is much broader than the definition of *religious worship* as used for either the church or religious exemptions.

The church, religious, and welfare exemptions all require that any property for which one of the exemptions is sought must be *used exclusively* for the exempt purpose; specifically for religious worship (church exemption), for religious worship and the operation of a qualifying school (religious exemption), or for religious purposes (welfare exemption). Therefore, the first step in any analysis of a property's qualification for one of the exemptions is a determination as to whether the organization's exempt purpose is the *exclusive use* made of that property. Clearly, leasing a portion of a religious organization's property for the installation of a cell tower does not fall within its exempt purpose, regardless of whether the organization holds a church, religious, or welfare exemption on its property.

The next step in determining qualification for exemption pertains to property that is used for a purpose that is not within the organization's primary exempt purpose. For such property, it must be determined whether that use is incidental to and reasonably necessary for the organization's exempt purpose. The courts have consistently approved exemption for property that, while not used solely for the organization's primary purpose, is incidental to and reasonably necessary for the accomplishment of that primary exempt purpose. In *Cedars of Lebanon Hospital v. County of Los Angeles*,⁶ the California Supreme Court held:

It thus appears that under the rule of strict but reasonable construction, the phrase "property used exclusively for...hospital...purposes" should be held to include any property which is used exclusively for any facility which is incidental to and reasonable necessary for...the fulfillment of a generally recognized function of a complete modern hospital.

Although the *Cedars* court interpreted the term *used exclusively* to include uses that are incidental to and reasonably necessary for an organization's exempt purpose in the context of a hospital under the welfare exemption, that holding and analysis apply equally to both the church and religious exemptions.⁷ Again, it would be difficult to conclude that leasing property for the installation of a cell tower is incidental to and reasonably necessary for religious worship or religious purposes. Therefore, that portion of the property so leased does not qualify for the

⁴ Section 214(a).

⁵ This letter discusses only how the welfare exemption relates to property owned by religious organizations. The exemption is also available for property owned by other non-profit organizations and used exclusively for charitable, scientific, or hospital purposes.

⁶ (1950) 35 Cal.2d 729.

⁷ See Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, Part II, at pp. 3, 12-13. All Assessors' Handbook Sections are posted on the Board's website at www.boe.ca.gov/proptaxes/ahcont.htm.

church, religious, or welfare exemptions. However, if a religious organization that qualifies for the church, religious, or welfare exemption leases space for the installation of a cell tower site, the organization may continue to qualify for the exemption on all of its property that previously qualified for the exemption; only the leased portion of the property would be disqualified from exemption.

With respect to the welfare exemption, courts' holdings indicate that disqualification of a portion of property from the welfare exemption does not disqualify the entire property from the welfare exemption. In fact, in *Cedars*, the court held that certain portions of the taxpayer's property qualified and certain other portions did not qualify for the welfare exemption.

We are unaware of any constitutional provision, statute, or judicial precedent that would require a different result when considering the effect of cell tower leases on property qualifying for the church or religious exemptions. Therefore, while the portion of property leased for the placement of a cell tower does not qualify for the church or religious exemptions, it does not disqualify the entire property from exemption. This is especially true since the amount of the property used is, in most cases, minimal. Additionally, and most importantly, the leasing of space on the exterior of a religious organization's building or on its grounds is distinguishable from allowing third party organizations the regular use of the interior of a main building for its own purposes unrelated to a religious purpose.

Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions* (AH 267), supports this view. AH 267 states that if religious worship is found to be the primary use of a building and all other uses are incidental to religious worship, the church exemption is applicable to the entire building. It goes on to state:

If, however, another organization uses all or part of the facility for charitable purposes on a fixed rental basis, the welfare exemption must be claimed by both the church and the other organization *for the extent of that use, in addition to the church exemption for the remaining portion; or the church could claim the welfare exemption for the entire property and the other organization could claim the welfare exemption for the extent of that use.*⁸ (Emphasis added.)

AH 267 contemplates that an organization that uses a portion of a building for purposes that are not incidental to religious worship but qualifying for the welfare exemption on that portion must qualify that portion under the welfare exemption; however, the church exemption is not lost on the portion of the building used for religious worship. By extension, if the use of the non-qualifying portion of the building qualifies for neither the church exemption nor the welfare exemption, that portion of the property will not be exempt. However, the remaining portions of the building that are used for religious worship should still qualify for the church exemption. This example applies equally to the religious exemption.

AH 267 also contemplates this treatment when separate structures are involved. It states that the church exemption applies to the place of worship and other areas or rooms in separate structures used for incidental or non-interfering purposes, while the welfare or religious exemption, *or no*

⁸ AH 267, Part II, p. 6.

exemption, applies to other structures based on their individual use.⁹ This contemplates that there may be other structures on a religious organization's property that do not qualify for the church exemption without jeopardizing the church exemption on the structures used exclusively for religious worship. This example applies equally to the religious exemption.

While possibly difficult for county assessors to measure the actual square footage of the disqualified space because of the varying ways in which cell towers could be placed, it is necessary since the exemption is lost only for that portion of the property leased for the cell tower site. The county assessor must determine a valuation methodology that satisfactorily estimates the value of the leased property. For instance, if leased space is separated from the main worship center on the grounds or in a portion of the parking lot, the leased space square footage may easily be measured. In many cases, however, religious organizations lease and allow the installation of the towers on the main worship center roof or in an item such as a steeple or cross. In those cases, an estimate of square footage leased must be determined, or it may be appropriate for the county assessor to use the income approach to determine the value of the leased site.

For assessment purposes, that portion of the property attributable to the lease may not be assessed as if it had undergone a change in ownership since the loss of an exemption does not trigger a change in ownership.¹⁰ Rather, the value upon which property tax must be paid is equivalent to that portion of the existing factored base year value that no longer qualifies for exemption.

If you have questions regarding these issues, you may contact Mrs. Ladeena Ford at 916-445-0208 or at ladeena.ford@boe.ca.gov.

Sincerely,

/s/ David J. Gau

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DJG:lf

⁹ AH 267, Part II, pp. 6-7.

¹⁰ Unless the lease is for 35 years or more; section 61(c).