

**Office of the County Counsel**

651 Pine Street, 9th Floor  
Martinez, CA 94553

Contra Costa County

Phone: (925) 335-1800

Fax: (925) 646-1078

*Date:* October 15, 2015

*To:* Board of Supervisors

*From:* Sharon L. Anderson, County Counsel 

*Re:* **WHETHER PROPERTY OWNED BY RELIGIOUS ORGANIZATION IS  
ENTITLED TO A "WELFARE EXEMPTION" FROM PROPERTY TAXATION  
UNDER SECTION 214 OF THE REVENUE AND TAXATION CODE WILL  
DEPEND ON THE FACTS SUPPORTING THE CLAIMED EXEMPTION**

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**SUMMARY**

If a church's use of property that it owns is "incidental to and reasonably necessary for the accomplishment of the purposes of the organization," all or a part of that property may be exempt from taxation. The church is responsible for presenting evidence sufficient to establish that its use of the property qualifies for an exemption. When a church files a claim with the Board of Supervisors for a refund of property taxes, because the County Assessor determined that church-owned property was not exempt, the Board must evaluate whether the church has presented sufficient evidence to establish that its property qualifies for an exemption.

**BACKGROUND**

California property tax laws permit a religious organization to claim an exemption from property taxation in certain circumstances. The exemption relevant to Lafayette Christian Church's claim for a property tax refund is known as the "welfare exemption." This office has been asked to provide the Board of Supervisors with a legal discussion of this exemption.

On September 15, 2015, a hearing was held before this Board on the claim filed by the Lafayette Christian Church ("Church") for a refund of 2014/15 property taxes it paid for church-owned, residential real property located at 3213 Sharon Court in Lafayette ("Property") on the basis that the Property was exempt from property taxation under the welfare exemption found in Revenue and Taxation Code section 214(a). Evidence was taken and the hearing was continued to October 20, 2015.

Although the property previously had been used as a parsonage, both the Assessor and the Church agree that nobody was living on the Property on the lien date of January 1, 2014. Instead, the Church's claim that the Property should be exempt from taxation is based on the Church's use of the Property for other Church-related activities. The Church has indicated that the Church was using the Property as a recruiting tool in the Church's search for a new minister, as well as for storage, occasional meetings or choir practice, furniture repair, and other intermittent uses.

## DISCUSSION

California Constitution Article XIII, section 4, is the basis of the welfare exemption. This constitutional provision provides, in pertinent part, that:

The Legislature may exempt from property taxation in whole or in part...  
(b) property used exclusively for religious ... purposes and owned by...  
corporations or other entities (1) that are organized and operated for  
those purposes, (2) that are nonprofit, and (3) no part of whose net  
earnings inures to the benefit of any private shareholder or individual.

Under this constitutional grant of authority, the Legislature enacted section 214 of the Revenue and Taxation Code. "Constitutional provisions and statutes granting exemption from taxation are strictly construed.... [O]wners of property, have the burden of showing that they clearly come within the terms of the exemption."<sup>1</sup>

### **A. Application of the Welfare Exemption to Property That is Being Used as Housing By a Religious Institution on the Lien Date.**

If the Church's minister had been living on the property on the lien date of January 1, 2014, the Property likely would have qualified for a property tax exemption under Subdivision (i) of Section 214, which authorizes a property tax exemption for "Property used exclusively for housing and related facilities for employees of religious...organizations that meet the requirements of subdivision (a)...." Attached is an excerpt from the State Board of Equalization's guidelines which includes examples of how the welfare exemption has been applied to property used for various housing purposes.<sup>2</sup>

### **B. Property That is Owned by a Religious Institution but is Not Being Used for Housing on the Lien Date Must be Incidental to and Reasonably Necessary for the Accomplishment of the Purposes of the Church to Qualify for the Welfare Exemption.**

Since nobody was living at the Property on the lien date, in order to qualify for a property tax exemption, the Property must meet the criteria of Subdivision (a) of Section 214. As relevant here, the statute provides that:

Property used exclusively for religious . . . purposes owned and operated  
by . . . foundations or corporations organized and operated for religious .  
. . purposes is exempt from taxation if:

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<sup>1</sup> *Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal.2d 279, 234.

<sup>2</sup> State Board of Equalization, Assessors' Handbook, *Welfare, Church and Religious Exemptions*, pt 1, § 267 at pp. 62-68 (Oct. 2004).

(3) The property is used for the actual operation of the exempt activity and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

The courts have held that property used exclusively for religious purposes and owned and operated by a religious organization qualifies for the exemption if its use is *incidental to and reasonably necessary* for the accomplishment of those purposes.<sup>3</sup> But it is not necessary, as a condition to exemption, that the use of the property is *indispensable* to the religious purposes of the religious organization.<sup>4</sup> In determining whether a religious organization qualifies for this exemption, the integrated activities as a whole must be examined.<sup>5</sup>

Several cases discuss how this exemption has been applied to property owned and operated by a religious organization and used for “incidental” purposes. *Christward Ministry v. County of San Diego*<sup>6</sup> was an action to recover taxes paid on 600 acres claimed to have been used exclusively as a religious retreat. The assessor exempted 40 acres that were improved with facilities such as a chapel, church, administration building, director’s house, roads, a dam site, water facilities, parking, trails, meditation sites and shrines, but not the rest of the natural, unimproved property. The trial court upheld the assessor’s determination and the religious organization appealed from the judgment denying the property tax refund. On appeal, the trial court’s decision was reversed. The appellate court held that the trial court failed to consider whether “possession of the 600 acres, or any part thereof, and its maintenance in a wild state, is a use incident to and reasonably necessary for the operation of the property as a retreat for religious purposes.”<sup>7</sup>

In *St. Germain Foundation v. County of Siskiyou*,<sup>8</sup> the appellate court affirmed the trial court’s decision that a portion of property owned by a religious organization and occupied by a snack bar, gift shop and beauty shop was tax exempt where there was evidence that these facilities were operated by the organization, not primarily for profit, but to serve convenience of persons assembled for religious purposes.

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<sup>3</sup> *Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

<sup>4</sup> *Christward Ministry v. County of San Diego* (1969) 271 Cal. App. 2d 805, 809-810.

<sup>5</sup> 34 Ops. Cal. Atty. Gen. 175, 177 (1959).

<sup>6</sup> *Christward Ministry v. County of San Diego*, *supra*, 271 Cal. App. 2d 805

<sup>7</sup> *Id.* at 812.

<sup>8</sup> *St. Germain Foundation v. County of Siskiyou* (1963) 212 Cal. App. 2d 911

In *Peninsula Covenant Church v. County of San Mateo*,<sup>9</sup> the church bought a former swim and tennis club. The church initially considered buying the property because the size of its congregation was increasing and it needed more parking spaces for its worship facility on an adjacent parcel. Ultimately, the church concluded that the entire parcel should be purchased since it would provide an additional facility for the educational and community service activities of the church. The appellate court determined that the community center building was entitled to the welfare exemption since the evidence established that it was used primarily as a center for the church's various religious study and recreational groups, and for the administrative and religious work of one of its ministers. But the evidence did not support a conclusion that a swimming pool, five tennis courts and locker rooms qualified for the welfare exemption, because the primary use of this part of the property was recreational, not evangelistic. The court noted that, even though the church may have intended that use of the recreational property would advance its evangelistic objectives, this was not enough to qualify for the exemption because, citing *Christward Ministry v. County of San Diego, supra*,<sup>10</sup> "Actual use of property for a religious purpose, and not *intended* use is the criteria for exemption."<sup>11</sup>

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<sup>9</sup> *Peninsula Covenant Church v. County of San Mateo* (1979) 94 Cal. App. 3d 382,

<sup>10</sup> *Id.* at 811; cf *Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal. 2d 729, 742.

<sup>11</sup> *Peninsula Covenant Church v. County of San Mateo, supra* at 396-397; see also, *First Baptist Church of San Fernando v. The County of Los Angeles* (1952) 113 Cal. App. 2d 392, 394, where the court noted that "the constitutional provision unequivocally requires that the property be 'used' for the designated purpose...[differentiating] *actual use*... from an *intention to use* the property for a particular purpose."

## CHAPTER 5: HOUSING

### INTRODUCTION

The welfare exemption is available for property used for various housing purposes: (1) housing property used exclusively for exempt purposes,<sup>192</sup> (2) housing for employees of qualified organizations,<sup>193</sup> (3) housing for lower-income households,<sup>194</sup> (4) housing for low and moderate income elderly and/or handicapped families,<sup>195</sup> (5) emergency or temporary shelter and related facilities for homeless persons and families.<sup>196</sup> This chapter discusses the requirements for qualifying for exemption for each kind of housing program.

### HOUSING PROPERTY USED EXCLUSIVELY FOR AN EXEMPT PURPOSE

The question of whether the welfare exemption extends to property used for housing and related facilities<sup>197</sup> provided by religious, hospital, scientific, and charitable organizations has presented property tax administrators and the California Courts with some difficult decisions over the years. Property tax administrators have historically taken a narrow view of the exemption, and have viewed much housing to be non-exempt on the grounds that the property is being used primarily for private residential purposes rather than exempt purposes, and is not being used exclusively for exempt purposes as required by section 214.

The courts, however, have taken a broader view, consistent with the Supreme Court's directive that statutory and constitutional provisions granting exemption are to be construed strictly, but reasonably. The Court stated that

...[t]he rule of strict construction does not require that the narrowest possible meaning be given to words descriptive of the exemption, for a fair and reasonable interpretation must be made of all laws, with due regard for the ordinary acceptance of the language employed and the object sought to be accomplished thereby.<sup>198</sup>

The Court recognized that too narrow an interpretation (1) would be inconsistent with the ordinary language of the provisions; and (2) would frustrate the underlying purpose of the constitutional and statutory provisions, to provide a property tax exemption to the properties of qualifying nonprofit organizations. Thus, the courts, in a number of cases, have applied the

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<sup>192</sup> Section 214(a).

<sup>193</sup> Section 214(i).

<sup>194</sup> Section 214(g).

<sup>195</sup> Section 214(f).

<sup>196</sup> Section 214(h).

<sup>197</sup> Related facilities have not been defined, but it is reasonable to assume that what is intended to be included are facilities such as dining rooms, kitchens, showers and toilets, and common rooms such as lounges, living rooms, recreation rooms and laundry facilities. When used in this discussion, the term *housing* includes *related facilities*.

<sup>198</sup> *Cedars, supra* at page 735.

principle that the term *exclusively used* is not to be applied literally so as to mean only, solely and purely for the stated exempt purposes to the total exclusion of any other use. Rather, the courts have said that the term not only applies to the primary use or purpose, but also to uses that *are incidental to and reasonably necessary* for the accomplishment of the exempt purposes of the organization. Thus, the courts have exempted properties used for a wide range of housing as property used exclusively for exempt [religious, charitable or hospital] purposes within the meaning of section 214(a).

## JUDICIAL AND ADMINISTRATIVE STANDARDS

### Decisions of Courts

As the following cases illustrate, the courts have applied two similar, but slightly divergent statements of the standard for exemption; that the housing must be *incidental to and reasonably necessary for the accomplishment of the exempt purpose* of the nonprofit organization or that housing be *institutionally necessary* in accomplishing the organization's exempt purpose in order to qualify for exemption as property used exclusively for [exempt] purposes within the meaning of section 214(a). The California Supreme Court used these terms interchangeably and/or simultaneously in four decisions issued on the same day in connection with the application of the exemption to property used for housing. These terms should be construed as having the same meaning, and constituting a single, uniform standard for exemption purposes.

- The California Supreme Court first considered the application of the welfare exemption to housing in the landmark case *Cedars of Lebanon Hospital v. County of Los Angeles*,<sup>199</sup> which determined how the welfare exemption applied to hospitals and hospital facilities. The court, under the rule of strict but reasonable construction, interpreted the exclusive use requirement of section 214(a), to include any facility which is incidental to and reasonably necessary for the accomplishment of hospital purposes; in other words, any facility which is reasonably necessary for the fulfillment of a generally recognized function of a complete modern hospital. Applying this test, the court exempted housing for interns, resident doctors, student nurses, and certain other hospital employees deemed essential to the operation of a complete modern hospital on a 24-hour basis.
- On the same day in 1950, the court issued an opinion in the case of *Serra Retreat v. County of Los Angeles*<sup>200</sup> holding that the exemption applied to living quarters for four priests and six lay-brothers who attended to the needs of laymen who attended religious retreats. The court held that the provision of housing for essential retreat personnel is an institutional necessity and constitutes property used exclusively for religious purposes. The free retreats lasted 50 hours - typically on weekends - and were directed toward laymen for the purpose of a silent religious meditation and reflection. The priests provided sermons, meditations and religious services. The lay-brothers did cooking, housekeeping, laundry, gardening and maintenance work, and generally provided for the "temporal needs" of the retreatants.

<sup>199</sup> *Cedars, supra* at page 759.

<sup>200</sup> (1950) 35 Cal.2d 755. *Serra Retreat, supra* at page 759.

- In a third case on that day in 1950 concerning the applicability of the exemption to property used for residential purposes, the California Supreme Court applied the Cedars test to exempt YMCA dormitory rooms rented to young men at minimum cost.<sup>201</sup> The court found that such housing constituted facilities incidental to and reasonably necessary for the accomplishment of the YMCA's charitable/religious purposes, and therefore, were within the exemption as property used for an exempt purpose. The court observed that the dormitory facilities were designed to provide young men with a place of study, recreation and residence; thus, the dormitories were reasonably necessary for the accomplishment of the YMCA's religious and charitable purposes of promoting good citizenship and Christian ideals and character. The court stated that the fact that plaintiff dormitories, as a secondary consideration, also serve the residential purposes of the occupants, does not destroy the effect of their dominant purpose as property used exclusively for religious ... or charitable purposes within the contemplation of the welfare tax exemption law.
- The Supreme Court also exempted property used for housing in a fourth case decided on that day, *Fredericka Home for the Aged v. County of San Diego*.<sup>202</sup> In addition to finding that the exemption applied to the main facility providing a home for elderly people, the court upheld the exemption for that portion of the property used as living quarters for personnel needed to care for the elderly on a 24-hour basis. Such personnel, the court said, lived on the premises as a matter of *institutional necessity*.
- Thus, under the principles set forth in these leading cases, the welfare exemption has been found to apply to a broad range of property used for housing, as further illustrated by the following cases: Temporary low-cost housing for missionaries, clergymen, other religious workers and their families while in the United States was held exempt as property used exclusively for the church's religious and charitable purposes.<sup>203</sup> The court held that the property maintained to provide temporary housing for workers on furlough status was an integral part of the church's religious and charitable operations. Further, the court observed that the housing facility furthered the church's foreign mission program of spreading Christianity throughout the world.
- A private school's property used for student board and lodging was exempted as a use of property within the school's educational purpose.<sup>204</sup> Although most of the school's students were day students, some students relied upon the school for board and lodging. The court stated that board and lodging is a one of the services provided by the school and is reasonably related to the exempt school activity.
- Dormitories and related facilities for persons assembled for religious instruction held exempt as within the organization's religious purpose, while housing for caretakers and

<sup>201</sup> *YMCA*, *supra* at pages 769-770.

<sup>202</sup> (1950) 35 Cal.2d 789.

<sup>203</sup> *House of Rest of the Presbyterian Church in the USA v. County of Los Angeles* (1957) 151 Cal. App. 2d 523, 536.

<sup>204</sup> *Sarah Dix Hamlin School*, *supra* at page 342.

maintenance workers at a religious conclave site were exempted as institutionally necessary.<sup>205</sup>

### Opinions of California Attorney General

The California Attorney General has concluded that the residence of a full time resident manager of the conference grounds owned by the California-Nevada Conference of the Methodist Church qualified for the welfare exemption. The manager's duties included complete responsibility for the maintenance and condition of all the property at the conference grounds. He saw that the facilities were in readiness for groups arriving and that supplies such as communion cups, hymnals, chairs and beds were available and ready. He was responsible for protection of the property from fire and snow damage in season. In essence, he was the representative of the management of the property and the administrative officer present. He was considered by the Methodist Conference to be necessary for the effective operation of the property.<sup>206</sup>

### Housing For Employees: The Statutory Standard For Exemption

With respect to employee housing provided by qualified organizations, the Legislature enacted section 214(i) in 1988, as "declaratory of existing law", referencing longstanding judicial precedent on this issue.<sup>207</sup> Section 214(i) states in relevant part that:

Property used exclusively for housing and related facilities for employees ... shall be deemed to be within the exemption ... to the extent the residential use of the property is institutionally necessary for the operation of the organization.

Thus, the statute provides that property used for employee housing will be exempt if it is *institutionally necessary* for the operation of the organization.

### Property Tax Rule 137, *Application Of The Welfare Exemption To Property Used For Housing*

In 1999 the Board of Equalization adopted Property Tax Rule 137, *Application of the Welfare Exemption to Property Used For Housing*, effective December 31, 1999.<sup>208</sup> The purpose of Rule 137 is to clarify that the welfare exemption from property taxation applies to housing and related facilities owned and operated by qualified nonprofit organizations and to establish a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.

Rule 137 provides the following guidance for applying the welfare exemption to housing:

(a) Housing and related facilities owned and used by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific or charitable purposes is eligible for the welfare exemption from

<sup>205</sup> *St. Germain Foundation, supra* at page 918.

<sup>206</sup> 959 34 Ops. Cal.Att.Gen. 175.

<sup>207</sup> Section 2, Stats. 1988, Ch. 1591.

<sup>208</sup> Rule 137 interprets sections 4(b) and 5 of Article XIII of the California Constitution and sections 214, 214.01, 214.1, 214.2, 254, 254.5, and 255 of the Revenue and Taxation Code.



property taxation as provided in Revenue and Taxation Code section 214. A single uniform statewide standard shall be used to determine whether the welfare exemption applies to housing and related facilities owned and used by qualified organizations. The standard is whether the use of the property by the organization for housing and related facilities is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization. For purposes of applying the uniform statewide standard, the phrase "Use of property that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization" includes the use of property that is institutionally necessary for the operation of the organization as provided in subdivision (i) of section 214 of the Revenue and Taxation Code.

(b) For purposes of determining whether property used for housing and related facilities is eligible for the welfare exemption, the terms "incidental to and reasonably necessary for" and "institutionally necessary" are identical and interchangeable; the term "institutionally necessary" means and includes "incidental to and reasonably necessary for" and vice versa. No distinctions in application of the welfare exemption to housing and related facilities shall be based on any difference or divergence between the terms.

(c) For purposes of determining eligibility for the welfare exemption, it is the use of the housing and related facilities by the organization owning the property that is to be considered, not the use by the occupants. If the organization's use of the property is incidental to and reasonably necessary for the accomplishment of the organization's exempt purposes, the property is eligible for exemption. The occupant's use for personal or residential purposes is secondary to the organization's primary exempt purpose and shall not disqualify the property from exemption either in whole or in part.

(d) The location of the property in relation to other property owned and used by the exempt organization is irrelevant to the application of the exemption. It is the use of the property by the organization which is the determining factor. The fact that the housing is located on property in a remote area may be considered in determining whether the housing is incidental to and reasonably necessary for the operation of the organization.

(e) **EXAMPLES:** The following examples illustrate the application of the welfare exemption to housing and related facilities

*Example No. 1*

The two-story building with seven completely-furnished apartments is used exclusively to provide temporary low-cost housing to missionaries, clergy, other religious workers and their families on furlough status while in the United States. The articles of incorporation of the nonprofit religious corporation which owns

and operates the property provide that its purpose is to provide housing for missionaries, clergymen, other religious workers and their families who work in establishing and furthering its religious purposes throughout the world. This housing is exempt as a facility incidental to and reasonably necessary for the accomplishment of the church's religious and charitable purposes.

*Example No. 2*

The property of a private school is used to provide board and housing to students. Although most of the school's students were day students, some students relied upon the school for board and lodging. These services provided by the school are reasonably related to the exempt educational activity, and are an exempt use of the property within the school's educational purpose.

*Example No. 3*

Property owned by a nonprofit corporation is used for housing and related facilities for persons who assemble two weeks each year for purposes of religious instruction and worship. The residential facilities are exempt as within the organization's religious purpose. Housing for caretakers or maintenance workers required to reside at the religious conclave facility is exempt as institutionally necessary.

*Example No. 4*

A nonprofit religious organization owns housing which it provides to its ministers and their families. Organizational documents require the church to provide housing as part of a system that allows the organization flexibility in assigning the clergy, aids in recruiting and keeping the clergy and provides the clergy with privacy and respite. The property also is used regularly for church functions such as youth meetings and organizational committee meetings. The church's use of its property to provide housing for its clergy is exempt as reasonably necessary for the furtherance of its religious purpose.

*Example No. 5*

The primary missionary activity of a nonprofit religious organization is to publish and disseminate its religious literature to the general public. The organization owns a complex consisting of a temple and six apartment buildings that provide work areas for about 250 devotees, about one-half of whom are involved in the publishing and distribution of the organization's religious books and magazines. The work areas are frequently used at night as sleeping areas since most of the devotees live in the rooms in which they work. The devotees follow a seven-hour daily regimen of communal and individual daily prayers, meditations, chanting, and attendance at temple services and observe a strict diet which necessitates

living in the temple complex. Property used for housing the devotees in the temple complex is exempt as reasonably necessary for the fulfillment of the organization's religious objectives.

The examples are merely illustrative, and are not intended to establish exclusive standards or guidelines.

### **REQUIREMENTS FOR EXEMPTION**

Rule 137 specified a single statewide standard for exemption for property used for housing and related facilities. Previously more than one standard had been considered by some in administering the exemption, resulting in confusion and inconsistency in administration. The most important principle in the single statewide standard, a principle that was not universally recognized in the past, is that it is the use of the property by the organization owning the property that is the determining factor, not the use by the occupants of the housing. If the use by the organization is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization, the property is exempt.

The recognition by Rule 137 of this principle had some important implications, which changed how some had administered the exemption in the past. For example, the use of the property by the owner organization solely for a residence for a member of the clergy to provide respite is an exempt purpose where that use is in furtherance of the religious purposes of the organization as set forth in the organization's tenets. Recognition of this principle also eliminated the past practice of exempting portions of the living space used for consultation and meetings with parishioners, and assessing the private living quarters of the clergy. The entire property can be exempt where the organization's purposes include both residential and communal use.

The assessor can require a claimant to submit documentation in support of its claim for exemption for property used for housing and related facilities. Accordingly, all nonprofit organizations may be required to submit documentation that establishes why the organization's use of the property is incidental to and reasonably necessary for the exempt purposes of the organization. Required documentation could include: (1) a copy of the organization's tenets, canons or other written policy confirming that the organization has the established practice or obligation, to provide housing to certain employees and/or volunteers to carry out the exempt purpose of the organization; or (2) a statement explaining how the use of the property for housing and related facilities is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization; or (3) a statement or other information confirming that the property is used for housing, and if other uses are also made of the property, the nature of those uses.

### **HOUSING FOR LOWER-INCOME HOUSEHOLDS**

Subdivision (g) of section 214 extends the welfare exemption to property owned and operated by qualifying organizations and used exclusively for rental housing which is occupied by lower-