

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-1113
	:	
of	:	<u>February 26, 1980</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Anthony S. Da Vigo	:	
Deputy Attorney General	:	
	:	

SUBJECT: ORGANIZATIONS UNDER SECTION 23701t (a) OF THE REVENUE AND TAXATION CODE—Organizations designated in section 23701t (a) of the Revenue and Taxation Code do not include corporations or associations organized and operated to provide for the maintenance of common areas of commercial condominiums or commercial planned unit developments.

The Honorable Kenneth L. Maddy, State Senator, Fourteenth District, has requested an opinion on the following question:

Do the organizations designated in section 23701t, subdivision (a) of the Revenue and Taxation Code include corporations or associations organized and operated to provide for the maintenance of common areas of commercial condominiums or commercial planned unit developments?

CONCLUSION

The organizations designated in section 23701t, subdivision (a) of the Revenue and Taxation Code do not include corporations or associations organized and operated to

provide for the maintenance of common areas of commercial condominiums or commercial planned unit developments.

ANALYSIS

The principal issue which arises from the subject inquiry is whether the statutory reference to certain property includes commercial as well as residential property. Section 23701 of the Revenue and Taxation Code¹ provides:

“Organizations which are organized and operated for nonprofit purposes within the provisions of a specific section of this article, or are subject to Section 23701m, are exempt from taxes imposed under this part, except as provided in this article or in Article 2 (commencing with Section 23731) of this chapter, if:

“(a) An application for exemption is submitted in the form prescribed by the Franchise Tax Board; and

“(b) A filing fee of ten dollars (\$10) is paid with each application for exemption filed with the Franchise Tax Board after December 31, 1969; and

“(c) The Franchise Tax Board issues a determination exempting the organization from tax.

“This section shall not prevent a determination from having retroactive effect and does not prevent the issuance of a determination with respect to a domestic organization which was in existence prior to January 1, 1970, and exempt under prior law the submission of a formal application or payment of a filing fee. For the purpose of this section, the term ‘domestic’ means created or organized under the laws of this state.

“The Franchise Tax Board may issue rulings and regulations as are necessary and reasonable to carry out the provisions of this article.”

Section 23701t designates the-following organizations:

“(a) Corporations or associations organized and operated to provide for the management, maintenance and care of association property and common areas, maintain architectural control and enforce protective

¹ Hereinafter, all section references are to the Revenue and Taxation Code.

restrictions, or promote the general welfare of the community comprising the association if—

“(1) Sixty percent or more of the gross income of such organization for the taxable year consists solely of amounts received as membership dues, fees and assessments from tenant-stockholders or owners *of residential units, residences or lots*;

“(2) Ninety percent or more of the expenditures of the organization for the taxable years are expenditures solely for providing management, maintenance and care of association property or for the general welfare of the community comprising the association;

“(3) No part of the net earnings inures (other than by providing management, maintenance and care of association property or by a rebate of excess membership dues, fees or assessments) to the benefit of any private shareholder or individual;

“(4) The organization does not provide or maintain facilities to provide utilities for its members; and

“(5) Amounts received as membership dues, fees and assessments not expended for association purposes during the taxable year are transferred to and held in trust to provide for the management, maintenance, and care of association property and common areas, or to promote the general welfare of the community comprising the association.

“(b) The term ‘association property’ means—

“(1) Property held by the organization,

“(2) Property held in common by the members of the organization and

“(3) Property within the organization privately held by the members of the organization.

“(c) A homeowners association shall be subject to tax under this part with respect to its ‘homeowners association taxable income,’ and such income shall be subject to tax as provided by Chapter 3 (commencing with Section 23501) of this part.

“(1) For purposes of this section, the term ‘homeowners association taxable income’ of any organization for any taxable year means an amount equal to the excess over one hundred dollars (\$100) (if any) of

“(A) The gross income for the taxable year (excluding any exempt function income), over

“(B) The deductions allowed by this part which are directly connected with the production of the gross income (excluding exempt function income).

“(2) For purposes of this section, the term ‘exempt function income’ means any amount received as membership fees, dues and assessments from tenant-shareholders or owners of *residential units, residences or lots*.” (Emphasis added.)

The question presented is whether the organizations designated in subdivision (a) of section 23701t include corporations or associations organized and operated to provide for the maintenance of common areas of commercial condominiums or commercial planned unit developments. Specifically, it has been suggested that the term “residential units, residences or lots” includes commercial as well as residential lots.

We begin with the fundamental rule that the intent of the Legislature should be ascertained so as to effectuate the purpose of the law. (*Moyer v. Workmen’s Camp. App. Bd.* (1973) 10 Cal. 3d 222, 230.) The words of a statute must be construed contextually, in order to give effect to the manifest purposes that, in light of its legislative history and the wider historical circumstances of its enactment, appear from its provisions as a whole. (*California Mfgs. Assn. v. Public Util. Com.* (1979) 24 Cal. 3d 836, 844; *Nightingale v. State Personnel Board* (1972) 7 Cal. 3d 507, 513; *Smith v. Mt. Diablo Unified Sch. Dist.* (1976) 56 Cal. App. 3d 412, 418.)

The exclusion of organizations providing for the maintenance of commercial, as distinguished from residential, property is intrinsically and extrinsically indicated. The term “commercial” nowhere appears in the statute. On the contrary, the sole modifier of the words “units, residences, or lots” is the word “residential.” Moreover, the exclusion of commercial property from the purview of the statute appears from its provisions as a whole. Subdivision (c) refers expressly to homeowners associations. With respect to such homeowners associations, the phrase “exempt function income” is defined as any amount received as membership fees, dues and assessments from tenant-shareholders or owners of “residential units, residences or lots.” Thus, although the word “lots” is not immediately preceded by the term “residential,” it is clear that the reference is limited to those lots which are defined or designated residential. There is no basis for concluding that the same

language in subdivision (a) has a different connotation. It is a reasonable assumption that the Legislature did not intend to use a significant term in two different senses in the same statute. (*Rosemary Properties, Inc. v. McColgan* (1947) 29 Cal. 2d 677, 686.)

Secondly, section 23701t was added by section 120 of chapter 1079 of the Statutes of 1977 known as the Tax Reform Act of 1977. Section 2 of chapter 1079 provides that:

“It is the intent of the Legislature to conform provisions of California law, where appropriate, to the changes contained in the Federal Tax Reform Act of 1977.”

The latter reference is apparently to the Tax Reform Act of 1976. (Pub. L. 94–455, tit. I, § 101; 90 Stat. 1525, 26 U.S.C. 1 note, Oct. 4, 1976.) Section 2101 (a) of title XXI of Public Law 94–455 (90 Stat. 1897) added section 528 to title 26, United States Code. Section 2371t is the state counterpart of, and is substantially patterned after title 26, United States Code, section 528. The federal provision pertains unequivocally to homeowners associations, and refers to “(i) owners of residential units in the case of a condominium management association, or (ii) owners of residences or residential lots in the case of a residential real estate management association.”

It is reasonable to assume, in view of the express intent of the Legislature to conform the state law to concomitant federal provisions, that if it had intended to attribute to the word “lots” an expanded meaning, it would have done so expressly. It is concluded that the organizations designated in subdivision (a) of section 23701t do not include corporations or associations organized and operated to provide for the maintenance of common areas of commercial condominiums or commercial planned unit developments. This conclusion is consistent with the principle that in the case of claims of exemption from the terms of a taxing statute, strict construction against such exemption should be adopted. (*Koenig v. Johnson* (1945) 71 Cal. App. 2d 739, 751–752.)
