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OPINION	:	No. 79-508
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of	:	November 9, 1979
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SUBJECT: TAX EXEMPT STATUS OF CHURCH-RELATED SCHOOLS—County assessors may constitutionally require church-related schools to file factual statements on prescribed forms as a condition to allowing such schools a property tax exemption. An institution which claims tax exemption has the burden of demonstrating its exempt status. The state can require such institution to file form 199B as a condition to allowing such schools an exemption from the state franchise tax.

The Honorable H.L. “Bill” Richardson, Senator, Twenty-Fifth District, has requested an opinion on the following questions:

1. (a) Can county assessors constitutionally compel the filing of detailed tax statements and welfare exemption forms from church-related schools, as exemplified by those attached to the opinion request?

(b) Does the state or the institution bear the burden of demonstrating that the institution is exempt from taxation?

2. Can the State of California constitutionally require church-related schools to file form 199B (Exempt Organization Annual Information Statement’)?

## CONCLUSIONS

1. (a) County assessors may constitutionally require church-related schools to file factual statements on prescribed forms as a condition to allowing such schools a property tax exemption. The welfare exemption forms attached to the request appear to be reasonably necessary for that purpose. The “church exemption” is not applicable to church-related schools. Therefore, the forms attached to the request relating to that exemption are not pertinent herein.

(b) An institution which claims that it is exempt from property taxation has the burden of demonstrating its exempt status.

2. The State of California can constitutionally require church-related schools to file form 199B (“Exempt Organization Annual Information Statement”) as a condition to allowing such schools an exemption from the state franchise tax.

## ANALYSIS

### 1. The Property Tax and Welfare Exemption Forms

The first question presented involves detailed claims forms which have been attached to the request for our opinion herein and which are used by the County Assessor in Sacramento County to establish the “church exemption” and the “welfare exemption.”

Article XIII of the California Constitution provides in section 1 that all [real] property shall be taxable “[u]nless otherwise provided by this Constitution or the laws of the United States,” and in section 2 that the Legislature may provide for the taxation of all tangible personal property, and specified intangible personal property such as stocks, bonds and other evidences of indebtedness. Section 3 of Article XIII then contains an enumeration of property which is specifically exempt from “property taxation,” which includes both real and personal property. Section 4 of Article XIII then provides an enumeration of property which the ‘Legislature may exempt from property taxation in whole or in part.’ Finally, Article XIII, section 33 provides that “[t]he Legislature shall pass all laws necessary to carry out the provisions of this article.”

The “church exemption” is found in sections 3(f), 4(d) and 5 of Article XIII. Thus, section 3(f) provides an exemption for:

“Buildings, land on which they are situated, and equipment used exclusively for religious worship.”

Section 4(d) then provides that the Legislature may exempt:

“Real property not used for commercial purposes that is reasonably and necessarily required for parking vehicles of persons worshipping on land exempt by Section 3(f).”

And finally section 5 of Article XIII provides that:

“Exemptions granted or authorized by Sections 3(e), 3(f), and 4(b) apply to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption.”

The church exemption is implemented primarily in section 206 of the Revenue and Taxation Code<sup>1</sup> by reference to the specific constitutional provisions of Article XIII, sections 3(f) and 5, and in section 206.1 with a detailed implementation of section 4(d) of Article XIII as to the church parking lot exemption. Additionally, section 256 requires that the affidavit for the church exemption shall demonstrate that “(1) [t]he building and equipment are used solely for religious worship” and “(2) [t]hat [t]he land claimed as exempt is required for the convenient use of the building.” It further requires county assessors to mail a claim form annually to the prior recipients of the exemption.

As is evident from these provisions, the “church exemption” is applicable only to property “used *exclusively* for religious *worship*” (emphasis added) and to certain appurtenances to such property such as parking lots. Therefore, as to church-related *schools*, the “church exemption” is not applicable, since the property of such schools would be used primarily for educational purposes-not worship. Thus, as described below, the “welfare exemption” would be applicable to such schools.<sup>2</sup>

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<sup>1</sup> All section references are to the Revenue and Taxation Code unless otherwise indicated.

<sup>2</sup> This conclusion is codified in section 214.5 which provides that [p]roperty used exclusively for school purposes of less than collegiate grade, or exclusively for purposes of both schools of and less than collegiate grade, and owned and operated by religious . . . foundations or corporations, which foundations or corporations meet all the requirements of section 214, shall be deemed to be within the exemption provided for in subdivision (b) of section 4 and section 5 of Article XIII. . . .” See also § 214, paragraph two, and *Cedars of Lebanon Hospital v County of Los Angeles* (1950) 35 Cal. 2d 729, 736, for a definition of the term “property used exclusively for” in the context of the welfare exemption. That definition is applied by the State Board of Equalization to the “church exemption.” (See, Assessors’ Handbook. Church Exemption, California State Board of Equalization (March 1977), AH 262.)

The “welfare exemption” is authorized by Article XIII, section 4(b) and 5 of the California Constitution. Section 4(b) permits the Legislature to exempt from property taxation:

“Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entitles (1) that are organized and operating 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.”

Section 5 of Article XIII has already been set forth in full above with respect to the “church exemption.”

Section 214 is the basic implementing section for the substantive portion of the welfare exemption, with a number of succeeding sections also being pertinent such as section 214.01 defining when property is deemed to be irrevocably dedicated to an exempt use; sections 214.1 and 214.2 specifying that “property used exclusively” in an exempt use includes property under construction; section 214.3 providing for exemptions under certain circumstances despite existing reversionary interests; sections 214.4 and 214.5 describing the exemption for property used for schools of “less than collegiate grade”; 214.6 describing exemptions in certain situations where the exempt property is leased to governmental entitles; etc., etc. In short, the Legislature has implemented the “welfare exemption” by enacting numerous code provisions setting forth the circumstances when it shall apply.

(a) The Requirement That Church-Related Schools File Forms to Establish Their Tax-Exempt Status.

The first portion of the first question is whether the county assessor may constitutionally require the filing of detailed forms by church-related schools such as are attached to the opinion request. As already noted, the forms are those to establish entitlement to (1) the “church exemption” and (2) the “welfare exemption.”

As explained above, “church-related” schools would not fall within the scope of the church exemption, but only within the scope of the “welfare exemption.” A perusal of the form used to establish the welfare exemption discloses that it requires information to demonstrate that the property is in fact exclusively used for an exempt use. It also requires a detailed statement as to salaries paid in excess of \$400 weekly or \$20,000 annually. It also requires operating statements of the exempt organization, or of the exempt property itself if different from the organization. It also requires a detailed description of exempt land, building and improvements, and personal property, and the primary and incidental

uses thereof. It also requires verification that the *organization* has tax-exempt status under section 23701d or section 501(c)(3) of the Internal Revenue Code. Without further elaboration, the form appears to follow the mandate of section 259.5 which states that “[t]he affidavit for the welfare exemption shall show that both the property and the owner meet all the requirements entitling the property to the exemption.”<sup>3</sup>

As explained above, the “church exemption” is an automatic exemption under the provisions of Article XIII of the California Constitution. However, also as explained above, the “welfare exemption” is a matter for legislative determination. *Furthermore, churches may be constitutionally required to bear their fair share of a general tax so long as a tax or fee is not exacted for the privilege of exercising their religion.* (See *Follett v. McCormick*, 321 U.S. 573, 577–578 (1943); *Murdock v. Pennsylvania*, 319 U.S. 105, 112–113 (1942); *Watchtower B. & T. Soc. v. County of L.A.* (1947) 30 Cal. 2d 426, 429–432.) In short, there is no requirement that the state exempt churches or church-related schools from the property taxation under the Free Exercise Clause of the United States Constitution or the California Constitution.<sup>4</sup>

Whether a given exemption is self-executing and absolute, such as the “church exemption” and the “veterans exemption,”<sup>5</sup> or is a matter for legislative determination, such as the “welfare exemption,” California courts have had little difficulty finding that the Legislature may implement the constitutional exemption and require a claimant to demonstrate entitlement thereto. For example, in *First Unitarian Church v. County of L.A.* (1957) 48 Cal. 2d 419, rev’d on other grounds 357 U.S. 545, (1958)<sup>6</sup> the California

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<sup>3</sup> For example section 214 requires that no part of the net profits of the organization shall inure to the benefit of any private individual or shareholder. An operating statement of the organization would be necessary to demonstrate this. Section 214 also requires that excessive salaries shall not be paid by the organization so that the property is not used for the private benefit of any person. Section 2148 requires tax exempt status for the organization claiming the exemption, except in several limited situations. And the basic thrust of the “welfare exemption” itself is that there must be an “exclusive” use for an exempt purpose, thus requiring a detailed description of the real and personal property, and its uses.

<sup>4</sup> U.S. Const., 1st Amend; see also Cal. Const., art. I § 4. In fact it was only relatively recently that the United States Supreme Court upheld the right of a state to grant a church exemption against the contention that such an exemption was contrary to the Establishment Clause as state aid to religion. (See *Walz v. Tax Commission*, 379 U.S. 664 (1970). See also generally, Comment, *Constitutional Aspects of Church Taxation* (1973) 9 Colum. J. Law & Soc. Prob. 646; Note, *Tax Benefits For Religion* (1970) 45 N.Y.U.L. Rev. 876.)

<sup>5</sup> For the “veterans exemption” see Cal. Const., art. XIII § 3(o), (p), (q), and (r).

<sup>6</sup> The narrow holding of the case was reversed on the basis that the objected to information required by law, the non-subversive affidavit, could not be constitutionally exacted by virtue of the First Amendment’s Freedom of Speech and Association. The general reasoning of the Court,

Supreme Court had this to say with respect to churches, and the “church exemption:”

“It is fundamental that the payment of taxes has been and is a uniform if not a universal demand of government, and that there is an obligation on the part of the owner of property to pay a tax legally assessed. An exemption from taxation is the exception and the unusual. To provide for it under the laws of this state requires constitutional or constitutionally authorized statutory authority. It is a bounty or gratuity on the part of the sovereign and when once granted may be withdrawn. *It may be granted with or without conditions but where reasonable conditions are imposed they must be complied with.*

“A church organization is in no different position initially than any other owner of property with reference to its obligations to assist in the support of government by the payment of taxes. Church organizations, however, throughout the history of the state, have been made special beneficiaries by way of exemptions. (*Id.* at p. 426, emphasis added.)

Thereafter, throughout its opinion, the Court discussed the assessor’s duty to ascertain the necessary facts before granting a property tax exemption, and the claimant’s duty to cooperate with the assessor in his performance of that duty. The Court eventually concluded:

“No good reason has been advanced why churches as well as all of the many other organizations seeking exemption from taxation should not be required to comply with the law of the state providing for assistance to the county assessors in the discharge of their duties to ascertain the facts which would justify the exemption. . . .” (*Id.* at p. 443).

Or as stated by the Court in the leading case of *Chesney v. Byram* (1940), 15 Cal. 2d 460, wherein a claimant for the “veterans exemption,” a self-executing and absolute exemption then provided for in Article XIII § 1¼ of the California Constitution, objected to proving his entitlement to the exemption by filling out the claim form required by law:

“We are not impressed with the argument advanced by respondent to the effect that the provisions of section 3612 of the Political Code imposes an unreasonable restriction or limitation upon the exercise of the right to the exemption granted by the constitutional provision above mentioned. *On the other hand, it appears to us reasonable and proper that some method should be provided by the legislature for the determination of those who may*

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however, is extremely germane to our inquiry.

*be entitled to the exemption provided for in the Constitution. It is obvious that the burden should be upon the person claiming the exemption to establish his right thereto.* The method provided for under section 3612 of the Political Code is a simple one and is available to all who desire to claim the exemption provided for under the abovementioned provision of the Constitution; in fact, it would be much easier and simpler for a person claiming such exemption to comply with the provisions of section 3612 of the Political Code than to resort to the procedure followed by respondent in this case, even if the tax collector had complied with respondent's request to accept the sum of \$21.84 in full payment of the taxes due from respondent, and the latter had not been required to institute this action.

*"It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions."* (*Id.* at p. 465, emphasis added.)

See also: *Serra Retreat v. County of L.A.* (1950) 35 Cal. 2d 755, 758: "the rule of strict construction applies to the welfare exemption law and the institution *seeking its benefit must clearly show that it comes within the terms thereof*" (emphasis added); *First M.E. Church v. Los Angeles Co.* (1928) 204 Cal. 201, 204, re "church exemption": "It creates no hardship to require of a property owner that he file an affidavit showing that the property claimed to be exempt is used solely for religious worship, that it is required for the convenient use and occupation of the building upon the premises, and that the same is not rented for such purposes and rent received by the owner thereof."

The affidavit attached to the opinion request herein, used by the county assessor in Sacramento County, does what the California Supreme Court has acknowledged for years may be done. It requires the claimant for the welfare exemption to sustain the burden of proof and establish its entitlement to the exemption.

Accordingly, we conclude that the assessor may require church-related schools to execute detailed forms such as that attached to the opinion request to establish their entitlement to the exemption.

(b) The Burden of Proof as to the Exemption

The second part of question one requests our opinion as to whether the government or a church-related school has the burden of proving entitlement or not to the welfare exemption. The case law just discussed above with respect to the affidavit also answers this second part of question one. The burden is on the school to prove its entitlement. It is not the duty of the government to demonstrate that the institution is not entitled to the exemption.

### 3. Must Church-Related Schools File Form 199B?

The second question presented is whether the Legislature may constitutionally require a church-related school to file a form 199B. That form is the “Exempt Organization Annual Information Statement” under the Bank and Corporation Tax Law.

The Bank and Corporation Tax Law is contained in section 23001 *et seq.* Essentially under that law corporation and financial institutions not otherwise exempt pay an annual franchise tax based upon their net income. (§§ 23151, 23154, 23181, 23183.) Under the provisions of section 23701d, church-related schools would be exempt organizations. That section provides:

“Corporations, community chests or trusts, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, (except as otherwise provided in Section 23704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. . . .”

Without a detailed exposition of the form, suffice it to say that form 199B is designed to elicit the information from the organization which is necessary to demonstrate that it meets the criteria of section 23701d.

Under the reasoning of the California cases discussed under question one, it is our opinion that the requirement that a church-related school file form 199B is a reasonable regulation to demonstrate that it in fact is an exempt organization, and that its income is derived from exempt activities and is used for proper purposes. For example, a church or church-related school might have “unrelated income” which is clearly taxable (§ 23731 *et seq.*). Without an “information return” the Franchise Tax Board could not determine whether the income is “related” to school purposes, or is “unrelated income.”

Furthermore, at least one Federal Circuit Court has stated that “it is constitutionally permissible to tax the income of religious organizations.” (*Parker v. C.I.R.* 365 F. 2d 792

(8th Cir. 1966). Exemptions from taxation on income are therefore matters for state determination (*Ibid.*)<sup>7</sup> Accordingly, under the cases discussed in question 1, *supra*, a state may clearly require a church-related school to justify its exemption from taxation on its income by requiring it to fill out form 199B.

Finally, the California Supreme Court has had little difficulty requiring churches to supply the information to the assessor to demonstrate its “church exemption.” The Free Exercise Clause has posed no problem despite the fact that the property is admittedly used exclusively for religious worship. (*E.g., First Unitarian Church v. County of L.A., supra*, 204 Cal. 201.) And significantly, the United States Tax Court in a very recent decision has held that it is not a violation of the Free Exercise Clause to require a church to establish its exemption from income tax under section 501 (c) (3) of the Internal Revenue Code. (*General Conference of the Free Church of America v. Commissioner*, CCH Dec. 35, 901; 71 Tax Ct. \_\_\_, February 28, 1979.) As noted in the case summary in the Commerce Clearing House Federal Tax Reporter:

“Such information is necessary for the Its to determine if the applicant fulfilled the statutory requirements that it be ‘operated exclusively’ for exempt purposes, as shown by its activities.”

In the final analysis, the requirement that a church or a church-related school file a form such as form 199B to aid the state in ascertaining facts peculiarly within the knowledge of the church in no manner exacts a tax or fee, or imposes a condition which interferes with the free exercise of its religion by the church or school. As stated by the Court in *First M.E. Church v. Los Angeles Co., supra*, 204 Cal. at page 204, the requirement to make a return to prove an exemption “is regulatory, and places no unreasonable burden upon those entitled . . . to tax exemption.”

Accordingly, it is concluded that the state may constitutionally require a church-related school to file a form 199B.

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<sup>7</sup> The payment of the bank and corporation franchise tax constitutes an offset as to any corporation income tax liability under section 23501, the corporation income tax, and is thus to a degree “in lieu” of an income tax. (§ 23503.) Section 23701d constitutes an exemption for both the corporation franchise tax and the corporation income tax.