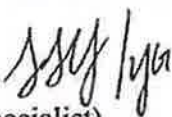


Memorandum

To: Ms. Lisa Thompson
Business Tax Administrator III
County-Assessed Properties Division (MIC:64)

Date: August 12, 2015

From: Sonya S. Yim 
Tax Counsel III (Specialist)
Tax and Fee Programs Division (MIC:82)

Subject: **Claim for Organizational Clearance Certificate – Imperial Valley Gateway Center, LLC and Brawley Community Foundation Assignment No. 15-218**

This is in response to your request that we review additional information sent by Imperial Valley Gateway Center, LLC (Imperial or Claimant) in response to the Incomplete Finding Sheet (Finding Sheet) issued for its claim for an organizational clearance certificate (OCC), and subsequent discussions thereto. You ask whether the additional information provided warrants the issuance of an OCC for the Claimant.

The Finding Sheet states that Imperial's purpose to acquire, construct and operate a medium security detention facility, and to finance costs for the same, did not qualify for the welfare exemption. Specifically, it appears that the Finding Sheet questions whether Imperial is organized for an exempt purpose, whether it uses the property exclusively for an exempt purpose and whether a user of the property, as explained below, is required to hold its own OCC. However, as discussed below, based on the additional information received and on additional research, in our view, Claimant is organized and operated for exempt purposes within the meaning of Revenue and Taxation Code¹ section 214. Therefore, as long as all other requirements are met, an OCC should be issued for the Claimant. We note, however, that it is the Assessor's ultimate decision whether to grant or deny the welfare exemption based on the actual usage of the property.

Factual Background

According to the materials provided by the Claimant, Imperial is wholly owned by Brawley Community Foundation (Brawley or Foundation), a nonprofit public benefit corporation which has been issued an OCC. Imperial was formed for the exclusive purpose of acquiring, constructing, and operating a 704-bed detention facility (Facility) located in unincorporated Imperial County, California, near the City of Holtville (City). This project is funded through a secured loan from The Industrial Development Authority of the County of La Paz, Arizona.

¹ All further statutory references are to the Revenue and Taxation Code, unless otherwise specified.

The Foundation approached the City to work with it (through Imperial) in connection with entering into intergovernmental agreements, even though the Facility is not located within the City's corporate area, due to the fact that California law does not allow counties to enter into such agreements.² As a result, Imperial has entered into a Housing Agreement with the City, pursuant to which the City may enter into agreements with local, state, out-of-state and federal entities (Agencies), whereby the City will be contractually obligated to provide security detention housing (provided at the Facility through Imperial) for inmates and detainees under the jurisdiction and control of those such Agencies. Timothy Kelley, a member of the Board of Directors of Brawley and the manager of Imperial, has issued a memorandum dated September 5, 2014 stating that rather than contracting directly with Imperial, the "City of Holtville was the most efficient source of contracting with other government agencies for the housing of detainees because they could provide this service to the Foundation for \$0.75 per day per prisoner."³

Furthermore, Imperial has entered into an Operations, Management, and Maintenance Agreement (Management Agreement) with Management & Training Corporation (MTC) to manage the Facility on a daily basis. Generally under the Management Agreement, Imperial is to market the Facility to Agencies and ensure MTC's compliance with the Management Agreement and all applicable federal, state, and local law. MTC is also to pursue contracts with government entities and develop comprehensive marketing plans in that regard. However, MTC must report to Imperial concerning the progress of such marketing efforts, and Imperial may refuse to enter government housing agreements if the per diem rate is lower than its daily costs and obligations. If MTC requests, Imperial is to cause the City to enter agreements to house offenders, provided that all responsibilities are assumed by MTC; however, MTC must approve of such terms and conditions.

Importantly, MTC is to staff the Facility, and provide food, medical, and laundry services, as well as special programs for the detainees' physical and mental health. MTC must report virtually all of its activities to Imperial, which includes quality control and self-compliance reports, as well as reports regarding, among other things, discipline, grievances, incidents, progress reports, staff turnover, Facility population statistics, and future plans for monitoring and auditing its operations at the Facility. Either party may terminate the Management Agreement with 100 days of prior written notice, but notwithstanding that, Imperial has agreed to give one year of prior written notice if the termination occurs during the term of a governmental housing agreement between the City and any other governmental agency that contemplates continued operation by MTC.⁴

Law & Analysis

Article XIII of the California Constitution authorizes the Legislature to exempt from property taxation in whole or in part "[p]roperty used exclusively for religious, hospital, or charitable purposes and owned or held in trust 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." (Cal. Const., art. XIII, § 4(b).) The

² Letter from Imperial's representative, D. Mathew Richardson of Sheppard Mullin, to the State Board of Equalization, dated September 22, 2014 (September Letter), at p. 2.

³ Exhibit G to September Letter.

⁴ Management Agreement (Exhibit B to September Letter), at p. 14.

constitutional authority for the welfare exemption is implemented by Revenue and Taxation Code⁵ section 214, which provides in relevant part that: "property used exclusively for . . . charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for . . . charitable purposes is exempt from taxation" if all other requirements set forth in section 214 are met.

Thus, for property to be eligible for the welfare exemption, it must be owned and operated by a qualifying organization that is organized and operated for an exempt purpose.⁶ The State Board of Equalization (Board) first determines whether an organization is eligible for the welfare exemption by determining whether it is organized and operated for an exempt purpose. If so, it may grant an OCC.⁷ Thereafter, the county assessor determines whether the organization's property qualifies for the exemption based on the actual use of the property, and grants (or does not grant) the welfare exemption.⁸ In this regard, the assessor may institute an audit or verification of the operations on the property, and may deny a claim for the welfare exemption, notwithstanding that the claimant has been granted an OCC by the Board.⁹

Exempt Purpose

In order for property to be eligible for the welfare exemption, it must be owned by a qualifying organization, that is, an organization organized and operated for at least one of four enumerated exempt purposes – religious, hospital, scientific or charitable. Imperial seeks to qualify as being organized and operated for charitable purposes. The Supreme Court has stated that "[t]he term charity has been defined in a number of California cases as 'a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons -- either by . . . assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.'" (*Lundberg v. County of Alameda* (1956) 46 Cal.2d 644, 649.)

An organization "lessens the burdens of government" if it performs a service that the government would otherwise have been required to provide, and thereby relieves the government of some obligation toward its citizens. (*Clubs of Cal. for Fair Competition v. Kroger* (1992) 7 Cal.App.4th 709, 716-717.) The court in *Clubs of Cal. for Fair Competition* stated that "courts have tended to recognize a charitable purpose in activities 'of a type often supported by government.'" (*Stockton Civic Theatre v. Board of Supervisors, supra*, 66 Cal.2d 13, 20.) The underlying premise appears to be that, where government agencies actually support activities similar to those at issue, it may be easily inferred that they serve a social interest." (*Id.* at p. 718.)¹⁰

⁵ All further statutory references are to the California Revenue and Taxation Code unless otherwise specified.

⁶ Rev. & Tax. Code, § 214, subd. (a).

⁷ Rev. & Tax. Code, § 254.6.

⁸ Rev. & Tax. Code, § 254.5.

⁹ *Ibid.*

¹⁰ See also Revenue Ruling 70-583, 1970-2 CB 114 and Private Letter Ruling (PLR) 9629002 (April 8, 1996) [holding that an organization's provision of detention or prison facilities for state and local governments lessened the burdens of government]; see also PLR 200832034 [ruling that an organization's activities of constructing, owning, managing and operating a public arena relieved the government from such activities, and therefore would be considered to lessen the burdens of government].

Specifically, the Supreme Court has stated that "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." (*In re Jenkins* (2010) 50 Cal.4th 1167, 1175.) Therefore, since running a prison is "peculiarly within the province" of government, and Imperial's purpose is to run a prison for detainees under the jurisdiction of local, state, and federal entities, Imperial's activities aid in an undertaking that the government otherwise would be obligated to provide, and thereby lessens a burden of government. For that reason, we believe Imperial's purpose to acquire, construct and operate the Facility constitutes a charitable purpose within the meaning of section 214, subdivision (a).

Exclusive Use

As stated above, section 214, subdivision (a) requires that the property for which the welfare exemption is claimed must be *used exclusively* for an exempt purpose by a qualifying organization. The Revenue and Taxation Code does not specifically define the term *used exclusively*; however, the courts have done so in a series of decisions. The State Supreme Court, following a rule of strict, but reasonable construction, has construed "exclusively used" in section 214, subdivision (a), to include any use of the property which is "incidental to and reasonably necessary for the accomplishment of the exempt purpose." (*Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.) The court in *Honeywell Information System, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23 further held that in order to be exempt, "such incidental use must be directly connected with, essential to, and in furtherance of the primary use." (*Id.* at p. 28.)

Here, Imperial carries out its exempt purpose by contracting with MTC to provide prison services. MTC is contracted under the Management Agreement to operate, maintain, and manage the Facility, and such activities are required by Imperial to be solely for a charitable purpose and charitable use to house individuals who are incarcerated pursuant to the jurisdiction of contracted government agencies. (Management Agreement, at p. 5, ¶¶ (A)(12), (B)(3).) Pages 6-13 of the Management Agreement describe MTC's duties of, among other things, providing and training all staff members, maintaining records and accounting, reporting to government and law enforcement agencies, providing supplies and medical, food, laundry, clothing, commissary, and telephone services, programs for mental and physical health, utilities and facilities equipment, grievance, discipline and safety procedures, drug testing, and inmate classification, assignment and transfer. It is clear, therefore, that Imperial has subcontracted many of its duties under the Housing Agreement to MTC.

Imperial's activities generally consist of negotiating and administering housing agreements and financing arrangements, as well as oversight of MTC.

In determining whether a property is used exclusively for an exempt purpose, we first note that courts have not disqualified organizations from receiving the welfare exemption merely because they hire contractors or service providers to carry out exempt purposes on the property in question. (See *Santa Catalina Island Conservancy v. County of Los Angeles* (1981) 126 Cal.App.3d 221 (*Santa Catalina*).)

In *Santa Catalina*, the court held that the land owned by the subject Conservancy, a nonprofit corporation to preserve open space land for recreational and ecological purposes, was exclusively used for charitable purposes, even though independent contractors used the land for

motor tours and a hunting program, which were intentionally profit-making activities. The court reasoned as follows:

The threshold question is not what revenues are derived from an activity, but the *purpose* for which it is conducted. Accordingly, “any property which is used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment of [the charitable] purpose []; or, in other words, for any facility which is reasonably necessary for the fulfillment of a generally recognized function of a complete modern [operation] . . .” comes within the welfare exemption. (*Cedars of Lebanon Hosp. v. County of L.A.* (1950) 35 Cal.2d 729, 736.) [¶] . . . [¶]

It is only when an activity which is not reasonably *necessary* to the charitable purpose is placed in commercial competition with public businesses that it is deemed not charitably incidental. (*Y.M.C.A. v. County of L.A.*, *supra*, 35 Cal.2d 760, 772-776.) [¶] . . . [¶]

Once the threshold determination is made that the purpose for which the activity is undertaken is proper, the generation of revenue is irrelevant where the receipts are not income from property *held by the charitable organization* solely for investment or commercial (i.e., intentionally profit-making) purposes. (*Id.*, at p. 559 [*San Francisco Boys’ Club, Inc. v. County of Mendocino* (1967) 254 Cal.App.2d 548, 559]; see also *Christ the Good Shepherd Lutheran Church v. Mathiesen* (1978) 81 Cal.App.3d 355, 363 [146 Cal.Rptr. 321].)

(*Santa Catalina Island Conservancy v. County of Los Angeles* (1981) 126 Cal.App.3d 221, 243-244, original italics.)

The court found that the motor tours provided instructive opportunities to people who may not otherwise be reached, and that hunting was essential to prevent over-grazing (*Santa Catalina, supra*, at p. 243-244). Therefore, even though the programs were operated for profit-making endeavors, the court found that those activities were incidental to and reasonably necessary for the Conservancy’s charitable purposes, and therefore did not detract from the property’s use for exclusively exempt purposes under section 214, subdivision (a). This is consistent with Assessors’ Handbook Section 267, *Welfare, Church, and Religious Exemptions* (AH 267) (Oct. 2004), which states that “[a]n organization’s use of its property for profit-making activities are scrutinized to determine if they were primarily carried on to advance its exempt purpose, or whether the organization was engaged in an unrelated business activity that was conducted in a manner similar to a commercial enterprise.” (AH 267, at p. 53.)

Based on *Santa Catalina*, we believe it is consistent with section 214 that nonprofit organizations may perform exempt activities through hired service providers. Of course, the nonprofit organization must maintain control over the service providers in an active and ongoing manner such that the activities performed are fulfilling the exempt purpose of the nonprofit organization rather than primarily serving the private for-profit interest of the service provider.

In this case, it is our opinion that MTC’s activities are akin to the motor tours and hunting program in the *Santa Catalina* case – there, the exempt organization hired for-profit entities to accomplish its exempt purposes. Those entities were themselves operated for profit, but were

limited in function to furthering the charitable purposes for which they were hired. Similarly, here, all of MTC's activities are solely to be performed in furtherance of Imperial's exempt purpose. As mentioned above, MTC is contracted to operate, maintain, and manage the Facility, and such activities are required by Imperial to be solely for a charitable purpose and charitable use to house incarcerated individuals pursuant to the jurisdiction of the contracted government agencies. (Management Agreement, at p. 5, ¶¶ (A)(12), (B)(3).)

This situation is unique because MTC performs substantially all the day-to-day activities that make up the exempt purpose, and because the activity for which MTC was hired is the exempt activity itself and not for an activity that has only an incidental benefit to the exempt activity. In our view, this fact alone does not disqualify an organization from receiving an OCC. However, to ensure that an organization is organized to use property for exempt purposes as opposed to being used itself by the for-profit company for the for-profit's own purposes, the contractual relationship must demonstrate that the nonprofit has sufficient management and control over the for-profit.

Here, Imperial appears to have contracted to retain sufficient management and control over MTC to ensure that all of its activities are solely to be performed in furtherance of Imperial's exempt purpose. Thus, MTC's activities are limited to being conducted within the parameters of Imperial's exempt purposes.

This is indicated by the following facts. First, Imperial appointed MTC as manager and operator of the Facility. (Exh. B to September Letter, at p. 14.) Although MTC is an independent contractor and has "the sole right to supervise, manage, operate, control, and direct the performance of [its] services" under the Management Agreement, it is subject to on-site monitoring by Imperial. (*Id.* at p. 17.) We also note that as mentioned above, all funds and expenditures are limited to being used for exempt purposes.

MTC is to obtain its own insurance and may subcontract its duties, but Imperial will not accept responsibility for any actions or omissions of the subcontractors. (*Id.* at p. 18, 20.) The City of Holtville (subcontracted through Imperial) is to enter contracts with other government agencies to house offenders, but only so long as MTC approves the terms of the contracts. (*Id.* at p. 11.) MTC is also to pursue contracts with government entities and develop comprehensive marketing plans in that regard, and provide monthly reports to Imperial concerning the progress of such marketing efforts; however, Imperial may refuse to enter government housing agreements if the per diem rate is lower than its daily costs and obligations. (*Id.* at p. 11.) If MTC requests, Imperial is to cause the City to enter agreements to house offenders, provided that all responsibilities are assumed by MTC; however, MTC must approve of such terms and conditions. (*Ibid.*) We recognize that these contract terms provide MTC some authority over third party agreements. However, we do not believe these provisions grant MTC authority over Imperial, because all third party agreements must be approved by Imperial. (*Id.* at p. 5, ¶ (B)(7).) Imperial, in turn, is to approve or disapprove of agreements subject to its charitable purposes. (*Id.* at p. 5, ¶ (B)(3).)

Either party may commit acts that constitute defaults under the Management Agreement such as failures to comply with laws or making false statements, but the Management Agreement additionally states that any evidence of MTC's insolvency could constitute a breach of the contract. (*Id.* at p. 14.)

MTC is to provide Offender Reports to Imperial every month until the Facility reaches a certain capacity, at which point it is to provide such reports every quarter. (*Id.* at p. 22-23.) Imperial is to appoint a Contract Monitor who is an employee or independent contractor of Imperial or an Agency, and who will be the liaison between Imperial and MTC. (*Id.* at p. 23.) The Contract Monitor will audit MTC's effectiveness and compliance with the Management Agreement. (*Id.* at p. 25.) If required by the applicable governmental housing agreement, MTC is to provide monthly summary reports regarding, among other things, discipline, grievances, incidents, progress reports, and staff turnover. (*Id.* at p. 24.) On a quarterly basis, MTC is to submit quality control and self-compliance reports to Imperial, as well as statistical information of the Facility population. (*Id.* at p. 24.) MTC is also to submit to Imperial for its approval a detailed plan on how it intends to monitor operations of the Facility, and conduct an internal, written operational audit at least annually. (*Id.* at p. 25.)

In our view, although MTC has numerous responsibilities and wide discretion, virtually all of its actions must be reported to Imperial, which ultimately has the power to monitor MTC's effectiveness in its duties and compliance with the Management Agreement. Although MTC has retained some veto powers in approving government contracts to house offenders, we view this as MTC's protection of its own rights, since MTC would be the entity actually involved in running the daily activities resulting from those contracts. It appears, then, that all of MTC's activities are under the management and control of Imperial, such that its primary activities are to serve Imperial's exempt purposes, even though it may happen to financially profit.¹¹ We note, however, that any determination of whether the property is actually used in that manner and within those parameters is made by the Assessor. (Rev. & Tax. Code, § 254.5.)

We emphasize that although the contracts demonstrate that Imperial has sufficient management and control over MTC, it is within the County assessor's discretion to determine whether Imperial is actually being operated in accordance with those contracts and actually exercises in an active and ongoing manner, the management and control given to it. To provide some guidance, we offer a number of factors an Assessor may consider to make this determination. Of course, this is not an exhaustive list but is merely representative of the types of factors an Assessor should consider. Such factors include confirmation of management, control, and proper reporting, and whether there are future plans for growth for the purpose of increasing the profits of the service provider. The Assessor may also consider whether the prices/fees are fixed with the intention of yielding a surplus over and above operating expenses, whether expenses are not excessive, and the reasonableness of financial reserves. Additionally, the Assessor may consider factors such as the extent and degree of below cost services provided, the extent to which Imperial solicits and receives charitable donations, and the degree to which marketing or advertising is performed in a commercial manner. Other factors to consider may include the management relationships among the individuals from Imperial and MTC, and the performance of the Contract Monitor's actual duties.

¹¹ See also Revenue Ruling 98-15, 1998-1 C.B. 718 at p. 18, stating that a nonprofit organization that is exempt from federal income tax under Internal Revenue Code section 501(c)(3) "may enter into a management contract with a private party giving that party authority to conduct activities on behalf of the organization and direct the use of the organization's assets provided that the organization retains ultimate authority over the assets and activities being managed and the terms and conditions of the contract are reasonable, including reasonable compensation and a reasonable term. See [*Broadway Theatre League of Lynchburg v. U.S.* (W.D.Va 1968) 293 F.Supp. 346].) However, if a private party is allowed to control or use the non-profit organization's activities or assets for the benefit of the private party, and the benefit is not incidental to the accomplishment of exempt purposes, the organization will fail to be organized and operated exclusively for exempt purposes."

Two additional issues arise in conjunction with Imperial's hiring MTC to provide services. The first is whether MTC, by virtue of its relationship with Imperial is engaged in the "more advantageous pursuit" of its business. The second is whether MTC is an operator of the property such that it needs its own OCC.

"More advantageous pursuit"

Section 214 requires that in order to receive the welfare exemption, the property must "not [be] used or operated by the owner or by any other person so as to benefit any officer, trustee, director, . . . or any other person, through the distribution of profits . . . or the more advantageous pursuit of their business or profession." (Rev. & Tax. Code, § 214, subd. (a)(4).) Although the statute does not define the standard against which "more advantageous" is to be compared, the court in *Scripps Clinic & Research Found. v. County of San Diego* (1997) 53 Cal.App.4th 402 has stated that the legislature "intended to preclude persons from obtaining an excessive benefit or a benefit better than a person might obtain through arm's length negotiation—a benefit more favorable than fair market value." (*Id.* at p. 410.) In that case, the court found that the subject agreements were made in good faith at arms-length negotiations, and no party received excessive compensation, consideration or other advantage above fair market value, in excess of that which would result from arm's length negotiations with other companies, and the agreements effectively accounted for risks. For these reasons, the court found that the agreements did not benefit a firm through the "more advantageous pursuit of its business."

In this case, it does not appear that MTC is receiving a "more advantageous pursuit of its business" because it is limited by government funding, as evidenced in the Housing Agreement with the City and the loan transaction mentioned above. It appears that MTC is receiving the same benefit that any other entity in the same position would have received, with no excessive advantage and with an effective accounting for risks. (See *Scripps Clinic & Research Found. v. County of San Diego*, *supra*; see also *Greek Theater Assoc. v. County of Los Angeles* (1978) 76 Cal.App.3d 768.) However, the assessor should confirm that this is the case when issuing the welfare exemption.

Operator

Another issue arises as to whether MTC is an "operator" of the property within the meaning of section 214, subdivision (a), such that it would need its own separate OCC in order for the property to obtain the welfare exemption. Obviously, as a for-profit company, MTC does not qualify for an OCC.

AH 267 states on page 14 that, "If property is owned by one exempt organization and operated by another exempt organization, each must qualify and file a claim for exemption." (See also Property Tax Annotation (Annotation)¹² 880.0200 (February 1, 1978).) However, in our opinion, MTC is not an "operator" of the property within the meaning of the welfare exemption requiring it to also meet all of the section 214 requirements. This is because its entire existence on the property is premised on being hired by Imperial in direct furtherance of Imperial's exempt purpose, with no independent purpose or activity of its own. For example, as discussed above, in

¹² Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

the *Santa Catalina Island* case, the nonprofit Conservancy contracted with a for-profit motor tour company and a for-profit hunting program, but the court held that this did not preclude the nonprofit organization's welfare exemption, because the for-profit activities were reasonably necessary for and in furtherance of the owner's exempt purposes.

In contrast, in the case of *Christ the Good Shepherd Lutheran Church of San Jose v. Mathiesen* (1978) 81 Cal.App.3d 355, the court found that the owner and operator of the property were separate and distinct entities which did not further the other's exempt purpose, when a Lutheran church leased its property to a Jewish Community Council for a term of five years. In that case, each entity had its own distinct purpose that was unrelated to the other (although they both had religious and charitable purposes). For these reasons, we believe an entity that has no independent or tangential purpose of its own, but is hired solely and exclusively to directly further an exempt entity's exempt purpose, does not require a separate and distinct OCC in order to conduct activities on the property. In our opinion, MTC is such an entity, as evidenced in its contractual agreement to operate solely within the confines of Imperial's charitable purposes, and under the management and control of Imperial, as discussed above.

On the flip side, however, it is also important to ensure that the for-profit entity is not so closely aligned with the nonprofit organization that the for-profit entity is, in reality, conducting its own operations and simply using the nonprofit organization as a façade in order to avoid paying taxes. In this regard, we believe it is necessary to ensure that the entities structurally exist and relate to one another at arms-length, and to ensure that neither entity benefits from the other in a manner that is a "more advantageous pursuit" of its business. (*Scripps Clinic & Research Found. v. County of San Diego, supra.*)

In this case, Timothy Kelley's memorandum dated September 5, 2014 states that no officer, director or employee of MTC is a member of the Board of Directors of, or is otherwise providing any services to, Brawley. (Exhibit G to September Letter.) Further, the Management Agreement provides that officers or members of MTC's board of directors will be prohibited from becoming an employee or member of the governing body of Imperial, and vice versa. (Exh. B to September Letter, at p. 5.) Finally, we note that the two entities' financial accounts are completely separate and independent of one another. There is no indication that MTC has any authority over Imperial's finances, and in fact, MTC is not to pursue Imperial's General Fund Revenues for payment.¹³

MTC has run rehabilitation programs since 1987 and secures more than 29,000 offenders in eight states at 25 facilities.¹⁴ Timothy Kelley's memorandum states that he learned of MTC when it was exploring opportunities throughout California, and he decided to pursue hiring MTC because of its history of running effective rehabilitation programs for incarcerated individuals. By this, we infer that MTC is able to carry on its enterprise independently from Imperial, was solicited in good faith out of the general marketplace, and does not benefit so substantially from Imperial that it is placed in a "more advantageous" position.

In our opinion, the above facts demonstrate that there is no indication that anyone in Imperial was promised any inducement or has any interest in MTC, the two entities' operations are not functionally interrelated, and that they interact at arms-length. Thus, MTC is neither an

¹³ Exh. B to September Letter, at p. 1.

¹⁴ <https://www.mtctrains.com/corrections/corrections-overview>.

independent "operator" of the property subject to the requirements of section 214, subdivision (a), nor is it so closely intertwined with Imperial that they essentially function as the same entity. Rather, MTC appears to have been hired in good faith for purposes of accomplishing Imperial's exempt purposes.

We again note, however, that although the contractual relationships evidence independence and arm's-length dealings, it is within the assessor's discretion to determine that the business and management relationship between Imperial and MTC are actually carried out according to the parameters outlined in the contracts.

SSY:yg

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cc: Mr. Dean Kinnee (MIC:63)
Mr. Benjamin Tang (MIC:64)
Mr. Todd Gilman (MIC:70)

STATE BOARD OF EQUALIZATION, PROPERTY AND SPECIAL TAXES DEPARTMENT
 COUNTY-ASSESSED PROPERTIES DIVISION
 PO BOX 942879, MIC:64, Sacramento, CA 94279-0064
 Exemptions Section: 916-274-3430; Division: 916-274-3350

**WELFARE OR VETERANS' ORGANIZATION EXEMPTION
 ORGANIZATIONAL CLEARANCE CERTIFICATE FINDING SHEET**

DATE: 09/18/2015

Organization Name and Mailing Address:

Organization Information:

Imperial Valley Gateway Center, LLC
 Attn: Timothy Kelley, Treasurer
 P.O. Box 1344
 Brawley CA 92227-1344

BOE Ex. No.: 24362 Status: Active
 Purpose: Charitable
 Corporate I.D. No.: 201304510345
 Fiscal Year: 14-15

Under the provisions of section 254.6 of the Revenue and Taxation Code, we have reviewed the Claim for Organizational Clearance Certificate together with other material submitted for the above organization. Our finding is that the requirements of section 214 or section 215.1 and following of the Revenue and Taxation Code, which provide for the welfare or veterans' organization exemption, have "Been Met," "Not Been Met," or your claim was determined to be "Incomplete" as indicated below:

- | | | |
|---|-------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> BEEN MET | <input type="checkbox"/> INCOMPLETE | <input type="checkbox"/> NOT BEEN MET |
| PURPOSE: | <input type="checkbox"/> A.I. | <input type="checkbox"/> R.N.A. |
| <input type="checkbox"/> Religious | <input type="checkbox"/> A.A.I. | <input type="checkbox"/> H.N.A. |
| <input type="checkbox"/> Hospital | <input type="checkbox"/> I.D. | <input type="checkbox"/> S.N.A. |
| <input type="checkbox"/> Scientific | <input type="checkbox"/> D.C. | <input type="checkbox"/> C.N.A. |
| <input checked="" type="checkbox"/> Charitable | <input type="checkbox"/> N.T.L. | |
| | <input type="checkbox"/> N.F.S. | |
| | <input type="checkbox"/> N.O.S. | |

If this finding sheet indicates an Incomplete or Not Been Met finding, you may submit additional information and/or documents in support of your claim. Please submit such documents, along with this finding sheet, to the address listed on the top of this form.

SEE REVERSE FOR DESCRIPTION OF CODES AND BELOW FOR ADDITIONAL COMMENTS REGARDING THE ORGANIZATION'S FINDING:

We received your information submitted in response to our previously issued incomplete findings. Our review indicates that you now qualify. This Finding Sheet is to issue your organization an Organizational Clearance Certificate (OCC).

Additionally, you filed a claim for OCC, Form BOE 277-LLC, seeking the earliest fiscal year as 13-14. However, for purposes of the Organizational Clearance Certificate (OCC), the organization does not qualify for 13-14 since you were organized on 02/14/13, which is after the 01/01/13 lien date which corresponds to the 13-14 fiscal year. However, your organization may be eligible for exemption from the Assessor for the earlier year for purposes of Revenue and Taxation Code section 271.

Please submit a copy of this Finding Sheet to the Assessor along with a copy of your OCC.

(Please note that the Assessor may not grant a Welfare or Veterans' Organization tax exemption on a claimant's property until the claimant has been issued a valid organizational clearance certificate according to section 254.6 of the Revenue and Taxation Code.)

The claimant may appeal the Board of Equalization staff's finding of ineligibility with the Board within 60 days of the date of mailing of the final notice of ineligibility (form BOE-277-F2). The appeal shall be in writing and shall state specific grounds upon which the appeal is founded. The Board shall conduct a hearing and shall provide written findings to support its decision.

CALIFORNIA STATE BOARD OF EQUALIZATION
**ORGANIZATIONAL CLEARANCE CERTIFICATE
FOR WELFARE OR VETERANS' ORGANIZATION EXEMPTION**



Organization Name and Mailing Address:

Imperial Valley Gateway Center, LLC
Attn: Timothy Kelley, Treasurer
P.O. Box 1344
Brawley

CA 92227-1344

*THIS CERTIFICATE NUMBER MUST BE
SUBMITTED TO A COUNTY WHEN FILING
A CLAIM FOR WELFARE OR VETERANS'
ORGANIZATION EXEMPTION*

Organizational Information:

Date of Certificate: 09/18/2015
BOE Ex. No.: 24362
Purpose: Charitable
Corporate I.D. No.: 201304510345
Fiscal Year First Qualified: 14-15

In accordance with section 254.6
of the Revenue and Taxation
Code, the Board has determined
that this organization meets the
organizational requirements of
section 214.

BOE-277-OC REV.2 (4-09)

**NOTICE TO ORGANIZATIONS
GENERAL INFORMATION REGARDING
WELFARE OR VETERANS' ORGANIZATION EXEMPTION**

Your claim for an Organizational Clearance Certificate has been reviewed and a determination has been made that your organization meets the organizational requirements for exemption under section 214. A claim for the organizational clearance certificate will be mailed to the organization periodically to verify and update information. The claim form must be completed, signed, and filed with the Board, along with supporting documents, in order to maintain eligibility for the certificate. The Board may institute an audit or verification of the organization to determine whether the organization meets the organizational requirements of Revenue and Taxation Code section 214, as required by section 15618 of the Government Code. If you have any questions concerning the organizational requirements, you may contact the State Board of Equalization, Property and Special Taxes Department, County-Assessed Properties Division, Exemptions Section, at 916-274-3430.

The Assessor may not approve a property tax exemption claim on any property until the claimant has been issued a valid Organizational Clearance Certificate under section 254.6. The Assessor may deny a claim for the exemption, notwithstanding that the claimant has been granted an organizational clearance certificate. Claim forms for the welfare or veterans' organization exemption for property newly acquired by an organization may be obtained from the Assessor in the county where the property is located.

Annually, claims for the welfare and veterans' organization exemptions and supplemental affidavits, if required, must be filed on or before February 15 with the application to the applicable Assessor to avoid a late filing penalty under section 270. (A separate claim must be filed for each property location.) The Assessor will review all claims to determine that the organization continues to use its property for qualifying purposes and activities, as specified in section 214. Any questions relating to section 214 requirements regarding qualifying purposes and uses of the property may be directed to the Assessor.