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TO COUNTY ASSESSORS:

No. 2008/034

COMMUNITY BENEFIT TEST FOR THE WELFARE EXEMPTION

Section 214, subdivision (a), which implements California Constitution article XIII, section 4, subdivision (b), provides that "[p]roperty used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation" if certain requirements are met. Where charitable purposes are involved, one such requirement is that the charitable activities must benefit "the community as a whole or an unascertainable portion thereof."¹ This requirement is commonly known as the *community benefit test*, and meeting this test is one of the considerations for qualifying for the Welfare Exemption in California.

Community Benefit Test

Historically, the *community benefit test* has been interpreted as requiring that an organization's claimed charitable activities must be found to primarily benefit persons within the geographical boundaries of the State of California. In other words, the Board's long-standing administrative interpretation of "community benefit" has been that the term "community" is defined as being co-extensive with the state's territorial boundaries and limited the application of the exemption accordingly. Pursuant to staff's historical definition of the term "community," an organization could not qualify for the Welfare Exemption if its charitable activities were not found to benefit persons within the state's boundaries.

Staff's opinion is based on several appellate decisions that define the term "community" (for other purposes in other contexts) as being the California community.² Staff's opinion is also based on the following general principle:

Since a property tax exemption shifts the tax burden to in-state properties that remain taxable, the term "community" must be defined to restrict the exemption to those organizations whose charitable activities benefit some group of persons within the state's boundaries. Otherwise the exemption will not be fair, equitable, and in the public interest for the balance of taxpayers to subsidize the exempt property.

¹ *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d 13, 22.

² See, e.g., *Keech v. Joplin* (1909) 157 Cal. 1, 12 [defining "community" as "people who reside in a given locality in more or less proximity" for purposes of a 1907 law authorizing "communities" to organize special protection districts within counties]; *Gist v. French* (1955) 136 Cal.App.2d 247, 271 [defining "community" to mean "such an area as is governed by the same laws, and the people are unified by the same sovereignty and customs" for medical malpractice purposes]; and *In re Giannini* (1968) 69 Cal.2d 563, 576 [defining "community" as the State of California for purposes of determining whether certain live performances affronted contemporary community standards of decency.]

Additionally, staff believes that a relatively strict construction of the term "community" is consistent with the 1944 Proposition 4 ballot language that added the Welfare Exemption to the California Constitution. The argument in favor of Proposition 4 states:

These nonprofit organizations assist the people by providing important health, citizenship, and welfare services. They are financed in whole or in part by your contributions either directly or through a Community Chest. It is good public policy to encourage such private agencies by exemption rather than to continue to penalize and discourage them by heavy taxation.

The ability of these agencies to serve you is reduced when a share of your contribution given to aid their work is absorbed by the property tax. The tax has also discouraged and in many cases prevented charitable agencies from securing greatly needed additional facilities to meet growing population needs. Both the present services and the equipment of these agencies are far below normal in California. The tax has thus proved a bad tax in its effect on these important services.

Of California's total tax levy of \$316,001,918.00, approximately 303 charities owning real property pay \$759,916.21. Exemption of these charities from taxation would mean a loss to counties of only 2/10ths of 1%. To the taxpayer this would mean a possible 1¢ increase per hundred dollars of assessed valuation. *Additional health and welfare services resulting from the exemption, in fact, would save taxpayers the entire exemption cost.*³ [Emphasis added.]

Based on this language, staff believes that the intent of Proposition 4, and consequently Revenue and Taxation Code section 214, is to provide benefits in the form of additional charitable services in exchange for a property tax exemption. And, since the property tax is limited to the state's boundaries, the charitable benefits and services should likewise be limited to those same boundaries.

Review of the Community Benefit Test Policy

The elected Members of the Board directed staff to review their policy regarding the *community benefit test* for the Welfare Exemption. At a July 17, 2007, meeting, the Members heard discussions regarding the feasibility of expanding the *community benefit test* to include nonprofit organizations who own property in California but whose charitable activities solely benefit persons outside of California. Staff held an interested parties meeting in Sacramento on September 19, 2007, to hear discussions regarding the pros and cons of expanding the *community benefit test* for the Welfare Exemption. At the February 1, 2008, Board meeting, staff requested the Board's guidance as to whether the definition of the term "community" should be expanded. After hearing testimony, the Board requested additional information of staff and to return the matter to the Board at a later date. At the March 19, 2008 meeting, the Board voted to retain the current definition of the term "community."

³ <http://traynor.uchastings.edu/cgi-bin/starfinder/1959/calprop.txt>.

In summary, as directed by the Board, staff will retain its historic interpretation of the *community benefit test* for the Welfare Exemption and will continue to require that an organization's claimed charitable activities must be found to primarily benefit persons within the geographical boundaries of the State of California.

All documents regarding this issue are posted to the Board's website at <http://www.boe.ca.gov/proptaxes/otherprojects08.htm>. If you have questions regarding this issue, you may contact Mrs. Ladeena Ford at 916-445-0208 or at Ladeena.Ford@boe.ca.gov.

Sincerely,

/s/ David J. Gau

David J. Gau
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DJG:lf