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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**04/30/14**	Bill No:	**Senate Bill 1152**
Tax Program:	**Property**	Author:	**Anderson**
Sponsor:	**American Legion**	Code Section:	**RTC 215.1**
Related Bills:		Effective Date:	**Upon enactment**

BILL SUMMARY

This bill provides that if a veterans' organization rents its facilities to the public, as specified, it will not affect its property tax exemption eligibility.

ANALYSIS

CURRENT LAW

Existing law purports to provide a property tax exemption on real property owned by veterans' organizations.[1] However, in practice, typically only small portions of most property owned by veterans' organizations receive the property tax exemption. The majority of veterans' organizations property is ineligible for exemption because another provision of law disqualifies property if used for fraternal, lodge, or social purposes.[2]

PROPOSED LAW

This bill provides that property otherwise eligible for the veterans' organization exemption may not be denied the exemption if the property is occasionally made available for private rentals as a service to the community. The bill stipulates that the amount of the rental fee charged must be limited to that amount necessary to reimburse the veterans' organization for its costs, and that the rental proceeds be used exclusively for the organization's charitable purposes.

The bill also includes extensive legislative findings and declarations related to the facilities that veterans' organizations need beyond the limited portion related to their charitable work to (1) perpetuate the memory of deceased veterans, (2) comfort their survivors, and (3) conduct programs and sponsor patriotic-oriented activities to fulfil the social and recreational activities for their members.

IN GENERAL

RTC Section 215.1 provides a "veterans' organization exemption." This section purports to provide an exemption to:

> "All buildings, and so much of the real property on which the buildings are situated as may be required for the convenient use and occupation of said buildings, used exclusively for charitable purposes, owned by a veterans' organization which has been chartered by the Congress of the United States, organized and operated for charitable purposes, when the same are used solely and exclusively for the purpose of such organization, if not conducted for profit and no part of the net

[1] Revenue and Taxation Code (RTC) Section 215.1
[2] RTC Section 214(a)(5) and Section 215.1(b)

> earnings of which inures to the benefit of any private individual or member thereof, shall be exempt from taxation."

However, Section 215.1 also states that the exemption only applies to "the property of all organizations meeting the requirements of this section and subdivision (b) of Section 4 of Article XIII of the California Constitution and paragraphs (1) to (7), inclusive, of subdivision (a) of Section 214."

Pertinent to this bill, Section 214(a)(5) provides that an exemption is available if, among other requirements:

> "The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose."

Extensive uncodified legislative findings were included with the enactment of Section 215.1 that will be addressed later in the analysis.

BACKGROUND

Section 215.1 was added by Assembly Bill 184 (Powers, Ch. 151, Stats. 1972). Apparently, this bill would have restored language previously included in Section 215 that also purported to provide an exemption for real property owned by veterans' organizations. This provision was deleted from Section 215 in 1970 because its provisions had been held invalid by the Attorney General in 1946 (8 Cal. Ops.Atty.Gen. 72) and was therefore considered "deadwood."

When AB 184 was enacted, an extensive uncodified statement of legislative finding was included that appears to address the prior findings of the Attorney General. It read:

> It has been stated that former Section 1c of Article XIII of the Constitution is not broad enough to serve to exempt buildings used for meetings and social gatherings of veterans' organizations. However, the Legislature finds that some of these organizations, such as the American Legion, are incorporated for purposes such as the following:
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> > ''...To uphold and defend the Constitution of the United States of America; to promote peace and good will among the peoples of the United States and all the nations of the earth; to preserve the memories and incidents of the two world wars and the other great hostilities fought to uphold democracy; to cement the ties and comradeship born of service; and to consecrate the efforts of its members to mutual helpfulness and service to their country.''
>
> It is established that ''charity,'' as used in Section 1c of Article XIII is not limited to the giving of alms to the poor. It has been defined in a number of cases as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.
>
> Moreover, it is recognized that a charitable exemption may be granted to property of organizations providing such diverse services as civic theater performances and recreational opportunities for members of a boys' club for 10 weeks each year.
>
> In acting under Section 1c of Article XIII, the Legislature must necessarily construe the terms of the provision in order to determine the extent of its authority to act thereunder, and the Legislature finds it reasonable to exempt the property of organizations devoted to spreading patriotism and unity and to promoting respect for those who serve their country

> in the armed services in times of peril, and which bring the hearts of the youth of this state under the influence of education through their various programs (such as Boys State, Boy Scout sponsorship and oratorical contests dealing with the Constitution of the United States), and which lessen the burdens of government through their additional programs (such as veterans employment, Veterans Administration volunteer services in hospitals, and junior baseball). The members of such an organization must necessarily have some accommodations in which to meet and correlate their activities, and the Legislature finds that such activities are incidental to, and reasonably necessary for, the accomplishment of the exempt activities of such organizations.

The BOE opposed AB 184. In a letter to Governor Ronald Reagan, dated June 9, 1972, the BOE recommended that the bill not be approved. That letter stated, in part:

> While AB 184 implies that the activities of veterans' organizations are charitable, it does not directly so state. * * * This curious construction invites litigation. If a tax benefit is to be granted, it should be clear as to what that benefit is.
>
> From an overall view, AB 184 is susceptible of three interpretations. First, it may be viewed as the creation of a new exemption which would be invalid without the support of a constitutional amendment. Second, it may be viewed as merely permitting veterans' organizations to receive the welfare exemption if they meet the traditional concepts of charity and otherwise satisfy other welfare exemption requirements. Under this view, AB 184 is an exercise in futility since it is highly doubtful that any organization could qualify and those organizations which do qualify are entitled to the existing welfare exemption. Third, the bill may be viewed as a vague attempt to expand the concept of charity so as to permit veterans' organizations to receive the benefit of the welfare exemption. Such a broadening is of doubtful constitutional validity and, as noted earlier, an initiation to further erosion of the tax base through the extension of the exemption to many other equally worthy organizations.

The Governor signed AB 184 and it became law. Thereafter, in 1972-73 many veterans' organizations applied for the new exemption under new Section 215.1 believing that the newly enacted law would exempt their property from property tax. However, it appears the BOE denied all the exemption claims, presumably for one of the three rationales described previously.

Given the exemption denials, Assembly Member Powers, AB 184's author, requested an attorney's general opinion on the constitutionality of Section 215.1. On June 12, 1973, the Attorney General opined (56 Cal. Ops. Atty Gen 255) that Section 215.1 was constitutional because to qualify the property for exemption one must also meet all the provisions of 214(a)(1) - (7). Of particular interest is Section 214(a)(5) which provides that to qualify for the welfare exemption, the property cannot be used by the owner or members thereof for fraternal or lodge purposes except where the use is clearly incidental to a primary religious, hospital, or charitable purposes. While the creation of the exemption was deemed technically "constitutional," in practice, most veterans' organizations would be ineligible for exemption (at least on the majority of the property) under Section 215.1 because many of the properties are used for fraternal, lodge or social purposes, thereby disqualifying the properties under Section 214(a)(5). The opinion states, in part:

> It should be clearly understood, however, that in reaching this conclusion we are not saying that each and every application for exemption must be granted. Every applicant will have to meet the requirement that it be organized for charitable purposes * * * and comply with the applicable legislative enactments.

> The forgoing serves to indicate some of the problems that veterans' organizations will meet, notwithstanding a legislative finding such as Section 9 of Statutes of 1972, chapter 151. Rather than our deciding whether such finding is supported by objective factors, we believe it is more appropriate to withhold judgment until specific cases arise.

Veterans' organizations representatives subsequently protested the exemption denials before the BOE on January 4, 1974. Ultimately, the new Section 215.1 exemption was extended to a limited portion of the entire veterans' organization property, such as the counseling rooms used for readjustment services, post-traumatic stress disorders, and alcohol or drug assistance programs.

Senate Bill 1469 (Johannessen) from 2002 was identical to the March 26, 2014 version of this bill. While the Members of the BOE voted to support SB 1469 at that time, the bill was never heard in a committee.

COMMENTS

1. **Sponsor and Purpose.** This American Legion-sponsored measure is intended to ensure that veterans' organizations receive a property tax exemption on their facilities beyond the limited portion currently provided.

2. **Section 215.1 and the uncodified statement of legislative intent accompanying its enactment purports to extend an exemption to the real property of veterans' organizations.** However, historically the "veterans' organization exemption" appears not to have had much practical effect. Relatively few veterans' organization properties currently receive the exemption and those that do are only receiving a partial exemption on a small part of their property. Fewer than 100 veterans' organization properties applied for the veterans' exemption and a number of these are currently receiving a partial exemption, generally on the office or room(s) used for counseling. Consequently, the property tax savings is typically very small.

3. **Veterans' Organization Posts and Halls.** Often the majority of property consists of a club room, auditorium, restaurant, and bar which falls under the prohibition of Section 214(a)(5) that the property is not used for fraternal or lodge purposes except where that use is clearly incidental to a primary charitable purpose. Again, the exemption is available to a limited portion of the entire veterans' organization property such as the counseling rooms used for readjustment services, post-traumatic stress disorders, and alcohol or drug assistance programs.

4. **In its present form, this bill may not exempt additional portions of veterans' organizations property.** The statutory changes address occasional use of the property by the public, but this is a secondary issue, and presumes the property is otherwise fully exempt. The main issue relates to the use of the property by its own veteran members. As related in the bill's uncodified provisions, the majority of the property is not eligible for the exemption for the reasons noted previously. However, the proposed amendments to Section 215.1 are not consistent with the concerns noted in its uncodified provisions. Additional amendments are needed to exclude Section 214(a)(5) from applying to these veterans' organizations properties.

5. **The constitutionality of this exemption has been previously questioned.** There is extensive historical background, including two attorney general opinions on this issue. To attempt to tackle the issue that, in the distinctive case of veterans and their service to the county, the social gatherings and meetings serve a "charitable purpose," the amendments should address that the lodge and social club activities

form the central charitable purpose of veterans' organizations chartered by the US Congress. The prohibition in Section 214(a)(5) concerning fraternal, lodge or social club use is not in the constitution.

6. **Statutory amendments consistent with the bill's uncodified provisions.** The following language is suggested to better reflect this bill's intent.

215.1 (a) All buildings, and so much of the real property on which the buildings are situated as may be required for the convenient use and occupation of the buildings, used exclusively for charitable purposes, owned by a veterans' organization which has been chartered by the Congress of the United States, organized and operated for charitable purposes, when the same are used solely and exclusively for the purpose of the organization, if not conducted for profit and no part of the net earnings of which inures to the benefit of any private individual or member thereof, shall be exempt from taxation.

(b) The exemption provided for in this section shall apply to the property of all organizations meeting the requirements of this section and subdivision (b) of Section 4 of Article XIII of the California Constitution and paragraphs (1) to (7), ~~inclusive~~ exclusive of paragraph (5), of subdivision (a) of Section 214.

(c) The exemption specified by subdivision (a) may not be denied to a property on the basis that the property thereof is used for fraternal, lodge, or social club purposes.

(1) With regard to this subdivision, the Legislature finds and declares all of the following:

(A) The exempt activities of a veterans' organization as described in subdivision (a) qualitatively differ from the exempt activities of other nonprofit entities that use property for fraternal, lodge, or social club purposes in that the exempt purpose of the veterans' organization is to conduct programs to perpetuate the memory of deceased veterans and members of the Armed Forces and to comfort their survivors, to conduct programs for religious, charitable, scientific, literary, or educational purposes, to sponsor or participate in activities of a patriotic nature, and to provide social and recreational activities for their members.

(B) In light of this distinction, the use of real property by a veteran organization as described in subdivision (a), for fraternal, lodge, or social club purposes is central to that organizations exempt purposes and activities.

(C) In light of the factors set forth in subparagraphs (A) and (B), the use of real property by a veteran organization for fraternal, lodge, or social club purposes, constitutes the exclusive use of that property for a charitable purpose within the meaning of subdivision (b) of Section 4 of Article XIII of the California Constitution.

(d) Property owned by an organization that satisfies the requirements of Section 215 or this section shall not be denied the veterans' organization exemption because the property is occasionally made available for private rentals as a service to the community, provided that the amount of rental fee charged is limited to that amount necessary to reimburse the veterans' organization for its costs in making the rental available, and any proceeds from the rentals are used exclusively for the charitable purposes of the organization.

(~~c~~e) An organization that files a claim for the exemption provided for in this section shall file with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(~~d~~f) ~~(1)~~ This exemption shall be known as the "veterans' organization exemption."

~~(2) Property owned by an organization that satisfies the requirements of Section 215 or this section shall not be denied the veterans' organization exemption because the property is occasionally made available for private rentals as a service to the community, provided that the amount of rental fee charged is limited to that amount necessary to reimburse the veterans' organization for its costs in making the rental available, and any proceeds from the rentals are used exclusively for the charitable purposes of the organization.~~

7. **The property of other lodges and clubs owned by other types of nonprofit organizations are similarly not property tax exempt.** For example, lodges and clubs owned by the Elks, Moose, Oddfellows, and Rotary, etc. are not exempt from taxation. Consequently, if legislation is ultimately successful in exempting property used for fraternal, lodge, or social purposes, then similarly situated nonprofit organizations will likely seek similar tax treatment.

8. **Referenced BOE Correspondence**. The bill's uncodified provisions refer to BOE annotation 870.0001 related to the Veterans' Organization exemption. "**Billiard and Card Rooms.** Billiard rooms, card rooms and other rooms used for social club purposes are not eligible for the exemption. C 1/21/1980; C 10/13/1994."

COST ESTIMATE

The BOE would incur some minor absorbable costs to inform and advise county assessors, the public, and staff of the law changes, update documents, and address ongoing implementation issues and questions. These costs are estimated to be under $10,000. However, corrective amendments resulting in a significant increase in claims filed by veterans' organizations will result in a revision of this cost estimate

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Existing law provides for the exemption of property used for charitable purposes that is owned by veterans' organizations. Statewide, veterans' organization exemptions are granted on only for a small portion of the property, usually an office or room used for counseling. The dollar amount of the exemption is typically very small. The main portion of the veterans' organization property, such as the club room, auditorium, restaurant, or bar, have not been given the exemption because they do not fit the criteria for charitable purposes.

REVENUE SUMMARY

Since this bill only addresses the incidental use of the properties owned by these organizations and will not result in any additional properties qualifying for exemption, this bill has no revenue effect in its current form. Corrective amendments will result in a revision of this revenue estimate.

Analysis prepared by:	Rose Marie Kinnee	916-445-6777	05/02/14
Revenue estimate by:	Chris Butler	916-445-0840	
Contact:	Michele Pielsticker	916-322-2376	

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.