



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	06/18/14	Bill No:	<a href="#">Senate Bill 1152</a>
Tax Program:	Property	Author:	Anderson, et al
Sponsor:	American Legion	Code Section:	RTC 215.1
Related Bills:		Effective Date:	Upon enactment

**BILL SUMMARY**

This bill allows the veterans’ organization exemption to apply to real property owned by veterans’ organizations that is used for fraternal, lodge, or social club purposes, excluding the bar area.

**Summary of Amendments**

Since the prior analysis, this bill was amended to add coauthors.

**ANALYSIS**

**CURRENT LAW**

The constitution allows the Legislature to exempt property, in whole or in part, used exclusively for charitable purposes and owned by an entity that is (1) organized and operated for the charitable purpose, (2) a nonprofit entity, and (3) net earnings do not inure to any private individual.<sup>1</sup>

Existing law purports to provide a property tax exemption on real property owned by veterans’ organizations.<sup>2</sup> 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.<sup>3</sup>

**PROPOSED LAW**

This bill provides that property otherwise eligible for the veterans’ organization exemption may not be denied the exemption on the basis that the property is used for fraternal, lodge, or social club purposes. However, the exemption would not apply to any portion of a property that consists of a bar where alcoholic beverages are served. The portion of the property ineligible for the veterans’ organization exemption is that area used primarily to prepare and serve alcoholic beverages.

The legislative findings and declarations provide that the veterans’ organization exempt purpose is to (1) conduct programs to perpetuate the memory of deceased veterans and members of the Armed Forces and comfort their survivors, (2) conduct programs for religious, charitable, scientific, literary, or educational purposes, (3) sponsor or participate in activities of a patriotic nature, and (4) provide social and recreational activities for their members.

The bill includes codified legislative findings and declarations related to the qualitative difference between veterans’ organizations and the exempt activities of other nonprofit

<sup>1</sup> California Constitution Article XIII, Section 4(b)

<sup>2</sup> Revenue and Taxation Code (RTC) Section 215.1

<sup>3</sup> RTC Section 214(a)(5) and Section 215.1(b)

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entities that use property for fraternal, lodge, or social club purposes in that such use is central to the veterans' organizations exempt purpose and activities.

The findings state that, in light of this difference, the use of real property by a veterans' organization for fraternal, lodge or social club purposes constitutes the exclusive use of the property for a charitable purpose within the meaning of the constitution.

#### 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 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:

"...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

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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. **The June 18, 2014 amendments** made nonsubstantive changes and added Senate and Assembly coauthors. **The May 15, 2014 amendments** deleted the private rental provisions and excluded from exemption the bar area where beverages are prepared and served. **The May 7, 2014 amendments** added provisions to better reflect the bill's intent and deleted the uncodified legislative findings and declarations. In its introduced form, this bill would likely have not resulted in the exemption of additional portions of veterans' organizations property. The initial statutory changes addressed occasional property use by the public and presumed these properties were otherwise fully exempt. The May 7 amendments address the core issue -- the use of the property by its own veteran members, as related in the bill's prior uncodified provisions.
3. **Historically the "veterans' organization exemption" has had little 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. Only about 50 veterans' organizations currently apply for the exemption and a number of these receive a partial exemption, generally on the office or room(s) used for counseling. Consequently, the property tax savings is typically very small.

4. **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
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 of charitable purpose, this bill finds that, in the distinctive case of veterans and their service to the county, the social gatherings and meetings serve a "charitable purpose." Thus, lodge and social club activities support the central charitable purpose of veterans' organizations. The prohibition in Section 214(a)(5) concerning fraternal, lodge, or social club use is not in the constitution.
6. **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. This bill finds that US Congress chartered veterans' organizations activities qualitatively differ from those of other nonprofits in this regard. Nonetheless, if legislation is ultimately successful in exempting property used for fraternal, lodge, or social purposes, similarly situated nonprofit organizations might seek similar tax treatment.
7. **Referenced BOE Correspondence.** The bill as introduced referred 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 moderate costs on a limited term basis to issue organization clearance certificates to veterans' organizations newly applying for the exemption under this bill. While these costs are pending, costs are estimated to be between \$100,000 and \$150,000 annually.

## **REVENUE ESTIMATE**

### **BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

Existing law provides a property tax exemption on real property owned by veterans' organizations. However, only a small portion of the property receive the 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.

This bill provides that property otherwise eligible for the veterans' organization exemption, may not be denied the exemption (excluding the bar area) if the property is used for fraternal, lodge, or social purposes as specified. Staff estimates veterans' organizations, as defined, own nearly 240 qualified properties in the state with an assessed value of approximately \$57.5 million (excluding the bar area). Annual revenue loss at the basic one percent property tax rate is then computed as follows:

$$\$57.5 \text{ million} \times 1\% = \$575,000$$

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**REVENUE SUMMARY**

Extending the veterans' organization exemption would result in annual revenue loss of \$575,000.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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