

Amend Revenue and Taxation Code Sections 214 and 214.8 to make corrective changes to the welfare exemption regarding eligible occasional users of tax exempt properties and limited liability companies. (Housekeeping)

Source: Property and Special Taxes Department and Legal Department

Note: This proposal is a carry over proposal from a 2005 (Proposal 1-3) which was previously contained in SB 610, but amended out to accommodate other provisions.

Existing Law

Charitable Use - Meetings Held by Other Nonprofits. In 2003, legislation was enacted to improve the joint administration of the welfare exemption by the Board of Equalization (Board) and local county assessors. To eliminate the prior duplication of effort, duties were separated between the functions of organization eligibility, which is determined by the Board, and qualifying uses of property, which is determined by the assessor. In addition, it simplified the welfare exemption filing process by reducing the amount of paperwork nonprofits file annually, especially for those owning property in multiple counties. Nonprofit organizations that own property now apply to the Board for an “organizational clearance certificate” which is granted if the nonprofit meets the organizational requirements for the welfare exemption. This certificate is filed with the assessor of the county where the property is located and indicates the organization is eligible for the exemption provided it uses the property for qualifying purposes. Previously, a variety of documents such as articles of incorporation, financial statements, and tax exemption letters were required to be filed in duplicate in every county where the nonprofit owned property.

Related to this bill, the law generally allows a nonprofit organization that owns property receiving the welfare exemption to allow *other* nonprofit organizations (those exempt under either 501(c)(3) or 501(c)(4) of the Internal Revenue Code) to use their facilities to hold meetings no more than once per week without jeopardizing the tax exempt status of the property. The streamlining legislation inadvertently changed the documentation related to the use of a property for weekly meeting purposes by other nonprofit organizations to the organizational clearance certificate. Previously, only a copy of a valid tax exemption letter from the meeting holder was necessary.

Limited Liability Companies. Beginning January 1, 2005, the law allows property owned by a limited liability company (LLC) in which the members are qualifying organizations to qualify for the welfare exemption. Property Tax Rule 136, also effective January 1, 2005, provides that a governmental entity can be a qualifying member of a LLC.

This Proposal

Charitable Use - Meetings Held by Other Nonprofits. This proposal would amend Section 214 (a)(3)(D) to reinstate the documentation needed when a nonprofit organization receiving the welfare exemption allows other qualifying nonprofit groups to use their property to hold weekly meetings without jeopardizing their tax exempt status. This bill would require that a copy of a valid tax exemption letter be provided rather than a copy of an organizational clearance certificate.

Allowing other nonprofits to use a facility to hold weekly meetings is an acceptable charitable use of a property receiving the welfare exemption. Requiring the meeting holder to provide an “organizational clearance certificate” was an unintended drafting error in the streamlining legislation of 2003. If followed, it would create additional paperwork filing requirements on a nonprofit that does not own property but instead only uses a property owned by another nonprofit that does hold an organizational clearance certificate. Additionally, 501(c)(4) tax exempt organizations are not able to obtain an organizational clearance certificate since only 501(c)(3) tax exempt organizations are eligible. This proposal is consistent with prior statutory requirements and current administrative practice.

In addition, this proposal would reverse an unintentional substantive amendment to Section 214 by an annual maintenance of the code bill. SB 662 (Stats. 2001, Ch. 159, Judiciary Committee), the maintenance of the code bill for 2001, substituted the word “of” for “or” in the last sentence of subparagraph (D) of paragraph (3) of subdivision (a) of Section 214. Previously the sentence read “The owner *or* the other organization shall also file with the assessor...” and now it reads “The owner *of* the other organization shall file with the assessor...”. Usually, there is little or no direct contact between the assessor and a meeting holder (i.e., “the other organization”) because they are not required to file an annual welfare exemption claim. In reviewing the claim filed by the nonprofit owner of the property, the assessor verifies that the property is used exclusively for charitable purposes and it is in this connection that a tax exempt letter from the meeting holder may be required. The tax exempt letter could be obtained from *either* the meeting holder or the property owner – who likely requires a copy of the letter for its files as a condition of allowing the use of their property for meetings so it can protect its tax exempt status.

Limited Liability Companies - Government Entities. A government entity can be a member of an LLC for purposes of qualifying for the welfare exemption. In developing Property Tax Rule 136 it was found that some local governments have entered into joint ventures with nonprofit organizations to own and operate property. Each member of the LLC, the local government and the nonprofit, is eligible for a property tax exemption if they own the subject property separately, either as government owned property or welfare exemption property, respectively. Property Tax Rule 136 was drafted to expressly recognize these

joint ventures and this proposal makes conforming amendments to Section 214.8. This proposal would amend Section 214.8 to include governmental entities as qualifying members of a LLC, consistent with Property Tax Rule 136. This proposal would also insert and move the phrase "limited liability companies" in various locations in Section 214 to correct omissions and misplacement of the phrase.

Revenue and Taxation Code Section 214 is amended to read:

214. (a) Property 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, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is

imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph

(A) that is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive, of this subdivision. The owner ~~of~~ or the other organization also shall file with the assessor ~~a valid organizational clearance certificate issued pursuant to Section 254.6~~ a copy of a valid, unrevoked letter or ruling from the Internal Revenue Service or the Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code or Section 23701d, 23701f, or 23701w.

(E) Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) 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.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, limited liability companies, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect. Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be

exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner ~~or eligible limited liability company,~~ is an eligible nonprofit corporation or eligible limited liability company, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which either of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(C) In the case of a claim, other than a claim with respect to property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation, that is filed for the 2000-01 fiscal year or any fiscal year thereafter, 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. The total exemption amount allowed under this subdivision to a taxpayer, with respect to a single property or multiple properties for any fiscal year on the sole basis of the application of this subparagraph, may not exceed twenty thousand dollars (\$20,000) of tax.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) (i) For any claim filed for the 2000–01 fiscal year or any fiscal year thereafter, certify and ensure, subject to the limitation in clause (ii), that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(ii) In the case of a limited partnership in which the managing general partner is an eligible nonprofit corporation, the restriction and provision specified in clause (i) shall be contained in an enforceable and verifiable agreement with a public agency, or in a recorded deed restriction to which the limited partnership certifies.

(B) Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(3) As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, limited liability companies, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section to the extent the

residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, "educational purposes" means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and do not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

(k) In the case of property used exclusively for the exempt purposes specified in this section, owned and operated by limited liability companies that are organized and operated for those purposes, the State Board of Equalization shall adopt regulations to specify the ownership, organizational, and operational requirements for those companies to qualify for the exemption provided by this section.

(l) The amendments made by Chapter 354 of the Statutes of 2004 shall apply with respect to lien dates occurring on and after January 1, 2005.

Revenue and Taxation Code Section 214.8 is amended to read:

214.8. (a) Except as provided in Sections 213.7 and 231, and as provided in subdivision (g) of Section 214 with respect to veterans' organizations, the "welfare exemption" shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701d of this code or Section 501(c)(3) of the Internal Revenue Code. This section shall not be construed to enlarge the "welfare exemption" to apply to organizations qualified under Section 501(c)(3) of the Internal Revenue Code of 1954 but not otherwise qualified for the "welfare exemption" under other provisions of this code. The exemption for veterans' organizations shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701f or 23701w of this code or under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code. This section shall not be construed to enlarge the "veterans' organization exemption" to apply to organizations qualified under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code but not otherwise qualified for the "veterans' organization exemption" under other provisions of this code.

(b) For purposes of subdivision (a), an organization shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(c) (1) For purposes of subdivision (a), a limited liability company wholly owned by one or more qualifying organizations, which may include governmental entities and nonprofit organizations, that are exempt under

Section 23701d or under Section 501(c)(3) of the Internal Revenue Code shall qualify as an exempt organization.

(2) In the case of a limited liability company that does not have a valid unrevoked letter from the Franchise Tax Board or the Internal Revenue Service, the limited liability company may not be deemed to be qualified as an exempt organization unless each nonprofit tax-exempt member of the limited liability company files with the board a copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or the Internal Revenue Service that states that the organization qualifies as an exempt organization under the appropriate provisions of the Revenue and Taxation Code or the Internal Revenue Code.

(d) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.