

Memorandum

To : Honorable Carole Migden, Chairwoman
Honorable Claude Parrish, Vice-Chairman
Honorable Bill Leonard
Honorable John Chiang
Honorable Steve Westley, Controller

Date: September 5, 2003

From : Jean Ograd
Acting Chief Counsel



Subject: ***Proposed Rule 136 – Limited Liability Companies as Qualifying Organizations for the Welfare Exemption and Corresponding Suggested Legislation***

On May 9, 2003, Ingrid Mittermaier, Esq. of Silk, Adler & Colvin and a member of the Executive Committee and the Exempt Organizations Committee of the Taxation Section of the State Bar filed a petition with the Board requesting the adoption of a new regulation, Property Tax Rule 136, *Qualifying Organizations*, pursuant to Government Code section 11340.6. The proposed rule would allow a limited liability company (LLC), organized and operated for exempt purposes, as specified in section 214 of the Revenue and Taxation Code, to qualify for the welfare exemption from property taxes. Thus, the LLC would become a qualifying entity for purposes of section 214, making its property eligible for the welfare exemption, provided that all the existing exemption requirements were satisfied.

The rule petition was scheduled as a Chief Counsel Matter at the May 28, 2003 Board meeting. The Board adopted staff's recommendation to defer a decision on the rule petition and include legislation for this purpose in the proposed welfare exemption streamlining legislation. The suggested legislation was scheduled for Board review at the June 25th meeting.

After further review, staff determined that legislation for this purpose was problematic for the current session of the Legislature. Consequently, staff recommended at the June 25th meeting that the Board further defer initiation of the rule-making process to allow a working group of staff, State Bar representatives, nonprofit organizations, assessors and county counsels to develop language for a proposed rule and/or legislative proposal for the 2004 legislative year. The Board adopted staff's recommendation and requested that the staff present suggested language and a recommendation concerning this matter for the Board's review and consideration at the September 25, 2003 Board meeting.

The Necessity for Both a Regulation and Suggested Legislation

Staff recommends that the Board adopt proposed Rule 136 to ensure that only LLCs owned by qualifying nonprofit organizations that satisfy all the requirements for the welfare exemption may qualify for the exemption. (See Attachment No.1) Staff further recommends that the proposed rule be adopted only if legislation to amend section 214 et seq. to specify LLCs as eligible for the welfare exemption is enacted. The suggested legislation is necessary, as section 214 does not list LLCs among the types of nonprofit entities (community chests, funds, foundations and corporations) eligible for the welfare exemption. (See Attachment No. 2) In addition, the State Bar representatives will pursue legislation to amend section 17002 of the Corporations Code to clarify that LLCs may be engaged in any lawful business or activity, whether or not for profit. This proposed amendment is intended to clarify that LLCs may be formed for nonprofit exempt purposes. (See Attachment No. 3.)

The Draft Rule and Suggested Legislation Has the Consensus of the Working Group

The working group met on July 23, 2003 to discuss an initial draft rule and suggested legislation. Members of the working group agreed that it is necessary for the Board to adopt a new regulation and to sponsor legislation to provide exemption to LLCs and their property. Staff revised the draft rule and suggested legislation to reflect the group's discussion at the meeting and requested that the working group submit any further changes by August 8, 2003. The attached draft rule and suggested legislation incorporate suggested revisions submitted by August 8, 2003 that are consistent with the rule petition and the Board's direction to staff. They also reflect the consensus of the members of the working group.

The purpose of proposed Rule 136 and the suggested legislation is to provide nonprofit organizations that currently qualify for the welfare exemption the option of forming limited liability companies for purposes of owning and operating their properties. The rule's provisions define a qualifying LLC for purposes of section 214, and enumerate organizational and operational requirements. These requirements are intended to ensure that qualifying LLCs adhere to the same requirements as other nonprofit [tax-exempt] entities currently eligible for the exemption. The corresponding statutory changes add the LLC as a qualifying entity in section 214 et seq., thereby allowing the LLC and its property to qualify for the exemption only if all the existing requirements for the welfare exemption are satisfied.

Revenue Impact

Staff has determined that there should not be a revenue loss resulting from adoption of the proposed rule and enactment of the suggested legislation for the following reasons:

1. The LLC must be wholly owned by qualifying nonprofit tax-exempt organizations that are eligible for the welfare exemption, so an expansion of the welfare exemption should not result. (Rule 136, subsection (b))

2. Both the LLC and its property must satisfy the same legal requirements as other legal entities eligible for the welfare exemption. (Draft Rule 136 requirements and suggested legislation)

Staff anticipates that the adoption of Rule 136 and the related statutory changes will not cause an expansion of the exemption, but instead generate a change in the type of legal entity qualifying for exemption. Thus, nonprofit organizations already receiving the welfare exemption for their real property will transfer these assets to a qualifying LLC, as specified in proposed Rule 136.

Staff Recommendation

In conclusion, staff recommends that the Board approve draft Rule 136 and set a public hearing date on the rule. Staff also requests that the Board support or sponsor the suggested legislative proposal. Although proposed Rule 136 may be adopted prior to the enactment of legislation, the rule's effective date may be specified as the effective date of the legislation.

If you have any questions on this matter, please contact Assistant Chief Counsel, Kristine Cazadd at (916) 323-7713.

Attachments

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PROPERTY TAX RULE 136 Limited Liability Companies as Qualifying Organizations for the Welfare Exemption

Reference: Sections 214, 214.01, 214.02, 214.1, 214.2, 214.5, 214.8, 214.14 254, 254.5 255, Revenue and Taxation Code: Article XIII, Sections 4(b) and 5, California Constitution

(a) A limited liability company may be a qualifying entity for welfare exemption purposes, if it is wholly owned by a qualifying organization or organizations and if it meets specific organizational and operating requirements.

(b) **Qualifying Organization.** A qualifying organization is an organization that is exempt under section 501[c][3] of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and that qualifies for exemption under section 214 of the Revenue and Taxation Code. A limited liability company is a qualifying organization if all its owner organization(s) (referred to as members) are exempt under section 501[c][3] of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code. Each member shall have a valid, unrevoked letter from the Internal Revenue Service or the Franchise Tax Board, stating that it qualifies as an exempt organization under section 501[c][3] of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code.

(c) **Organizational Requirements.** A limited liability company wholly owned by qualifying organization(s) may satisfy the organizational requirements for purposes of the exemption, if its articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed, meets all of the following requirements:

- (1) A specific statement shall be included which limits the activities of the limited liability company to one or more exempt purposes, as specified in section 214. This requirement may be satisfied by a clause stating that the limited liability company is organized and operated exclusively for one or more exempt purpose(s) as specified in section 214 [religious, hospital, scientific or charitable].
- (2) The organizational language shall specify that the limited liability company is operated exclusively to further the exempt purpose(s) as specified in section 214, of its member(s).
- (3) The organizational language shall require that each member of the limited liability company be a qualifying organization under section 214 and exempt under section 501[c][3] of the Internal Revenue Code or section 23701d of the Revenue and Taxation Code.
- (4) The organizational language shall prohibit any direct or indirect transfer of any membership interest in the limited liability company to any nonqualified person or entity.
- (5) The organizational language shall provide an acceptable dedication clause. This requirement may be satisfied by a clause that irrevocably dedicates the property to one or more of the exempt purposes, as specified in sections 214 and 214.01.

ATTACHMENT 1

- (6) The organizational language shall provide an acceptable dissolution clause. This requirement may be satisfied by a clause, which specifies that upon dissolution, all assets shall be distributed to an organization(s) organized and operated exclusively for exempt purposes, as specified in section 214, and which has established its tax exempt status under section 501[c][3] of the Internal Revenue Code, or under section 23701d of the Revenue and Taxation Code.
- (7) The organizational language shall require that any amendments to the limited liability company's articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed and to the operating agreement, be consistent with section 214.
- (8) The organizational language shall prohibit the limited liability company from merging with, or converting into, a for-profit entity.
- (9) The organizational language shall require that the limited liability company not distribute any assets to members who cease to be organizations described in section 214.
- (d) The limited liability company shall represent that its articles of organization are consistent with state law governing limited liability companies and are enforceable at law and in equity.
- (e) Operating Requirements. A limited liability company wholly owned by qualifying organization(s) may satisfy the operational requirements for purposes of this exemption, by operating in accordance with its articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed.
- (f) The limited liability company shall file with the county assessor, duplicate copies of certified Articles of Organization or the equivalent legally recognized formative document required under the laws of the jurisdiction where the entity is formed, and any certified amendments and restatements.
- (g) In the event that a member of the limited liability company ceases to be a qualifying welfare organization, as described in section 214, the limited liability company shall report this information to the assessor and the Board no later than the next annual filing deadline for the welfare exemption. Such event will serve to disqualify the limited liability company and its property from the welfare exemption.

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**Suggested Legislative Amendments to Welfare Exemption Statutes to Provide for
Exemption of Limited Liability Companies and their Properties**

(Suggested changes to existing law identified in strikethrough and underline format.)

**Section 214 of the Revenue and Taxation Code
Welfare Exemption.**

(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.

ATTACHMENT 2

(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 duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service that state that the owner and the other organization qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The owner of the property and any other organization using the property as provided in subparagraph (A) also shall file duplicate copies of their most recently filed federal income tax returns.

(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 subdivision (a). The owner of the other organization also shall file with the assessor duplicate copies of valid, unrevoked letters or rulings 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, together with duplicate copies of that organization's most recently filed federal income tax return, if the organization is required by federal law to file a return.

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, the 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 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.
- (3) 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 or eligible limited liability company, 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 Sections 4 and 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 shall 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 a limited liability company, organized and operated for those purposes, the Board of Equalization shall adopt regulations to specify the ownership, organizational, and operational requirements for such entities to qualify for the exemption provided by this section.

Section 214.01

Welfare exemption: Irrevocable Dedication.

For the purpose of Section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific, or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation, or in the case of any other fund or foundation, limited liability company, or corporation chartered by an act of

Congress, in the bylaws, articles of association, articles of organization, constitution, or regulations thereof, as determined by the State Board of Equalization.

If, when performing the duties specified by Section 254.5, the board finds that an applicant for the welfare exemption is ineligible therefor, because at the time of the filing of the affidavit required by Section 254.5, the applicant's articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, articles of organization, constitution or regulations, did not comply with the provisions of this section, the board shall notify the applicant in writing. The applicant shall have until the next succeeding lien date to amend its articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, articles of organization, constitution or regulations, and to file a certified copy of such amendments that conform to the provisions of this section with the board, and the board shall make a finding that the applicant, if otherwise qualified, is eligible for the welfare exemption and forward such finding to the assessor.

Section 214.02

Welfare Exemption; property in its natural state.

- (a) Except as provided in subdivision (b) or (c), property that is used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty, is open to the general public subject to reasonable restrictions concerning the needs of the land, and is owned and operated by a scientific or charitable fund, foundation, limited liability company or corporation, the primary interest of which is to preserve those natural areas, and that meets all the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the Constitution of the State of California and Section 214.
- (b) The exemption provided by this section shall not apply to any property of an organization that owns in the aggregate 30,000 acres or more in one county that were exempt under this section prior to March 1, 1983, or that are proposed to be exempt, unless the nonprofit organization that holds the property is constituted in such a way as to be fully independent of the owner of any taxable real property that is adjacent to the property otherwise qualifying for tax exemption under this section. For purposes of this section, the nonprofit organization that holds the property shall be considered fully independent if the exempt property is not used or operated by that organization or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor or bondholder of the exempt organization or operator, or the owner of any adjacent property, 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.
- (c) The exemption provided by this section shall not apply to property that is reserved for future development.
- (d) This section shall be operative from the lien date in 1983 to and including the lien date in 2012, after which date this section shall become inoperative, and as of January 1, 2013, this section is repealed.

Section 214.5

Welfare Exemption: Schools of less than collegiate grade

Property used exclusively for school purposes of less than collegiate grade, or exclusively for purposes of both schools of and 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 Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and Section 214. This section shall not be construed to enlarge the college exemption.

Section 214.14

Welfare Exemption: museums

Property used exclusively for the charitable purposes of museums and owned and operated by a religious, hospital, scientific, or charitable fund, foundation, limited liability company or corporation which meets all the requirements of subdivision (a) of Section 214 shall be deemed to be within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution and Section 214. For purposes of this section:

- (a) Property used exclusively for the charitable purposes of museums shall include property used for activities and facilities related to the primary charitable purposes of museums and reasonably necessary and incidental to those purposes.
- (b) Property used exclusively for the charitable purposes of museums shall not be required to be indispensable to the primary charitable purposes of museums.
- (c) Property used exclusively for the charitable purposes of museums shall not include property used for activities and facilities not related to the primary charitable purposes of museums and not reasonably necessary or incidental to those purposes.
- (d) Property used exclusively for the charitable purposes of museums shall include property owned by a nonprofit association or organization performing auxiliary services to any city or county museum in the state and used for the storage of items donated for an annual rummage sale, the proceeds of which, after taking into account the expenses of the nonprofit association or organization, are used to provide support to those museums. For purposes of this subdivision, "storage of items donated for an annual rummage sale" shall not be considered a "fundraising activity," as that term is used in paragraph (3) of subdivision (a) of Section 214.

Section 214.8.

Welfare Exemption: Limitation

- (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) 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 duplicate copies of a valid, unrevoked letter or ruling from either the Franchise Tax Board or, in the alternative, the Internal Revenue Service, which states that the organization qualifies as an exempt organization under the appropriate provisions of the ~~Bank and~~ Corporation Tax Law or the Internal Revenue Code.
- (c) For purposes of subdivision (a), a limited liability company wholly owned by one or more qualifying organization(s) exempt under section 23701d of the Revenue Taxation Code or under section 501[c][3] of the Internal Revenue Code, shall qualify as an exempt organization. In the case of a limited liability company that does not have a valid unrevoked letter from the Franchise Tax Board or Internal Revenue Service, the limited liability company shall not be deemed to be qualified as an exempt organization unless each member of the limited liability company files with the assessor duplicate copies of a valid, unrevoked letter or ruling from either the Franchise Tax Board or the Internal Revenue Service, which states that the organization qualifies as an exempt organization under the appropriate provisions of the ~~Bank and~~ Corporation Tax Law or the Internal Revenue Code.

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Suggested Legislative Changes to the Corporation Code that the State Bar Association will pursue

(Suggested changes to existing law identified in strikethrough and underline format.)

Section 17002 of the Corporation Code

Subject to any limitations contained in the articles of organization and ~~to~~ in compliance with other applicable laws, a limited liability company may be engaged in any lawful business, or activity, whether or not for profit, except *for* the banking business, *the* business of issuing policies of insurance and assuming insurance risks, or the trust company business.

MAA:lg

Rules/Rule136/03/FinalVersion/BdProposal-Attach3.doc