State of California

Board of Equalization
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Memorandum

To: Honorable Judy Chu, Ph.D., Chair
Honorable Betty T. Yee, Vice-Chairwoman
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: February 28, 2008

From: Kristine Cazadd
Chief Counsel

Subject: **Request for Guidance – Welfare Exemption**
"Community Benefit Test" Under Revenue and Taxation Code section 214
March 19, 2008 Board Meeting – Chief Counsel Matters

This matter was raised initially at the July 17, 2007 Board Meeting, at which the Board directed staff to meet with interested parties to discuss the issues and ramifications of an expanded interpretation of the "community benefit test" for the welfare exemption from property taxation provided by Revenue and Taxation Code[1] section 214.

Section 214, subdivision (a), which implements California Constitution article XIII, section 4, subdivision (b), provides that "[p]roperty used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation" if certain requirements are met. Where charitable purposes are involved, one such requirement is that the charitable activities must benefit "the community as a whole or an unascertainable portion thereof."[2] Due to this reference to the "community," this requirement has commonly become known as the "community benefit test."[3]

Historically, the "community benefit test" has been interpreted as requiring that an organization's claimed charitable activities must be found to primarily benefit persons within the geographical boundaries of the State of California. In other words, the Board staff's long-standing administrative interpretation of "community benefit" has defined "community" as being co-extensive with the state's territorial boundaries and limited the application of the exemption accordingly. Recently, however, certain nonprofit organizations that engage in charitable activities have requested an expanded definition of the "community" that would contain no such limitation based on geographical boundaries.

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[1] All statutory references are to the Revenue and Taxation Code unless otherwise specified.
[2] *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d 13, 22.
[3] See Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions* (Oct. 2004) (AH 267), pp. 2-7 for a general discussion and history of the test.

On September 19, 2007, staff held an interested parties meeting to discuss the issues related to expanding the definition of the "community" beyond the state's territorial boundaries. Thereafter, at the February 1, 2008, Board meeting, staff requested the Board's guidance as to whether or not staff should expand the definition of the "community." In response, at that Board meeting, the Board directed staff to complete a new revenue estimate with the assistance of the county assessors in obtaining any appropriate data.

The requested revenue estimate is attached as Exhibit 1, and concludes that the estimated annual revenue loss would be less than $500,000. To complete the revenue estimate, staff gathered data from county assessors, Franchise Tax Board, Internal Revenue Service, and the Secretary of State. Further, as the Board requested, staff contacted states believed to have changed their state law to exempt nonprofit organizations that did not provide an in-state benefit. However, staff was not successful in obtaining revenue loss estimates as a result of such contacts.

If you need more information or have any questions, please contact Acting Assistant Chief Counsel Robert Lambert at (916) 324-6593.

Approved: _____
Ramon J. Hirsig
Executive Director

KEC:RM:pb
Chief Counsel/Finals/Community Benefit .Memo.doc

Attachment

cc:	Mr. Ramon Hirsig	MIC: 73
	Mr. David Gau	MIC: 63
	Mr. Robert Lambert	MIC: 82
	Mr. Dean Kinnee	MIC: 64
	Mr. Todd Gilman	MIC: 70
	Mr. Richard Moon	MIC: 82

EXHIBIT 1

REVENUE ESTIMATE
(REV. 4/98)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

BOARD OF EQUALIZATION

REVENUE ESTIMATE

WELFARE EXEMPTION: "COMMUNITY BENEFIT TEST"

Issue

Can a nonprofit organization whose charitable activities primarily benefit people located outside of California satisfy the "community benefit test" and qualify as a "charitable" organization for purposes of the welfare exemption provided by Revenue and Taxation Code section 214?

Background, Methodology, and Assumptions

The Board's historic interpretation of the "community benefit test" has been to define the relevant community that must be benefited as one that is located within the boundaries of the State of California. As a result of inquiries from nonprofit organizations, Board staff initiated a review of the interpretation of the "community" as it pertains to the welfare exemption. The review included analysis of the statutory intent of Revenue and Taxation Code section 214, investigation of other state's practices, and evaluation of documents provided by nonprofit organizations that conduct charitable activities outside of California and other government agencies.

Currently, there are seven welfare exemption claimants that do not satisfy the historical "community benefit test" that have filed for the welfare exemption. The assessed value for these claimants total $3.14 million. Under the broader definition of "community" that would include nonprofit organizations that primarily benefit persons outside of California, the revenue impact for these claimants at the basic one percent property tax rate is $3.14 million x 1 percent, or $31,400.

There may be other organizations that historically have not claimed the welfare exemption but would qualify under a broader definition of "community." We have been unable to find any data on the number of nonprofit organizations that operate in California and whose charitable activities primarily benefit people living outside of California. Neither have we been able to find data on what property these organizations might own in California.

We were able to find some information on nonprofit organizations in Los Angeles and Orange counties from an Internet site – TaxExemptWorld.com. For the organizations listed on this site we found 112 organizations that we believe could be eligible for a property tax exemption under the broader definition of "community." We asked Los Angeles County or Orange County to check to see if any of these organizations owned property in their counties. We found that only 12 of these organizations owned property and the assessed value for that property amounted to only $435,000. At the basic one percent property tax rate the revenue on these properties amounts to $4,350.

We recognize that the list we found was an exceedingly small sample. However, it may point out that while there may be many organizations like this, only a small portion of them might own property in California, and the assessed values of that property may not be very large.

Based on these assumptions, we believe that the revenue impact from a broader definition of "community" will not result in a large revenue loss. We believe that the revenue loss would be less than $500,000 annually.

Revenue Summary

If the welfare exemption were extended to nonprofit organizations whose charitable activities primarily benefit people located outside of California, the annual revenue impact at the basic one percent property tax rate would be less than $500,000.

Preparation This revenue estimate was prepared by Mr. David E. Hayes, Manager, Research and Statistics Section.

Current as of February 28, 2008