

Memorandum

Date: June 16, 2003

To: Tim Boyer
Interim Executive Director

From: Jean Ogrod
Acting Chief Counsel, Legal Department



Subject: Revised Staff Recommendation on Petition for Adoption of a New Property Tax Rule, Proposed Rule 136, to provide the welfare exemption from property taxes to limited liability companies and their property - From: Ingrid Mittermaier, Esq. Of Silk, Adler & Colvin

On May 9, 2003, the Board Members received a petition, pursuant to Government Code section 11340.6, from Ingrid Mittermaier, Esq. of Silk, Adler & Colvin and the Exempt Organizations Committee of the Taxation Section of the State Bar, to add new property tax Rule 136, *Qualifying Organizations*. Rule 136 would interpret and implement Article XIII A, section 4(b) and Revenue and Taxation Code section 214. The Rule would clarify that a limited liability company, organized and operated for exempt purposes, as specified in section 214, is an entity eligible for the welfare exemption from property taxes. The rule would allow property owned by limited liability companies and used for exempt purposes and activities to qualify for the exemption.

The rule petition was scheduled for the Chief Counsel Matters at the May 28, 2003 Board meeting in order to comply with a 30-day deadline for action on the matter. Staff reviewed the petition and recommended that the Board defer a decision on the rule petition and include legislation for this purpose in the proposed welfare streamlining legislation. The Board adopted staff's recommendation - a decision was deferred on the petition and the matter was referred to the staff for incorporation into the proposed welfare exemption legislation.

The staff has since determined that legislation for this purpose is problematic for the current session of the Legislature, as there is insufficient time to fully develop and resolve the issues. As such, the staff recommends that the Board further defer initiation of the rule-making process for the purpose of allowing a working group of staff, State Bar representatives, nonprofit organizations, assessors and county counsels to research and develop optional language for a legislative proposal for the 2004 legislative year, as well as language for a

proposed rule. Upon completion, staff would then present suggested language to the Board along with a recommendation as to whether this matter is best addressed through adoption of a new rule, Board-sponsored legislation, or both.

OG:MAA:eb

Rules/136/03/02maa_.doc

cc: Ms. Kristine Cazadd, MIC:82
Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Harold Hale, MIC:61
Ms. Mary Ann Alonzo
Ms. Jennifer Willis, MIC:70

REGULATION HISTORY

TYPE OF REGULATION: Property Tax
REGULATION: 136
TITLE: Qualifying Organizations
PREPARATION: Kristine Cazadd/Paul Steinberg
LEGAL CONTACT: Kristine Cazadd/Paul Steinberg

New Rule 136, *Qualifying Organizations*, has been proposed in order to clarify that real property owned by a nonprofit limited liability company may qualify for the property tax welfare exemption.

REGULATION HISTORY

June 25, 2003: Placed on Chief Counsel Matters for Board's consideration regarding the adoption of a new rule.
May 28, 2003: Placed on Chief Counsel Matters for Board's consideration regarding the adoption of a new rule.
May 9, 2003: Honorable Chairwomen Carole Midgen received a petition to adopt new rule submitted by Ingrid Mittermaier, Esq., Silk, Adler and Colvin.