

Issue Paper Number 00-033



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

**UPDATE OF
ASSESSORS' HANDBOOK SECTION 267
WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS**

I. Issue

Should the Board authorize publication of the updated Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, and should it include a discussion of the Board's 1997 decision in the *Matter of St. Jude Hospital Yorba Linda, dba St. Jude Heritage Health Foundation*?

II. Staff Recommendation

Staff recommends the updated Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, be authorized for publication with staff's proposed text concerning the Board's *St. Jude* decision included. (Attachment 1)

III. Other Alternative(s) Considered

Authorize the updated Assessor's Handbook Section 267 for publication with staff's proposed text regarding the Board's *St. Jude* decision deleted as proposed by the California Assessors' Association. (Attachment 2)

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IV. Background

Under Government Code sections 15606 et seq., the Board is charged with the duty of administratively enforcing and interpreting the statutes governing the local assessment function. Specifically, the Board is required to prepare and issue instructions designed to promote property tax assessment uniformity throughout the state. The Assessors' Handbook is published by the Board as one means of fulfilling this requirement of providing instructions. Staff has recently published several sections of the handbook series, including Assessors' Handbook Section 267 (AH 267), *Welfare, Church, and Religious Exemptions*. The current edition of AH 267 was approved by the Board in October of 1998.

Recent amendments to several sections of the Revenue and Taxation Code and Title 18 of the California Code of Regulations (Property Tax Rules) necessitated changes to language in the AH 267. Staff announced to interested parties its intention to update the AH 267 as a result of the recent law changes and invited interested parties to participate in this process. Staff advised interested parties that the update would be limited in scope and that changes would be restricted to those necessitated by the statutory and regulatory amendments. During the initial process of updating AH 267, the Office of Administrative Law of the State of California issued a regulatory determination (2000 OAL Determination No. 6), at the request of the California Assessor's Association, regarding the policy in the October 1998 AH 267 regarding the property tax exemption for multispecialty medical clinics. OAL determined that the text which stated that the requirements of a multispecialty clinic could be met by aggregating multiple clinic locations when operated as a single unit was an underground regulation. Therefore, during the updating process, staff proposed changes to the section on multispecialty clinics, specifically, deleting language which it believes caused OAL to make the determination that this section in the AH 267 contained an underground regulation. Identifying the specific portions of the multispecialty clinics language to be deleted is the one remaining issue on which Board staff and interested parties have not reached agreement in the update of the AH 267 and is the subject of this issue paper.

Staff worked with the California Assessors' Association (CAA), nonprofit and religious organizations, and private tax practitioners in making the proposed changes to the AH 267. Staff and interested parties are in agreement with changes made to the AH 267 with the exception of the multispecialty clinics issue.

During discussions on Chapter 5, *Housing*, the CAA continued to express their disappointment with Property Tax Rule 137, *Application of the Welfare Exemption to Property Used for Housing*, particularly Examples 4 and 5 of the rule. Comments submitted on the draft of the update of AH 267 proposed not including Rule 137, or portions of it, in the AH 267. The CAA acknowledges that, regardless of their opinion of Rule 137, it has been adopted by the Board and approved by OAL; therefore, it is appropriately included in AH 267.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends that the Board authorize publication of the updated AH 267 with the staff version of the multispecialty clinic section, which includes a discussion of the Board's *St. Jude* decision. Staff's proposed language discussing multispecialty clinics modifies the original handbook by deleting the specific wording which promotes the Board's decision in the *St. Jude* case as a standard of general application, thus removing the language which led OAL to conclude that the Board was publishing an underground regulation concerning the application of the welfare exemption to multispecialty clinics.

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The staff proposal does retain wording which presents the issue and the Board's decision in the *St. Jude* case without stating that this is the standard for other cases. Attachment 1 identifies staff's recommended changes to the October 1998 AH 267 in strikeout and underline format for the *Multispecialty Clinics* section in Chapter 3 of Part I.

B. Pros of the Staff Recommendation

The Board previously addressed the issue of including the *St. Jude* decision during the drafting of the October 1998 AH 267. The issue was presented to the Property Tax Committee at its August 26, 1998 meeting, during which the committee recommended that the Board adopt staff's text regarding multispecialty clinics, which included a discussion of the Board's 1997 *St. Jude* decision. The Board authorized the *St. Jude* decision for publication as a Memorandum Opinion because it addressed an issue that was of interest to others beyond the involved parties. It is appropriate for the Board to include a published Memorandum Opinion on an exemption appeal in a section of the assessors' handbook. With the inclusion of staff's proposed text, the AH 267 will continue to maintain information on current Board policy and reflect recent decisions by the Board regarding application of the welfare exemption.

C. Cons of the Staff Recommendation

The CAA believes that the Board's *St. Jude* decision misinterpreted the statutes regarding the definition of multispecialty clinics and that including a discussion of this decision in the AH 267 would promote and provide validity to this misinterpretation of the law.

(The following comments regarding multispecialty clinics were submitted by the CAA during the process of updating the AH 267.)

Highly controversial decisions made by the Board that do not follow California statutes should not be included in Assessors' Handbook Sections. . . . Neither section 214.9 of the Revenue and Taxation Code or section 1206(l) of the Health and Safety Code state that a multispecialty clinic may be defined on an "aggregate" basis.

Any reference to this decision in a manual supposedly providing direction on how Assessors and others should render determinations relative to exempt status, has the effect of *promoting* the referenced procedure. The OAL has declared this to be INVALID; thus, all text and any reference to the *St. Jude* decision must be stricken from the handbook.

D. Statutory or Regulatory Change

None

E. Administrative Impact

Possible change in criteria for reviewing claims for the welfare exemption on multispecialty clinic property.

FORMAL ISSUE PAPER**F. Fiscal Impact****1. Cost Impact**

None

2. Revenue Impact

None (See attached Revenue Estimate.)

G. Taxpayer/Customer Impact

None

H. Critical Time Frames

Distribution of the revised manual is scheduled for September 2000. In order to meet this deadline, the updated draft of AH 267 must be approved for publication by the Board at its August 9, 2000 meeting.

VI. Alternative 1**A. Description of the Alternative Recommendation**

The California Assessors' Association (CAA) recommends that the Board authorize publication of the updated AH 267 with the CAA version of the multispecialty clinic section. The CAA's proposed language discussing multispecialty clinics modifies the Board staff proposal by deleting all discussion of the circumstances and Board decision in the *St. Jude* exemption appeal. The CAA contends that removal of all language discussing the *St. Jude* decision is necessary to comply with the OAL ruling. The CAA proposal does retain wording which presents the existing law concerning this issue. Attachment 2 identifies the CAA's proposed changes to the October 1998 AH 267 in strikeout and underline format for the *Multispecialty Clinics* section in Chapter 3 of Part I.

B. Pros of the Alternative Recommendation

(The following comment regarding multispecialty clinics was submitted by the CAA during the process of updating the AH 267.)

The fact that the Board considers the AH 267 handbook to be merely advisory is irrelevant to the issue. The OAL determination on multispecialty clinics supersedes any position or opinion of the Board. Accordingly, it is neither justified nor appropriate to promulgate an invalid procedure in the handbook. Inclusion of the *St. Jude* case and Board decision in the handbook is completely unacceptable. This portion of the text must be completely stricken from the handbook.

C. Cons of the Alternative Recommendation

Deleting the entire discussion of the *St. Jude* decision misinterprets the OAL determination regarding this topic. The OAL ruling does not make any judgement regarding the Board's interpretation of the law in this case. Its determination only addresses the issue of whether the AH 267 contains statements of policy that have not been adopted through the procedures prescribed by the California Administrative Procedures Act.

Nowhere in the OAL determination does it state that the Board made the wrong decision in the *St. Jude* appeal. It only stated that certain language concerning the Board's decision and multispecialty

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clinics in the AH 267 "constituted standards of general application" which were not adopted pursuant to the procedures prescribed by the California Administrative Procedures Act. Removal of all discussion of the *St. Jude* decision is a hindrance to nonprofit organizations and tax practitioners because it fails to inform them of current Board practice regarding this subject.

D. Statutory or Regulatory Change

None

E. Administrative Impact

Possible change in criteria for reviewing claims for the welfare exemption on multispecialty clinic property.

F. Fiscal Impact

3. Cost Impact

None

4. Revenue Impact

None (See attached Revenue Estimate.)

G. Taxpayer/Customer Impact

None

H. Critical Time Frames

Distribution of the revised manual is scheduled for September 2000. In order to meet this deadline, the updated draft of AH 267 must be approved for publication by the Board at its August 9, 2000 meeting.

Prepared by: Property Taxes Department; Policy, Planning, and Standards Division
Legal Division, Property Taxes Section

Current as of: July 26, 2000

ATTACHMENT 1 STAFF PROPOSAL

MULTISPECIALTY CLINICS

Section 214.9 expands the hospital purposes aspect of the exemption to include outpatient clinics of two types; a clinic that provides psychiatric services for emotionally disturbed children, and a *nonprofit multispecialty clinic*. Thus, property of a nonprofit multispecialty clinic and property of a clinic that provides psychiatric services for emotionally disturbed children that meet the requirements of section 214, is eligible under the hospital purposes aspect of the exemption. Section 214.9 does not provide a definition of nonprofit multispecialty clinic, but it specifies that it be such a clinic of the type described in section 1206(l) of the Health and Safety Code:

1. A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof,
2. Which conducts medical research and health education and provides health care to its patients,
3. Through a group of 40 or more physicians and surgeons,
4. Who are independent contractors,
5. Representing not less than 10 board-certified specialties, and
6. Not less than two-thirds of whom practice on a full-time basis at the clinic.

The multispecialty clinic is also subject to the requirement in section 214.9 that it must not reduce the level of charitable or subsidized activities it provides as a proportion of its total activities.

Finally, section 214.9 does not include those portions of an outpatient clinic which may be leased or rented to a physician for the general practice of medicine. Thus, a nonprofit multispecialty clinic is eligible for exemption under the hospital purposes aspect of the exemption only if the clinic meets all the requirements in section 214 and section 214.9, which includes section 1206(l) of the Health and Safety Code.

~~Multiple clinic sites operated as a unified integrated clinic may be treated as a single clinic for purposes of section 214.9 based on a recent Board decision.¹¹²—In 1997, the Board of Equalization considered whether each clinic site must meet all the requirements for exemption per the definition of a multispecialty clinic in section 1206(l) of the Health and Safety Code, or whether these requirements could be met by all of the claimant's clinic sites as a group.¹¹³~~

¹¹² Board of Equalization Decision in the *Matter of St. Jude Hospital Yorba Linda, dba St. Jude Heritage Health Foundation*. (1997)

¹¹³ Board of Equalization Decision in the *Matter of St. Jude Hospital Yorba Linda, dba St. Jude Heritage Health Foundation*. (1997)

ATTACHMENT 1
STAFF PROPOSAL

1 The claimant provided evidence that its clinics operated as a single integrated clinic: all sites
2 operated by a single board of directors and common management and share assets, personnel,
3 patients, support functions; ~~are~~all sites subject to the same operational procedures, patient charge
4 rates and personnel policies; and, each site is dependent on the support and assistance rendered to
5 it by professional personnel at the other sites in order to operate as a health facility.

6 Pursuant to the Board's authority under section 254.5, and the specific wording of section 214.9,
7 the Board found that the Health and Safety Code section 1206(l) requirements for purposes of
8 section 214.9 appliedly to all of ~~the~~a claimant's clinic sites which are operated as a *unified single*
9 *integrated clinic in the aggregate*.

10 ~~Accordingly, the requirement that a clinic maintain a group of 40 or more physicians~~
11 ~~representing not less than 10 specialties and not less than two-thirds of whom practice on a full-~~
12 ~~time basis, may be met by aggregating the group of physicians at all of a claimant's clinic sites.~~
13 ~~The nonprofit organization should provide information addressing the above requirements when~~
14 ~~filing its exemption claim for multispecialty clinics.~~

15 A clinic which does not provide psychiatric services for emotionally disturbed children and
16 which is not a nonprofit multispecialty clinic of the type described in section 1206(l) would not
17 be included in the definition of a hospital and would not qualify under the hospital purposes
18 aspect of the exemption per section 214.9. However, it may qualify under the charitable
19 purposes aspect of the exemption.

**ATTACHMENT 2
CAA PROPOSAL**

MULTISPECIALTY CLINICS

Section 214.9 expands the hospital purposes aspect of the exemption to include outpatient clinics of two types; a clinic that provides psychiatric services for emotionally disturbed children, and a *nonprofit multispecialty clinic*. Thus, property of a nonprofit multispecialty clinic and property of a clinic that provides psychiatric services for emotionally disturbed children that meet the requirements of section 214, is eligible under the hospital purposes aspect of the exemption. Section 214.9 does not provide a definition of nonprofit multispecialty clinic, but it specifies that it be such a clinic of the type described in section 1206(l) of the Health and Safety Code:

1. A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof,
2. Which conducts medical research and health education and provides health care to its patients,
3. Through a group of 40 or more physicians and surgeons,
4. Who are independent contractors,
5. Representing not less than 10 board-certified specialties, and
6. Not less than two-thirds of whom practice on a full-time basis at the clinic.

The multispecialty clinic is also subject to the requirement in section 214.9 that it must not reduce the level of charitable or subsidized activities it provides as a proportion of its total activities.

Finally, section 214.9 does not include those portions of an outpatient clinic which may be leased or rented to a physician for the general practice of medicine. Thus, a nonprofit multispecialty clinic is eligible for exemption under the hospital purposes aspect of the exemption only if the clinic meets all the requirements in section 214 and section 214.9, which includes section 1206(l) of the Health and Safety Code.

~~Multiple clinic sites operated as a unified integrated clinic may be treated as a single clinic for purposes of section 214.9 based on a recent Board decision.¹¹² In 1997, the Board of Equalization considered whether each clinic site must meet all the requirements for exemption per the definition of a multispecialty clinic in section 1206(l), or whether these requirements could be met by all of the claimant's clinic sites as a group.~~

~~The claimant provided evidence that its clinics operated as a single integrated clinic: all sites operated by a single board of directors and common management and share assets, personnel, patients, support functions; are subject to the same operational procedures, patient charge rates and personnel policies; and, each site is dependent on the support and assistance rendered to it by professional personnel at the other sites in order to operate as a health facility.~~

¹¹² Board of Equalization Decision in the *Matter of St. Jude Hospital Yorba Linda, dba St. Jude Heritage Health Foundation*. (1997)

ATTACHMENT 2
CAA PROPOSAL

1 Pursuant to the Board's authority under section 254.5, and the specific wording of section 214.9,
2 the Board found that the Health and Safety Code section 1206(l) requirements for purposes of
3 section 214.9 apply to all of a claimant's clinic sites which are operated as a *unified single*
4 *integrated clinic in the aggregate*.

5 Accordingly, the requirement that a clinic maintain a group of 40 or more physicians
6 representing not less than 10 specialties and not less than two thirds of whom practice on a full-
7 time basis, may be met by aggregating the group of physicians at all of a claimant's clinic sites.
8 The nonprofit organization should provide information addressing the above requirements when
9 filing its exemption claim for multispecialty clinics.

10 A clinic which does not provide psychiatric services for emotionally disturbed children and
11 which is not a nonprofit multispecialty clinic of the type described in section 1206(l) would not
12 be included in the definition of a hospital and would not qualify under the hospital purposes
13 aspect of the exemption per section 214.9. However, it may qualify under the charitable
14 purposes aspect of the exemption.

BOARD OF EQUALIZATION
REVENUE ESTIMATE

ISSUE 00-033**UPDATE OF ASSESSORS' HANDBOOK SECTION 267**
WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS**Staff Recommendation**

Staff recommends the updated Assessors' Handbook Section 267 (AH 267), *Welfare, Church, and Religious Exemptions*, be authorized for publication with staff's proposed text concerning the Board's 1997 *St. Jude* decision included.

Alternative Proposal

The California Assessors' Association (CAA) proposes that the updated AH 267 be authorized for publication without the staff's proposed text concerning the *St. Jude* decision.

Background, Methodology, and Assumptions

Revenue and Taxation Code Section 214.9 extends the welfare exemption for hospitals to nonprofit multispecialty clinics meeting specific requirements. In 1997, the Board of Equalization found in the claim for welfare property tax exemption appeal by St. Jude Hospital that these requirements apply to all of the claimant's clinic sites which are operated as a unified single integrated clinic in aggregate. Prior to this decision, each clinic site had to meet these requirements to qualify as a hospital.

The current AH 267, approved by the Board in October 1998, includes a discussion of the treatment of these clinics in light of the *St. Jude* decision. Under the staff proposal, this discussion would be restricted to a description of the decision; those portions which may be considered as a general application of the case-specific decision would be deleted. Under the CAA proposal, the entire discussion would be deleted.

Since the publication of the current AH 267 in October 1998, only a very few counties have granted the welfare exemption for multispecialty clinics with multiple sites considered in aggregate. The list of claimants includes Kaiser Health, Sutter Health, Cedars, and Catholic Healthcare West. The current practice by county assessors is likely to continue with either the staff proposed text or the alternative CAA proposed text.

Revenue Summary

The staff recommendation has no revenue effect.

Alternative proposal

The CAA proposal would have no revenue effect.

Preparation

This revenue estimate was prepared by Aileen Takaha Lee, Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Mr. Richard Johnson, Deputy Director, Property Tax Department. For additional information, please contact Ms. Lee at (916) 445-0840.

Current as of July 25, 2000