STATE OF CALIFORNIA

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June 11, 2004

No. 2004/038

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES

CALIFORNIA CODE OF REGULATIONS
TITLE 18. PUBLIC REVENUES

PROPERTY TAX RULE 136
LIMITED LIABILITY COMPANIES AS QUALIFYING ORGANIZATIONS FOR THE WELFARE EXEMPTION

NOTICE OF PROPOSED RULE AMENDMENTS FOR THE 15-DAY PUBLIC COMMENT PERIOD

The State Board of Equalization held a public hearing on May 25, 2004, on proposed Property Tax Rule 136, *Limited Liability Companies as Qualifying Organizations for the Welfare Exemption.* During the public comment period prior to hearing, the Board received a comment proposing amendment of the proposed rule to include government entities as "qualifying organizations". In accordance with Government Code section 11346.8, subdivision (c), the Board provides this notice of the fifteen-day period for any comments in response to the public comment, recommending changes to the published version of the rule as follows:

- Renumber subsection (b) as (b)(1) and add a new subsection (b)(2) to read:
- (b)(2) Qualifying Organization. A qualifying organization is also a government entity that is exempt from property taxation under section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities. A limited liability company is a qualifying organization if one or more of its members is a government entity, as specified, and all other 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.

- Amendment to section (c) (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.~~ ,as specified in subsections (b)(1) and (b)(2) of this rule.

Amendment to section (f) is necessary because Senate Bill 1062 (Stats. 2003, Ch. 471, in effect January 1, 2004) changed welfare exemption claim filing requirements. The amendment to Section (f) in strikeout and under line format, reads as follows: The limited liability company shall file with the Board a copy ~~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.

Attached is a revised version of Rule 136, in strikeout and underline format, with language added to the rule in double underscore and deleted language identified by strikeout.

The revised version of Rule 136 is being placed in the rulemaking file and mailed today to interested parties that commented orally or, in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, California.

Questions regarding the revisions to the proposed rule should be directed to: Ms. Mary Ann Alonzo, Senior Tax Counsel, at the State Board of Equalization, P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 324-1392; FAX (916) 323-3387, e-mail MaryAnn.Alonzo@boe.ca.gov.

The Board will consider comments solely concerning the proposed revisions only if received by **June 27, 2004**. This matter will be placed on the Board's meeting consent agenda, to be held in Sacramento, California, on June 30, 2004, for the Board's consideration. Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, email Diane.Olson@boe.ca.gov or to Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, email Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC:80, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,

/s/ Deborah Pellegrini

Deborah Pellegrini, Chief
Board Proceedings Division

DP:dgo
Enclosures

RULE 136 LIMITED LIABILITY COMPANIES AS QUALIFYING ORGANIZATIONS FOR THE WELFARE EXEMPTION

(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) (1) 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.

(b)(2) Qualifying Organization. A qualifying organization is also a government entity that is exempt from property taxation under section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities. A limited liability company is a qualifying organization if one or more of its members is a government entity, as specified, and all other 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.

(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.~~ ,as specified in subsections (b)(1) and (b)(2) of this rule.

(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.

(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 Board a copy ~~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.

Authority: Section 15606(c), Government Code.
Reference: Sections 214, 214.01, 214.02, 214.1, 214.2, 214.5, 214.8, 214.14 254, 254.5, 254.6, 255, 261, 270, 271, 75.21 and 75.22 of the Revenue and Taxation Code; Article XIII, Sections 4(b) and 5, California Constitution.

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