

Amend various sections of the Revenue and Taxation Code to streamline the administration of the welfare exemption.

Source: Property and Special Taxes Department and Legal Department

The joint administration of the Welfare Exemption was initially established by the Legislature as a safeguard against favoritism by the assessor in granting exemptions. In recent years, however, the system has been criticized as being unnecessarily burdensome on claimants and creating a costly duplication of work for state and local government.

- I. The staff recommends that the following provisions to streamline the administration of the welfare exemption be adopted as a legislative proposal for the 2003 legislative year. In 1998, these provisions were contained in a Board sponsored bill, Senate Bill 2235, which passed the house of origin. These provisions were not controversial and were supported by assessors. They had no known opposition, as discussions were held and issues resolved with interested parties. Therefore, staff recommends the following changes to streamline the welfare exemption process which will reduce the administrative burden by improving procedures without affecting revenue:
 - Elimination of duplicative review functions, so the Board will determine whether an *organization* is eligible for the welfare exemption and the county assessor will determine whether the *use of the property* is eligible for the welfare exemption. The assessor's determination of whether an organization's property use satisfies the requirements of section 214 will be made exclusively by the county assessor without review by the Board staff.
 - Administrative appeal remedy that provides for the claimant to file an appeal with the Board if the organization is denied exemption by Board staff for failure to meet organizational requirements. Claimant may file a claim for refund of property taxes with the county and file a refund action in superior court, upon denial by the Board. If the organization is denied exemption by the assessor, for nonqualifying property use, claimant may file a claim for refund of property taxes with the county and file a refund action in superior court.
 - Clarify that the Board and assessor may audit organizations to verify continuing qualification for the exemption.
 - Board staff review of the assessors' administration of the Welfare and Veterans' Organization Exemptions as part of the assessment standards surveys conducted by Board staff to ensure proper administration of these exemptions.
- II. The staff recommends that the following provisions, which also have been identified as possible additional streamlining measures, be studied and explored with interested parties as potential legislative proposals for the 2004 legislative year:

- Establishing one-time filing or postcard return provisions for certain types of claimants.
- Ensuring that the documents non-profit organizations file with their claims are perfected to avoid unnecessary delays in obtaining organizational clearance certificates.
- Revising and recasting the foundational statute of the welfare exemption and related statutes, to make this area of the law more user friendly. These sections of law have become unwieldy and cumbersome through many years of amendments.

Staff will pursue discussions with interested parties to explore these ideas as well as solicit other possibilities to further improve the administration of the welfare exemption. The product of these discussions will be brought forward to the Board for potential sponsorship of legislation for the 2004 legislative year.

Section 213.7 of the Revenue and Taxation Code is amended to read:

213.7. (a) As used in Section 214, "property used exclusively for religious, hospital, scientific or charitable purposes" shall include the property of a volunteer fire department which is used exclusively for volunteer fire department purposes, provided that the department qualifies for exemption either under Section 23701d or 23701f of this code or under Section 501(c)(3) or 501(c)(4) 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) or 501(c)(4) of the Internal Revenue Code, but not otherwise qualified for the "welfare exemption" under other provisions of this code.

As used in this section, "volunteer fire department" means any fund, foundation or corporation regularly organized for volunteer fire department purposes, which qualified as an exempt organization on or before January 1, 1969, either under Section 23701d or 23701f of this code or under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, having official recognition and full or partial support of the government of the county, city or district in which such volunteer fire department is located, and which has functions having an exclusive connection with the prevention and extinguishing of fires within the area of the county, city or district extending official recognition for the benefit of the public generally and to lessen the burdens of the entity of government which would otherwise be obligated to furnish such fire protection.

(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 a valid organizational clearance certificate issued by the board pursuant to Section 254.6. ~~The board shall not issue an organizational clearance certificate unless the organization files the documents required by Section 254.6. 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.~~

Section 214 of the Revenue and Taxation Code is amended to read:

214. Welfare exemption. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations 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.

(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 a valid organizational clearance certificate issued by the board pursuant to Section 254.6. The board shall not issue an organizational clearance certificate unless the organization files the documents required by Section 254.6. ~~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 a valid organizational clearance certificate issued by the board pursuant to Section 254.6. The board shall not issue an organizational clearance certificate unless the organization files the documents required by Section 254.6. ~~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.

* * *

Section 214.01 of the Revenue and Taxation Code is amended to read:

214.01. 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, or corporation chartered by an act of Congress, in the bylaws, articles of association, constitution, or regulations thereof, as determined by the State Board of Equalization.

If, when performing the duties specified by Section ~~254.5~~254.6, the board finds that an applicant for the welfare exemption is ineligible ~~therefor~~ for an organizational clearance certificate, because at the time of the filing of the affidavit claim required by Section ~~254.5~~254.6, the applicant's articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, 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, 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~~ an organizational clearance certificate and forward such finding to the ~~assessor~~applicant.

Section 214.8 of the Revenue and Taxation Code is amended to read:

214.8. (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 a valid organizational clearance certificate issued by the board pursuant to Section 254.6. ~~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.~~

Section 231 of the Revenue and Taxation Code is amended to read:

231. (a) Property which is owned by a nonprofit corporation and leased to, and used exclusively by, government for its interest and benefit shall be exempt from taxation within the meaning of "charitable purposes" in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution if:

(1) All of the provisions of Section 214 are complied with, except paragraph (6) of subdivision (a). For purposes of paragraph (6) of subdivision (a) of Section 214, irrevocable dedication to charitable purpose shall be deemed to exist if the lease provides that the property shall be transferred in fee to the entity of government leasing the same upon the sooner of either the liquidation, dissolution, or abandonment of the owner or at the time the last rental payment is made under the provisions of the lease.

(2) All of the provisions of Section 254.5 relating to owners are complied with, commencing during calendar year 1969.

(3) All of the provisions of Section 214.01 are complied with by March 15, 1970.

* * *

(d) As used in this section "nonprofit corporation" means a community chest, fund, foundation or corporation, not conducted for profit, and no part of the net

earnings of which inures to the benefit of any private shareholder or individual and that nonprofit corporation is organized and operated for the sole purpose of leasing property to government and to lessen the burden of government and, in fact, only leases property to government. That nonprofit corporation shall qualify as an exempt organization either under Section 23701f or 23701u of this code or Section 501(c)(4) of the Internal Revenue Code of 1986. This subdivision is not intended to enlarge the "welfare exemption" to apply to organizations qualified under Section 501(c)(4) of the Internal Revenue Code of 1986 but not otherwise qualified for the "welfare exemption" under this section. Nonprofit corporations meeting the tests of this subdivision are deemed to be organized and operated for charitable purposes.

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(k) For purposes of subdivision (d), a nonprofit corporation shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor a valid organizational clearance certificate issued by the board pursuant to Section 254.6. ~~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.~~

Section 254.5 of the Revenue and Taxation Code is amended to read:

254.5. (a) ~~Affidavits~~ Claims for the welfare exemption and the veterans' organization exemption shall be filed ~~in duplicate~~ on or before February 15 of each year with the assessor. The assessor shall not approve a property exemption claim until the claimant has been granted a valid organizational clearance certificate issued by the State Board of Equalization pursuant to Section 254.6. ~~Affidavits of organizations filing for the first time shall be accompanied by duplicate certified copies of the financial statements of the owner and operator. Thereafter, f~~inancial statements shall be submitted only if requested in writing by either the assessor or the board. ~~Copies of the affidavits and financial statements shall be forwarded not later than April 1 by t~~The assessor with his or her recommendations for approval or denial to the board which shall review all claims for the welfare exemption to ascertain whether the property on which the exemption is claimed meets the property use requirements in Section 214. The assessor's review shall include, but is not limited to the following matters: ~~the affidavits and statements and may institute an independent audit or verification of the operations of the owner and operator to ascertain whether both the owner and operator meet the requirements of Section 214 of the Revenue and Taxation Code. In this connection the board shall consider, among other matters, whether:~~

(1) ~~The services and expenses of the owner or operator (including salaries) are excessive, based upon like services and salaries in comparable public institutions.~~

(2) ~~The operations of the owner or operator, either directly or indirectly, materially enhance the private gain of any individual or individuals.~~

~~(3) (1)~~ Any capital investment of the owner or operator for expansion of a physical plant is justified by the contemplated return thereon, and required to serve the interests of the community.

~~(4) (2)~~ The property on which the exemption is claimed is used for the actual operation of an exempt activity and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

The assessor may institute an audit or verification of the operations of the owner and operator to ascertain whether both the owner and operator meet the requirements of Section 214.

(b) (1) If the assessor finds the applicant's property to be ineligible for the welfare exemption, the assessor shall notify the claimant in writing and shall advise the claimant of the right to file a claim for refund with the county, and if denied, file a refund action in superior court.

~~(b) The board shall make a finding as to the eligibility of each applicant and the applicant's property and shall forward its finding to the assessor concerned. If the board conducts a hearing with respect to the eligibility of the applicant and the applicant's property, the finding shall be forwarded to the assessor concerned within 30 days after the decision is made by the board following the hearing. The assessor may deny the claim of an applicant that the board finds eligible but may not grant the claim of an applicant the board finds ineligible.~~

(2) The assessor may deny a claim for the welfare exemption for nonqualifying property use, notwithstanding that the organization claiming the exemption has been granted an organizational clearance certificate by the board.

(c) Notwithstanding subdivision (a), an applicant, granted a welfare exemption and owning any property exempted pursuant to Section 214.15 or Section 231, shall not be required to reapply for the welfare exemption in any subsequent year in which there has been no transfer of, or other change in title to, the exempted property and the property is used exclusively by a governmental entity or by a nonprofit corporation described in Section 214.15 for its interest and benefit.

The applicant shall notify the assessor on or before February 15 if, on or before the preceding lien date, the applicant became ineligible for the welfare exemption or if, on or before that lien date, the property was no longer owned by the applicant or otherwise failed to meet all requirements for the welfare exemption.

Prior to the lien date, the assessor shall annually mail a notice to every applicant relieved of the requirement of filing an annual application by this subdivision.

The notice shall be in a form and contain that information that the board may prescribe, and shall set forth the circumstances under which the property may no longer be eligible for exemption, and advise the applicant of the duty to inform the assessor if the property is no longer eligible for exemption.

The notice shall include a card that is to be returned to the assessor by any applicant desiring to maintain eligibility for the welfare exemption under Section 214.15 or Section 231. The card shall be in the following form:

To all persons who have received a welfare exemption under Section 214.15 or Section 231 of the Revenue and Taxation Code for the fiscal year.

Question: Will the property to which the exemption applies in the fiscal year continue to be used exclusively by government or by an organization as described in Section 214.15 for its interest and benefit in the fiscal year?

YES _____ NO _____

Signature: _____

Title: _____

Failure to return this card does not of itself constitute a waiver of exemption as called for by the California Constitution, but may result in onsite inspection to verify exempt activity.

(d) Upon any indication that a welfare exemption on the property has been incorrectly granted, the assessor shall redetermine eligibility for the exemption. If the assessor determines that the property, or any portion thereof, is no longer eligible for the exemption, he or she shall immediately cancel the exemption on so much of the property as is no longer eligible for the exemption.

(e) If a welfare exemption on the property has been incorrectly allowed, an escape assessment as provided by Article 4 (commencing with Section 531) of Chapter 3 in the amount of the exemption, with interest as provided in Section 506, shall be made, and a penalty shall be assessed for any failure to notify the assessor as required by this section in an amount equaling 10 percent of the escape assessment, but may not exceed two hundred fifty dollars (\$250).

(f) Pursuant to Government Code Section 15640, the Board shall review the assessor's administration of the welfare exemption as part of the Board's survey of the county assessment roll to ensure proper administration of the exemption.

Section 254.6 is added to the Revenue and Taxation Code is amended to read:

254.6. (a) Any claim for the welfare exemption pursuant to Section 254.5 shall not be approved unless the applicant holds a valid organizational clearance certificate issued by the State Board of Equalization.

(b) The applicant shall file a claim for an organizational clearance certificate with the board. The board shall review each claim for an organizational clearance certificate and shall issue an organizational clearance certificate if the board determines that the applicant is an organization that is organized and operated in compliance with the requirements set forth in Section 214 of the Revenue and Taxation Code. In making the determination the board shall consider, among other matters, whether:

(1) The services and expenses of the owner or operator (including salaries) are excessive, based upon like services and salaries in comparable public or private institutions;

(2) The operations of the owner or operator, either directly or indirectly, materially enhance the private gain of any individual or individuals;

(c) Organizations filing for an organizational clearance certificate for the first time shall provide their corporate identification number, mailing address and the following documents:

(1) A copy of the organization's financial statements.

(2) A certified copy of the articles of incorporation, and any amendments, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, constitution or regulations, and any amendments.

(3) A copy 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 exemption organization under the appropriate provisions of the Bank and Corporation Tax Laws or the Internal Revenue Code.

(d) If the board staff determines that the applicant is not eligible for an organizational clearance certificate, the board shall notify the claimant of the ineligibility.

(1) The claimant may file an appeal of the board staff's finding of ineligibility with the board within 60 days of the date of mailing of the notice of ineligibility. The appeal of the board staff's finding shall be in writing and shall state the specific grounds upon which the appeal is founded.

(2) The board shall conduct a hearing on the appeal in accordance with any rules of notice, procedure, and briefing as the board shall prescribe. The parties to the hearing or proceeding shall be the department staff and the claimant appealing the finding of ineligibility. The department staff and the claimant may agree in writing to submit the matter to the board for decision without hearing. The board shall provide written findings and conclusions or a written decision to support its decision.

(e) Once granted, an organizational clearance certificate shall remain valid until such time as the organization no longer meets the organizational requirements of Section 214.

(1) If the board determines that the organization no longer meets the requirements of Section 214, the board shall revoke the certificate and notify the claimant and the assessor of the revocation.

(2) The organization may file an appeal of the board staff's revocation with the board within 60 days of the date of mailing of the notice of revocation. The appeal of the revocation shall be in writing and shall state the specific grounds upon which the appeal is founded.

(3) The board shall conduct a hearing on the appeal in accordance with any rules of notice, procedure, and briefing as the board shall prescribe. The parties to the hearing or proceeding shall be the department staff and the claimant appealing the finding of ineligibility. The department staff and the claimant may agree in writing to submit the matter to the board for decision without hearing. The board shall provide written findings and conclusions or a written decision to support its decision.

(f) Pursuant to Government Code Sections 15618, the board may institute an audit or verification of an organization to ascertain whether the organization meets the requirements of Section 214.

Section 259.5 of the Revenue and Taxation Code is amended to read:

259.5. The affidavit claim for the welfare exemption shall show that ~~both the property use and the owner meet all the requirements are met, entitling the property to the exemption~~ and that the owner has a valid organizational clearance certificate pursuant to Section 254.6.

Section 259.7 of the Revenue and Taxation Code is amended to read:

259.7. The affidavit claim for the veterans' organization exemption shall show that ~~both the property use and the owner meet all the requirements are met, entitling the property to the exemption~~ and that the organization has a valid organizational clearance certificate issued by the board pursuant to Section 254.6.

Section 272 of the Revenue and Taxation Code is amended to read:

272. Notwithstanding any other provision of law, whenever a valid application for exemption on the property is filed pursuant to Section 270 or 271 and the assessor receives the board finding pursuant to Section 254.5 ~~grants the claim~~ prior to the completion of the roll for the year for which the exemption is claimed, the assessor shall enroll the property so as to provide for the amount of exemption on the property's assessed value as provided by the applicable section.

When the application for exemption on the property ~~or the finding of the board for that application~~ is received after completion of the roll or the assessor grants the claim after the completion of the roll, the assessor shall initiate an action to correct the roll by addition of the appropriate amount of exemption on the property. Upon notification by the assessor, the auditor shall make the appropriate adjustment on the roll.

Where authorized under the provisions of this article, the tax, penalty or interest thereon subject to cancellation or refund shall be canceled pursuant to Article 1 (commencing with Section 4985) of Chapter 4 of Part 9, as if it had been levied or charged erroneously, and, if paid, a refund thereof shall be made pursuant to Article 1 (commencing with Section 5096) of Chapter 5 of Part 9, as if it had been erroneously collected. The amount of tax, penalty or interest which is not canceled or refunded under this article with respect to property tax exemptions covered by this article and filed late may be paid in installments as provided in Chapter 3 (commencing with Section 4186) of Part 7.