March 21, 1989

TO COUNTY ASSESSORS:

EXEMPTION CODE SECTIONS AFFECTED BY 1988 LEGISLATION

In 1988, nine bills and one ballot proposition, affecting fourteen Revenue and Taxation Code Sections and one constitutional provision relating to property tax exemptions, were passed.

Following, chronologically by Revenue and Taxation Code section, is a summary of those changes. In instances where two bills changed the same code section, the language of the latest chaptered bill prevails.

Section 75.21

Chapter 1271 (Assembly Bill 2878) amends Section 75.21 to provide that only one homeowner's exemption claim form need be filed in order to receive the exemption, whether for the regular or supplemental roll. Previously, there were a few circumstances requiring the filing of a second claim form. Chapter 1271 is an urgency statute and became effective September 26, 1988. It chapters out a duplicate provision in Chapter 560 (Senate Bill 569).

Sections 202 and 203

Chapter 1606 (Senate Bill 2407), effective January 1, 1989, amends Sections 202 and 203 to provide that a property tax shall be imposed on the portion of a student bookstore otherwise eligible for the public school exemption (Section 202) or the college exemption (Section 203) that generates "unrelated business taxable income" as defined in Section 512 of the Internal Revenue Code, to the extent the property is:

"(1) Owned by an educational institution of collegiate grade or used by a nonprofit corporation operating a student bookstore affiliated with such an educational institution, and

"(2) Is primarily devoted to bookstore use that produces income that is taxable as unrelated business taxable income.

"This tax shall be determined by establishing a ratio of the unrelated business taxable income to the bookstore's gross income as defined by the Internal Revenue Code. That percent shall be the maximum percentage of such bookstore property on which a property tax can be levied."
"At the end of a fiscal year when unrelated business income has been generated, the nonprofit organization shall file with the assessor copies of the organization's most recent tax return filed with the Internal Revenue Service."

Section 205 (Proposition 93)

Section 205, which states, in part, "The veterans' exemption is as specified in subdivisions (o), (p), (q), and (r) of Section 3 of Article XIII of the Constitution..." was not changed. However, Proposition 93, passed by the voters on November 8, 1988 and effective November 9, 1988, amends subdivision (o) of Section 3 of Article XIII of the Constitution and changes the residency requirement for the Veterans' Exemption. Assessors' Letter 88/85 discusses this change in detail.

Section 205.5 (Proposition 93)

Chapter 411 (Senate Bill 726), operative as the result of the passage of Proposition 93 on November 8, 1988 and effective January 1, 1989, repealed subdivision (c) of Section 205.5 (and renumbered the subsequent subdivisions accordingly), thus making the residency requirements for the disabled veterans' exemption uniform with those for the veterans' exemption discussed above. Again, Assessors' Letter 88/85 discusses these changes in more detail.

Section 214

As Chapter 77 (Senate Bill 753) and Chapter 1591 (Assembly Bill 3842) amended different aspects of Section 214 the provisions of both bills are applicable. Chapter 77 added subdivision (h) to Section 214 and as an urgency measure became effective April 14, 1988. Subdivision (h) expands the welfare exemption to include certain emergency or temporary shelters and related facilities for the homeless which are eligible for funding under Section 50800 et seq. of the Health and Safety Code. Assessors' Letter 88/54 dated July 13, 1988 provides additional details relative to Chapter 77.

Chapter 1591, effective January 1, 1989, amends Section 214(a)(3) by adding the following:

"(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 fund raising 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 1986, of the owner and are used to further the exempt activity of the owner."
"(ii) The owner permits any other organization which meets all of the requirements of this subdivision, other than ownership of the property, to conduct fund raising 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 1986, of the organization, are not subject to the tax on unrelated business taxable income which is imposed by Section 511 of the Internal Revenue Code of 1986, 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) which is incidental to the primary activities of the owner or the other organization.

"(ii) "Fund raising 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 duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service which 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) shall also file duplicate copies of their most recently filed federal income tax returns.

"Nothing in subparagraph (A), (B), or (C) 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 Constitution of the State of California and this section."

This bill also adds subdivision (i) which states:

"(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations which meet all the requirements of subdivision (a) and owned and operated by
funds, foundations, or corporations which meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

It is important to note that Sections 2 and 3 of Chapter 1591 provides that the amendments to Section 214 of the Revenue and Taxation Code made by this act do not constitute a change in, but are declaratory of, the existing law and that the Legislature finds and declares that these amendments are codifications of existing State Board of Equalization practice. Therefore, no escape assessments shall be levied and no refunds shall be made as a result of the enactment of this act.

Section 214.05

Chapter 1606 (Senate Bill 2407), effective January 1, 1989, adds Section 214.05 restricting the welfare exemption where property granted the exemption is also used for activities that generate unrelated business taxable income as defined.

Section 214.05(a) provides that if the property of an organization is granted the welfare exemption, that property is deemed to be used exclusively for the organization's exempt purposes. However, to the extent that income derived from the organization's use of the property is unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, and the regulations implementing that section, and is subject to the tax on unrelated business taxable income which is imposed by Section 511 of the Internal Revenue Code, the property shall be exempt from taxation under Section 214 only to the extent provided in subdivision (b) or (c).

Subdivision (b) contains three sets of circumstances for determining the amount of exemption allowable. Paragraph (1) provides that if the use of property which has qualified for the welfare exemption involves activities of the organization, some of which produce income that is exempt from income or franchise taxation and some of which produce income that is taxable as unrelated business taxable income, and those activities are attributable to a reasonably ascertainable portion of the entire property, that portion of the property shall be entitled only to a partial exemption from property taxation equal to that proportion of the total value of the portion of the property which the amount of income of the organization that is exempt from income or franchise taxation and that is attributable to that portion bears to the total amount of income of the organization that is attributable to that portion. The remaining proportion of the total value of that portion of the property shall be subject to taxation pursuant to this division.

For example, a museum property qualifying for the welfare exemption also has a gift shop in a "reasonably ascertainable portion" of the property. Seventy percent of the gift shop's income is exempt from income or franchise taxation
and 30 percent is taxable as unrelated business taxable income. Under these circumstances, the portion of the property used for the museum and 70 percent of the gift shop area are exempt. Thirty percent of the gift shop area is taxable.

Paragraph (2) of subdivision (b) provides that if the use of property which has qualified for the welfare exemption involves activities of the organization, some of which are exempt for property tax purposes and produce no income and some of which produce income that is taxable as unrelated business taxable income, or produce both income that is taxable as unrelated business taxable income and income that is exempt from income or franchise taxation and those activities are attributable to a reasonably ascertainable portion of the entire property that portion of the property shall be entitled only to a partial exemption equal to that proportion of the total value of the portion of the property which the amount of time actually devoted to those exempt nonincome-producing activities of the organization attributable to that portion bears to the total amount of time actually devoted to all of the activities of the organization attributable to that portion. The remaining proportion of the total value of that portion of the property shall be subject to taxation pursuant to this division.

This paragraph differs from paragraph (1) in that the "reasonably ascertainable portion" of the property used to produce income is also used for nonincome-producing activities and thus uses a time measure to determine the amount of exemption allowable. Assume the museum gift shop in the example above is also used for nonincome-producing activities such as a business office or preparing or developing exhibits. This area is operated eight hours a day and has five employees representing 40 person hours a day. The activities generating no income or generating exempt income represents 32 of the 40 person hours. Two employees spend about four hours each per day on activities that produce unrelated business taxable income. Under these circumstances the portion of the property used for the museum and 80 percent (32/40 person hours) of the gift shop/office area are exempt. Twenty percent (8/40 person hours) of the gift shop/office area is taxable.

While the statute lacks guidance in how to calculate time ratios, we believe the method illustrated above is reasonable and promotes uniformity.

Paragraph (3) of subdivision (b) provides that if the activities described in paragraphs (1) and (2) cannot be attributed to a reasonably ascertainable portion of the entire property, the entire property shall be entitled only to a partial exemption by applying the formulas described in paragraphs (1) and (2) to the entire property.

Subdivision (c) provides that, notwithstanding subdivision (b), if more than 75 percent of the income of an organization is attributable to property which has qualified for the welfare exemption, but is not specifically related to the organization's use of particular property, the property shall be entitled only to a partial exemption equal to that proportion of the total value of the property which the amount of the income of the organization attributable to activities in this state and exempt from income or franchise taxation bears to the amount of total income of the organization that is attributable to activities in this state.
This subdivision pertains to a few organizations who operate in several counties and cannot allocate unrelated business taxable income to a specific location or even a specific county.

For example, Kaiser Hospital Foundation's accounting office knows that a certain percentage of the foundation's income is taxable as unrelated business taxable income but cannot allocate that taxable income to a specific location. Therefore, all properties of the foundation located in California that are granted the welfare exemption will have their exemption restricted to the statewide percentage of exempt income over the total statewide income. Pharmacies, optical departments, and clinics operated by the medical group or health plan are not affected by this law change and are still fully taxable.

Subdivision (d) provides that whenever property is claimed exempt under Section 214 and activities of the organization on the property produce unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, the organization, as a part of its claim for exemption, shall file with the assessor each of the following:

1. The organization's information and tax returns filed with the Internal Revenue Service for its immediately preceding fiscal year.

2. Information indicating the amount of time devoted to its income-producing and its nonincome-producing activities and, where applicable, a description of that portion of the property in which those activities are conducted.

3. A statement listing the specific activities which produce the unrelated business taxable income.

4. Whenever subdivision (c) is applicable, the amount of income of the organization that is attributable to activities in this state and is exempt from income or franchise taxation and the amount of total income of the organization that is attributable to activities in this state.

5. Any other information as prescribed by the Board.

Subdivision (e) declares that nothing in this section shall be construed to enlarge the welfare exemption provided in Section 214.

Section 226

Chapter 1559 (Senate Bill 2584), effective September 30, 1988 as an urgency statute, adds Section 226 to classify as personal property and exempt computer equipment of the San Diego Supercomputer Center located on the campus of the University of California, San Diego. "Computer equipment" is defined to include, without being limited to, any supercomputer and all peripheral computer and other equipment related to the system of which the supercomputer is the principal component and all other equipment that becomes a part of that supercomputer system.
Section 231

Chapter 560 (Senate Bill 569) and Chapter 571 (Assembly Bill 4062) both amend Section 231 with the same language. However the latter, Chapter 571, is controlling and as an urgency statute became effective August 26, 1988. This change adds to Section 231(d) reference to Section 23701u of the Revenue and Taxation Code.

Section 5 of Chapter 571 states that legislation adding Section 23701u of the Revenue and Taxation Code in the 1987 portion of the 1987-88 Regular Session of the Legislature inadvertently omitted the amendment of Section 231 of the Revenue and Taxation Code to incorporate the reference to Section 23701u of the Revenue and Taxation Code. The amendment of Section 231 of the Revenue and Taxation Code by this act corrects that inadvertent omission, and does not constitute a change in, but is declaratory of, existing law.

Section 236

Chapter 1296 (Senate Bill 2709), effective January 1, 1989, adds Section 236 to provide that property leased for a term of 35 years or more or any property transferred with a lease with a remaining term of 35 years or more during which term is used exclusively for low income housing and related facilities and which is leased by an otherwise qualifying entity, is eligible for the welfare exemption.

Sections 251, 254 and 255

Chapter 560 (Senate Bill 569) and Chapter 1271 (Assembly Bill 2878) both amend Sections 251, 254, and 255. As Chapter 1271 was enacted last, its language prevails. As an urgency statute it became effective September 26, 1988.

Section 251(a), as amended by Chapter 1271, now states: "The board shall prescribe all procedures and forms required to carry into effect any property tax exemption enacted by statute or constitutional amendment" (underlining added). Previously, exemptions were specifically listed (i.e., veterans' church, college, etc.) and occasionally when new exemptions were created they inadvertently were not added to Section 251. This change alleviates this problem.

Section 254 was amended to include reference to the aircraft of historical significance exemption.

Section 255(a) and 255(c) were amended to include reference to the aircraft of historical significance exemption and to establish April 1 as the time for filing for that exemption.

Section 259.11

Chapter 1271 (Assembly Bill 2878), effective September 26, 1988 as an urgency
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statute, adds Section 259.11 to provide that the affidavit for the aircraft of historical significance exemption shall show that both the property and the owner meet all the requirements entitling the property to the exemption.

Section 259.12

Chapter 560 (Senate Bill 569), effective January 1, 1989, adds Section 259.12 with exactly the same language as contained in Section 259.11 above. Clean up legislation to repeal Section 259.12 has been introduced (see Senate Bill 90).

Some of the above bills affect sections of the Revenue and Taxation Code and other codes that do not pertain to property tax exemption. Persons interested in those other changes should refer to the actual Chapter(s).

If you have any questions regarding the preceding, please contact our Exemption Unit at (916) 445-4982.

Sincerely,

Verne Walton
Chief
Assessment Standards Division

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