ASSESSORS' HANDBOOK
SECTION 267

WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS

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FOREWORD

The staff of the Assessment Policy, and Standards Division of the Property and Special Taxes Department in conjunction with the staff of the Property Taxes Division of the Legal Department drafted this section of the Assessors' Handbook. Board staff met with industry representatives and staff from county assessors' offices to solicit input for this handbook. The Board originally approved this handbook section in October 1998. The Board approved updates of this publication on August 10, 2000 and on April 18, 2002. The Board approved this update on October 19, 2004.

Pursuant to subdivision (b) of section 4 of article XIII of the California Constitution, the Legislature has the authority to exempt property used exclusively for religious, hospital, or charitable purposes. This exemption from property taxation, popularly known as the welfare exemption, was first adopted by voters as a constitutional amendment on November 7, 1944.

Part I of this handbook section contains information relative to the administration and legal requirements of the welfare exemption. Section 214 of the Revenue and Taxation Code is the primary welfare exemption statute. In addition, the exemption has been expanded both by legislation and numerous judicial decisions construing the language of section 214 and related legislation. The Constitution and statutes impose a number of requirements which must be met before property is eligible for exemption. These requirements and relevant judicial decisions are discussed in Part I.

Pursuant to sections 3(f), 4(d) and 5 of article XIII of the California Constitution, California property tax laws provide for four exemptions that may be claimed on church property depending on the use of the property: the Church Exemption; the Church Parking Area Exemption; the Religious Exemption; and the Welfare Exemption. The church exemption is primarily used by churches with leased real property; the Religious exemption is primarily used by churches who own the real property which is used exclusively for worship and school purposes; and the Welfare exemption exempts church-owned property used for all other exempt purposes. Part II of this handbook section contains information relative to the administration and legal requirements of the church, church parking area and religious exemptions.

Under Government Code sections 15606 et seq., the State Board of Equalization is charged with the duty of administratively enforcing and interpreting the statutes governing the local assessment function. While regulations adopted by the State Board of Equalization are binding as law, Board-adopted manuals are advisory only. Nevertheless, courts have held that they may be properly considered as evidence in the adjudicatory process.[1] The citations and law references in this publication were current as of the writing of the manual.

David J. Gau
Deputy Director
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October 2004

[1] *Coca-Cola Co*. v. *State Board of Equalization* (1945) 25 Cal.2d 918; *Prudential Ins. Co*. v. *City and County of San Francisco* (1987) 191 Cal.App.3d 1142; *Hunt Wesson Foods, Inc*. v. *County of Alameda* (1974) 41 Cal.App.3d 163.

PART I

WELFARE EXEMPTION

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Part I: Welfare Exemption

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CHAPTER 1: INTRODUCTION

Under section 4(b)[2] of article XIII of the California Constitution, the Legislature has the authority to exempt property (1) used exclusively for religious, hospital, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption from property taxation, popularly known as the *welfare exemption*, was first adopted by voters as a constitutional amendment on November 7, 1944.[3] With this amendment, California became the last of 48 states in the country to provide such an exemption from property taxes. The ballot language in favor of the amendment stated:

> These nonprofit organizations assist the people by providing important health, citizenship and welfare services. They are financed in whole or in part by your contributions either directly or through a Community Chest. It is good public policy to encourage such private agencies by exemption rather than to continue to penalize and discourage them by heavy taxation.

When the Legislature enacted section 214 of the Revenue and Taxation Code[4] to implement the Constitutional provision in 1945, a fourth purpose *scientific*, was added to the three mentioned in the Constitution. Section 214 parallels and expands upon the Constitutional provision that property used exclusively for the stated purposes (religious, hospital, scientific, or charitable), owned by qualifying nonprofit organizations is exempt from taxation if certain requirements are met. An organization's *primary* purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. A qualifying organization's property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities.[5]

Section 214 is the primary welfare exemption statute in a statutory scheme that consists of more than 20 additional provisions. Over the years, the scope of the welfare exemption has been expanded both by legislation and numerous judicial decisions construing the language of section 214 and related legislation.

The Constitution and statutes impose a number of requirements which must be met before property is eligible for exemption. These requirements and relevant judicial decisions will be discussed in this handbook section.

The first requirement, that an organization must be organized and operated for one of the stated exempt purposes, by necessity, has been construed by the judiciary, since neither the Constitution nor section 214 define what constitutes a religious, hospital, scientific, or charitable

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[2] According to California Style Manual, the correct citation for subdivisions is "section 4, subdivision (b)." For ease of reference in this Handbook, subdivisions may also be referred to as "section 4(b)."

[3] Assembly Constitutional Amendment No. 17, Proposition 4 on the ballot, became section 1(c) of article XIII of the Constitution. The constitutional provision was readopted by the electorate on November 5, 1974, in substantially the same form as section 4(b) of article XIII of the Constitution.

[4] All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

[5] *Cedars of Lebanon* v. *County of Los Angeles* (1950) 35 Cal.2d 729, 746; *YMCA* v. *County of Los Angeles* (1950) 35 Cal.2d 760, 767.

purpose. The first chapter will discuss the scope and meaning of these terms, as defined by the courts.

WHAT CONSTITUTES A CHARITABLE PURPOSE?

The State Supreme Court has broadly construed the charitable purpose aspect of the welfare exemption to include a wide range of activities which benefit the general public.[6] The term *charitable* is not confined to the relief of poverty, but includes all kinds of humanitarian activities, rendered at cost or less, the object of which is the care of the physical and mental well-being of the recipients.[7] In *Lundberg* v. *Alameda County*, the court said:

> The term charity has been defined in a number of California cases as "a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education, or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life or by erecting, or maintaining public buildings or works, or otherwise lessening the burdens of government."[8]

Later, in *Stockton Civic Theatre* v. *Board of Supervisors*,[9] the court held that *charitable* was to be broadly construed in line with previous decisions and based upon the wide and varied nature of the exemption. The court gave no single definition of charitable, but instead took a number of definitions from various sources including tax cases, trust cases, commentaries, and cases from other jurisdictions. The court concluded that the broad definition of charitable includes "a wide range of activities beneficial to the community." These and other decisions which have construed charitable have relied in part upon the historical definition of charity from the law of trusts. The term charitable, as it pertains to charitable trusts, has been broadly defined to encompass activities promoting the general welfare.[10]

CHARITABLE INCLUDES EDUCATIONAL ACTIVITIES — COMMUNITY BENEFIT TEST

The courts have broadly construed charitable to include some educational purposes and activities. In *Lundberg* v. *County of Alameda*,[11] the State Supreme Court held that the word charitable is broad enough to include nonprofit schools of less than collegiate grade. The Court in *Stockton Civic Theatre*, following the *Lundberg* precedent, stated that the exemption is granted for charitable purposes, not merely for educational purposes. The primary test is whether the activity provides a general community benefit whose "ultimate recipients are either the community as a whole or an unascertainable and indefinite portion thereof."[12] The Court

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[6] *Stockton Civic Theatre* v. *Board of Supervisors* (1967) 66 Cal.2d. 13.
[7] F*redericka Home for the Aged* v. *County of San Diego* (1950) 35 Cal.2d 789, 793.
[8] *Lundberg* v. *County of Alameda* (1956) 46 Cal.2d 644, at page 649, citing *Estate of Hahn* (1925) 196 Cal. 778, 781-782.
[9] *Stockton Civic Theatre*, *supra* at page 20.
[10] Bruce R. Hopkins, *The Law of Tax Exempt Organizations* (7th Ed., 1998, section 5.1).
[11] (1956) 46 Cal.2d 644, 653.
[12] *Stockton Civic Theatre*, *supra* at page 22.

found that (1) the theatre's activities (light opera, musicals and plays) provided educational benefits to both the participants and the audience, and (2) such activities for the furtherance of the dramatic arts came within the term *charitable purposes* as used in the Constitution and section 214.

Following the principles of *Stockton Civic Theatre*, the Supreme Court in the case of *Greek Theatre Association* v. *County of Los Angeles*[13] held that the cultural edification of the public through the professional presentation of operas, symphonies, concerts, ballets, musical productions, drama, and comedy was a charitable-educational activity qualified for exemption. The fact that the professional entertainers who used the Greek Theatre Association's facilities were compensated for their performances was of no consequence since the Association was organized and operated for charitable purposes and since the Association was putting on the productions itself, not merely leasing its facilities to others. As in the *Stockton Civic Theatre* case, the Association's activities were found to benefit the community as a whole.

Court Decisions Codified

The Legislature later codified the holdings of *Lundberg* and *Stockton Civic Theatre* by enacting section 214(j) in 1989, which provides that charitable purposes include certain educational purposes and activities, subject to the following requirements:

- The educational purposes and activities must benefit the community as a whole or an unascertainable and indefinite portion thereof.
- The educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

Section 214(j) expressly precludes exemption to educational purposes and activities primarily for the benefit of the organization's shareholders.

Non-Qualifying Educational Activities

Educational purposes and activities may qualify as charitable. However, not every educational purpose and activity is charitable, and therefore, exempt. The judiciary, and subsequently section 214(j), have defined the kinds of educational activities that can qualify under the charitable purposes aspect of the Constitution and section 214. The following cases, decided prior to the enactment of section 214(j), are examples of educational activities that do not qualify for exemption because the courts determined that the educational activity did not provide a community benefit:

- An accredited junior college with a one-year course for morticians and funeral directors was not considered charitable because it did not benefit the community as a whole, but benefited only the funeral service industry by providing competently trained personnel.[14]

[13] (1978) 76 Cal.App.3d 768, 778-779.
[14] *California College of Mortuary Science* v. *County of Los Angeles* (1972) 23 Cal.App.3d 702.

- A construction industry vocational training school operated under a trust created by a labor union and construction industry employers who were parties to a collective bargaining agreement was not held to be charitable because it did not benefit the community as a whole, but benefited primarily the union and the employers which had created it.[15] The school gave priority in admission to union members and to persons recommended by the employers, and sought to obtain jobs for graduates exclusively with the employers.

BROAD RANGE OF CHARITABLE ACTIVITIES — COMMUNITY BENEFIT TEST

The community benefit test, first applied by the courts in *Lundberg* and *Stockton Civic Theatre* to exempt activities found to be charitable-educational, also has been applied by the courts to exempt other activities within the broad definition of charitable. Under the community benefit test, an organization's activities are charitable when they "benefit the community as a whole or an unascertainable and indefinite portion thereof."[16] This means that the class benefited must be sufficiently large that a gift to it may be considered to benefit an indefinite portion of the community. An organization may still be considered charitable even if its benefits are confined to the members of a certain segment of the public, such as a particular race or creed, provided no special advantage is given to members of the organization or to particular individuals.

In *Santa Catalina Island Conservancy* v. *County of Los Angeles*,[17] the court concluded that use of the island for recreational purposes, such as hiking, bicycling, sightseeing, camping, and hunting, by 100,000 annual users and by 500,000 annual visitors constituted use by an unascertainable portion of the community. In addition, the court concluded that preservation of a unique, partially wild, island environment containing many exceptional geological features, as well as many varieties of rare, endemic and native plant and animal species, provided incalculable benefit to every member of society. The fact that visitors were required to pay transportation costs to the island, to pay fees for motor tours, overnight camping, and hunting, and to obtain permits for hiking, bicycling, and camping was of no consequence, given the number of annual visitors and since the property was used for charitable purposes.

In the case of *J. Paul Getty Museum* v. *County of Los Angeles*,[18] the court concluded that the use of property for a free museum displaying Greek and Roman antiquities, Renaissance paintings, and 17th and 18th century decorative arts was a charitable activity within the exemption. The court again noted that the term *charitable* is to be broadly construed, with the primary test being whether the activity promotes a general community benefit whose ultimate recipients are either the community as a whole or an unascertainable and indefinite portion thereof.[19]

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[15] *Alcoser* v. *County of San Diego* (1980) 111 Cal.App.3d 907.
[16] *Stockton Civic Theatre*, *supra* at page 20.
[17] (1981) 126 Cal.App.3d 221.
[18] *J. Paul Getty Museum*, *supra* at page 607.
[19] Section 214 states that the existence of the free museum exemption and free public library exemption shall not preclude the welfare exemption for museum property or public library property. Such is the case even though nominal charges may be made.

CHARITABLE CONTRIBUTIONS INDICATE CHARITABLE PURPOSE

The word *charitable* in a legal sense includes every gift for a general public use, to be applied consistent with existing laws, for the benefit of an indefinite number of persons.[20] Charitable purposes, for purposes of tax exemption, has as its common element the accomplishment of objectives that are beneficial to the community.[21] A charitable organization uses gifts or contributions to provide a benefit to the community as a whole or an unascertainable and indefinite portion thereof.

A charitable organization is a publicly-supported charity if it attracts, receives, and depends on financial support from members of the general public on a regular, recurring basis. Thus, most charitable organizations are also publicly supported charities when they are either (1) substantially supported by gifts, grants, contributions or (2) primarily supported by combined revenue from admissions, income earned from exempt activity, gifts and grants (the service-provider charitable institution).

A review of cases involving the charitable aspect of the welfare exemption reveals that in many cases the organizations which were held to be charitable had, in fact, received donations from outside sources at one time or another which they, in turn, passed on, in the form of services or benefits, to recipients chosen from an indefinite class.[22] In some cases, although there was no explicit finding that there were donations to the organizations, it was concluded that, by virtue of the very nature of the organizations and their affiliations, they were supported in whole or in part by donations.[23] Thus, an organization's receipt of donations is an important criteria by which its charitable purpose can be demonstrated. However, the absence of donations, by itself, will not result in a determination that a charitable purpose does not exist if it can be shown that the organization is providing a benefit or gift to the community. [24]

The following case illustrates that an organization must still be able to demonstrate a charitable purpose by providing a benefit to the community as a whole or an unascertainable and indefinite portion thereof. The nonprofit claimant organization, which provided low-rent housing for the elderly and handicapped, was found not to have a charitable purpose because the rents charged generally were at market price which was necessary to pay the cost of operation and amortize the purchase price of the land and building. The organization offered no charitable services to the tenants and there was no showing that it had received a subsidy or donation which it could or did pass on to its recipients in the form of lower rents.[25] Absent donations, an organization's receipt of a government subsidy or funding could indicate charity, if the funds are used to provide some kind of benefit to the community as a whole or an unascertainable and indefinite portion thereof.

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[20] *Black's Law Dictionary*, 6th Ed., page 233.
[21] *Black's Law Dictionary*, 6th Ed., page 234.
[22] *Fredericka Home for the Aged*, *supra* at page 794; *Fifield Manor* v. *County of Los Angeles* (1961) 188 Cal.App.2d 1; *YMCA*, *supra* at page 765; *Stockton Civic Theatre*, *supra* at pages 19-20.
[23] *Pacific Home* v. *County of Los Angeles* (1953) 41 Cal.2d 844.
[24] *Stockton Civic Theatre*, *supra* at page 20.
[25] *Martin Luther Homes* v. *County of Los Angeles* (1970) 12 Cal.App.3d 205.

CHARITABLE ORGANIZATIONS RECEIVING GOVERNMENT FUNDING MAY QUALIFY FOR EXEMPTION

Any nonprofit corporation, meeting all other requirements of sections 214 and 214.10, is not disqualified from receiving the welfare exemption solely because it receives all of its funding from governmental agencies. Such a nonprofit corporation must be organized and operated for the advancement of education, improvement of social conditions, or improvement of the job opportunities of low-income, unemployed and underemployed citizens of the communities in which they operate.[26]

CHARITABLE INCLUDES NONPROFIT HEALTH CARE PROVIDERS IN SOME INSTANCES

Nonprofit medical clinics and other nonprofit health care providers may qualify for exemption if they satisfy the charitable purposes and activities requirements of section 214(a). Such nonprofit organizations claiming exemption are required to provide detailed information with their claim to document their charitable aspects. This should include a schedule or list of donations and grants received, services and/or programs provided to the public at no charge or on a sliding fee basis, the number of patients who were provided services at full cost versus reduced or no cost, and the organization's charity care policies. Medical clinics that do not qualify for exemption as charitable may possibly qualify as multispecialty clinics pursuant to section 214.9. (See discussion in Chapter 3 on eligibility of charitable medical clinics, clinics furnishing psychiatric services for emotionally disturbed children, and multispecialty clinics for exemption.)

ORGANIZATIONS GENERALLY NOT WITHIN CHARITABLE PURPOSES

Chambers of commerce or other business leagues, literary societies, scientific societies, college fraternities and sororities, lodges or mutual benefit societies generally do not qualify for the welfare exemption under the charitable purposes aspect of section 214. Such groups, although formed as nonprofit corporations exempt from state and/or federal income tax,[27] are usually not organized and operated exclusively for charitable purposes, nor are their properties used exclusively for charitable activities. As such, the properties of these organizations generally do not qualify for the welfare exemption. This does not mean that the classification of an organization in one of these groups should result in automatic denial of the exemption since the merits of each claim are determined on a case by case basis. However, to qualify for the exemption, the organization must not only be organized and operated exclusively for charitable purposes, but it must also meet all other requirements for the welfare exemption. The operation of the organization for exempt purposes is determined by its activities and use of its property. Thus, an organization must be able to demonstrate that it is organized and operated *for charitable purposes*, and its property is used exclusively for such purposes, meaning it is only incidentally

[26] Section 214.10.
[27] Section 23701(d), (f) or (w) of the Revenue and Taxation Code; section 501(c)(3) or (4) of the Internal Revenue Code.

used for the usual functions of organizations of its type, in order to qualify as being organized and operated for charitable purposes.[28] For example:

- American Legion meeting halls and bars are taxable, but offices used for veterans' records and/or counseling and facilities used for scout troop equipment storage may be exempt.
- Kiwanis meeting places are taxable, but youth camps may be exempt.
- Lions Club meeting places are taxable, but clinics and dispensaries may be exempt.

WHAT CONSTITUTES A HOSPITAL PURPOSE?

Hospital, as it is used in the welfare exemption, has been defined by the California Supreme Court as follows:

> A hospital is primarily a service organization. It serves three groups: the patients, its doctors, and the public. It furnishes a place where the patient, whether poor or rich, can be treated under ideal conditions. It makes available room, special diet, X-ray, laboratory, surgery, and a multitude of other services and equipment now available through the advances of medical science. Essential to the administration of these techniques is the corps of highly-trained nurses and student nurses who are on duty twenty-four hours per day. In the large hospitals there are the interns and residents whose presence makes it possible for the hospital to do a better job. In addition, the hospital ... must have administration to see that its services function properly and are coordinated, and that patients are received and cared for regardless of the hour or the patient's condition. Nothing can be left to chance because a slip may mean a life or many lives. These facilities also stand ready to serve the community in times of epidemic or disaster.[29]

Historically, only properties falling within this definition have been considered eligible properties under the hospital purposes aspect of the exemption. The exception is outpatient clinics referred to in section 214.9, such clinics are considered within the scope of the *hospital* purpose of section 214. (See discussion on clinics furnishing psychiatric services for emotionally disturbed children and multispecialty clinics in Chapter 3.)

The California Supreme Court also interpreted the phrase *property used exclusively for ... hospital ... purposes* to mean:

> ... any property which is used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment of hospital purposes; or, in other words, for any facility which is reasonably necessary for the fulfillment of a generally recognized function of a complete modern hospital.[30]

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[28] Section 214(a)(5).
[29] *Cedars, supra* at pages 735-736.
[30] *Cedars, supra* at page 736.

The Supreme Court found that a portion of hospital property devoted to a nurses' training school, housing, and recreational facilities was reasonably necessary for the fulfillment of a generally recognized function of a complete modern hospital; therefore, property so used qualifies for exemption. (See discussion on use of hospital property in Chapter 3.)

Property used by certain nonprofit organizations, which are not hospitals, may be considered exclusively used for hospital purposes if the terms of section 214.11 are met. The statute states that property owned and operated by a nonprofit organization, otherwise qualifying for exemption under section 214, *shall be deemed to be used exclusively for hospital purposes* so long as the property is exclusively used to meet the needs of hospitals which qualify for exemption from property taxation under section 214 or any other law of the United States or this state.[31] *Needs of hospitals* includes any use *incidental to and reasonably necessary for* the functioning of a full hospital operation. Property owned and operated by a nonprofit organization may be deemed exclusively used to meet the needs of hospitals if it qualifies for exemption under section 214, and is used by the organization to provide support services to hospitals including, but not limited to, purchasing, food services, laundry, collections, or waste disposal.

EXEMPTIONS FOR PROPERTY USED EXCLUSIVELY FOR RELIGIOUS PURPOSES

Three statutory exemptions provide for the exemption of property used for religious purposes, and all are dependent on the definition of religious purpose.[32]

1. Most religious organizations qualify their property for exemption under the church exemption. Property used exclusively for religious worship may be eligible for the church exemption under section 3(f) of article XIII of the California Constitution, as implemented by section 206.

2. Churches that use their properties for religious worship and operate schools of less than collegiate grade may be eligible for a full or partial religious exemption which is provided in section 207.[33] The school must be owned and operated by the church. Churches that lease property to such schools which are operated on their properties must file for the welfare exemption for those portions of the properties used by the schools, as must the schools as operators thereof.

3. The welfare exemption must be claimed for uses of the property beyond the scope of religious worship and schools, or if the property also is used regularly by a charitable organization.

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[31] Section 214.11.

[32] See Part II, *Church, Church Parking Area, and Religious Exemptions*, Ch. 1, *Church and Church Parking Area Exemptions*.

[33] The exemption provided in section 207 and the exemption provided under the religious purpose aspect of the welfare exemption are authorized for property used exclusively for religious purposes under section 4(b) of article XIII of the Constitution.

An advantage of the church exemption is that it is the sole exemption available to leased property. The welfare exemption covers the greatest number of uses. The religious exemption is generally more desirable for church-owned property because of its one-time filing provision. This chapter discusses the religious purpose aspect of the welfare exemption. (See also Chapter 2 for organizational requirements, Chapter 3 for property use requirements, and Chapter 5 for requirements for the exemption of property used for housing. For information on the other exemptions for property used for religious worship or religious worship and religious schools, see Part II, *Church, Church Parking Area, and Religious Exemptions* of this section of the Assessors' Handbook.)

WHAT CONSTITUTES A RELIGIOUS PURPOSE?

The terms *religious* or *religion* have been broadly defined by the courts to encompass all forms of belief, irrespective of whether it involves a belief in a Supreme Being.

> ... the proper interpretation of the terms "religion" or "religious" in tax exemption laws should not include any reference to whether the beliefs involved are theistic or nontheistic. Religion simply includes: (l) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from adherence to the belief; and (4) an organization within the cult designed to observe the tenets of the belief. The content of the belief is of no moment....[34]

The content of a religious belief is not a matter of a governmental concern and should not be subject to an inquiry concerning its validity. It is only necessary to determine whether the belief occupies the same place in the lives of its holders that the orthodox beliefs occupy in the lives of their holders, and whether a given group that claims the exemption conducts itself the way groups conceded to be religious conduct themselves.[35]

Although examination of the truth or validity of religious beliefs is foreclosed by the First Amendment of the United States Constitution,[36] the assessor must, of necessity, determine whether the claimant holds the belief honestly and in good faith or whether he seeks religious immunity merely for purposes of tax avoidance.

Religious purpose must be distinguished from religious worship for which the church exemption is available. The Supreme Court, in *Serra Retreat* v. *Los Angeles County* described the difference between the two exemptions:

> … our constitutional provision exempting churches from taxation limits the benefit to "buildings ... used solely and exclusively for religious worship," while the later enacted welfare exemption law is described as "in addition to such

[34] *Fellowship of Humanity* v. *Alameda County* (1957) 153 Cal.App.2d 673, 693.
[35] *Fellowship of Humanity, supra* at pages 691-692.
[36] "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...," These clauses known as the establishment clause and the free exercise clause bar any government regulation of religious beliefs.

> [church] exemption" and so, in evidence of a broader concept, refers to property "used exclusively for religious purposes."[37] (Citations omitted.)

Religious purpose is a much broader concept than religious worship. The distinction is a necessary requirement of the constitutional scheme and must be carried out in accordance with the mandate of the electorate. Obviously, if one exemption was subsumed under constitutional provision, then the other would be rendered meaningless. The welfare exemption may be claimed in addition to the church exemption in section 206 or religious exemption in section 207. (See additional information in Chapter 3 on allowed uses of the property. See Chapter 5 for discussion of the eligibility of property for housing of religious personnel. See also Part II, *Church, Church Parking Area, and Religious Exemptions*.)

WHAT CONSTITUTES A SCIENTIFIC PURPOSE?

The Constitutional amendment approved by the electorate in 1944 authorized the Legislature to exempt property used exclusively for religious, hospital, or charitable purposes and owned by qualifying organizations. However, when the Legislature enacted section 214 in 1945 to implement the Constitutional provision, a fourth purpose *scientific*, was added to the three mentioned in the Constitution.[38] The real and personal property of a scientific organization can qualify under the scientific purposes aspect of the welfare exemption, subject to the following requirements:

1. The foundation or institution claiming the exemption must be chartered by the Congress of the United States, unless the scientific purpose is medical research.

2. The objectives of the scientific organization must be to encourage or conduct scientific investigation, research and discovery for the benefit of the community at large.

The Legislature's addition of scientific purposes to the welfare exemption was within its constitutional law-making authority to provide for property taxation of all forms of tangible personal property and to classify such personal property for differential taxation or for exemption.[39] However, the Legislature may only exempt real property (land, buildings and fixtures) specifically declared by the Constitution to be subject to exemption by the Legislature. The exemption for real property used for scientific purposes, therefore, is subject to the following limitations and restrictions:

- Real property used for scientific purposes is exempt only if it is also used for religious, hospital, or charitable purposes.
- The organization's real property must meet the use requirements of section 214(a)(3) through (a)(5).

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[37] *Serra Retreat* v. *County of Los Angeles* (1950) 35 Cal.2d 755, 759.
[38] Article XIII, section 4(b) of the California Constitution.
[39] Article XIII, section 2 of the California Constitution.

Personal property of a scientific organization does not need to qualify under religious, hospital or charitable purposes. It is sufficient that personal property is used exclusively for scientific purposes. However, personal property must meet the requirements of section 214(a)(3) through (a)(5) to qualify for exemption.

Under these restrictions, a charitable scientific institution conducting scientific investigation for the benefit of private individuals or firms generally may not qualify for the exemption. An appellate court, however, recently affirmed the trial court's judgment that a scientific organization's use of its property to conduct research for a private for-profit firm did not disqualify the property from exemption.[40] The court held that agreements between Scripps and Johnson & Johnson, under which the firm funded basic research by Scripps in exchange for a license to develop and market applications of Scripp's research, did not constitute use of its property to benefit a for-profit entity in "the more advantageous pursuit of its business."[41] (See also Chapter 3, *Specific Requirements for Use of Property*.)

PROPERTY OWNED BY FEDERAL INSTRUMENTALITIES

Property owned by the United States is exempt from property taxation.[42] Property owned by federal instrumentalities is similarly exempt from property taxation unless Congress has consented to such taxation.[43] An organization may, however, be a federal instrumentality for one purpose but not for other purposes. Thus, it must be determined on a case-by-case basis whether corporate bodies created by Congress are federal instrumentalities and exempt from property taxation as such.

The test for determining whether an entity is a federal instrumentality for purposes of immunity from state or local taxation is very broad: it is whether the entity performs an important governmental function.[44] The American National Red Cross is a federal instrumentality; thus, property it owns is exempt from property taxation.[45]

Certain Marketing Committees established by the United States Department of Agriculture are instrumentalities of the United States government and, therefore, their properties are exempt from local property taxation.[46]

The Civil Air Patrol also is an instrumentality of the United States government, which makes its property exempt from property taxation. In addition, the legislature specifically provided in section 213.6 that personal property of the Civil Air Patrol used exclusively for civil air patrol

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[40] *Scripps Clinic and Research Foundation* v. *County of San Diego* (1997) 53 Cal.App.4th 402, 415.
[41] Section 214(a)(4).
[42] Article XIII, section 1 of the California Constitution.
[43] Ehrman and Flavin, *Taxing California Property* (3d. ed. 1999).
[44] *Louis* v. *United States*, (1982) 680 Fed. 2d 1239, 1241.
[45] *Department of Employment* v. *United States* (1966) 385 US 355.
[46] The marketing committees are established by the U. S. Dept. of Agriculture under the authority of Title 7 of the Code of Federal Regulations.

purposes is exempt from property taxation, provided that the organization qualifies for exemption under section 501(c)(3) of the Internal Revenue Code.

Property owned by the above named organizations, being instrumentalities of the United States, is exempt from property taxation, the same as property owned by the federal government, irrespective of the welfare exemption and the requirements therefor. Accordingly, these organizations are not subject to the filing requirements for the welfare exemption under section 254.5 of the Revenue and Taxation Code because their immunity from property taxation does not result from any grant of exemption by the state, but rather, it is a function of their status as instrumentalities of the federal government.

CHAPTER 2: SPECIFIC REQUIREMENTS OF OWNER AND OPERATOR

Section 214 requires that, to be eligible for the welfare exemption, both the owner and the user of a property must meet specific requirements. The first step in determining welfare exemption eligibility is to determine if the organization itself qualifies. In brief, an organization must meet the following requirements:

- It must be organized and operated for exempt purposes;
- It must not be organized or operated for profit;
- The owner organization must have an IRC §501(c)(3) or Revenue and Taxation Code §23701d letter of exemption;
- The user organization may also qualify with an IRC §501(c)(4) or Revenue and Taxation Code §23701f or §23701w letter;
- Organization's earnings must not benefit any private shareholder or individual;
- Articles of Incorporation must contain an acceptable statement of irrevocable dedication of the property to exempt purposes;
- Articles must contain an acceptable Dissolution Clause; and
- The property owner must be the owner of record on the lien date.

If the organization owning and operating the property does not qualify for exemption, its property does not qualify, even if it is used for exempt purposes.

OWNED AND OPERATED REQUIREMENT

A nonprofit organization claiming the welfare exemption for its property may be a community chest, fund, foundation, or corporation.[47] In addition, it must be organized and operated for religious, hospital, charitable, or scientific purposes.[48] Property owned by an organization may be eligible for the welfare exemption only if the nonprofit organization is organized and operated for these specific purposes. While it is not necessary that the organization be organized wholly for these exempt purposes, the primary purpose of the organization must be religious, hospital, scientific, or charitable. The operation of the organization for exempt purposes will be determined by its activities and use of the property. (See Chapter 3, *Specific Requirements for Use of Property*.)

[47] Section 4(b) of article XIII of the California Constitution; section 214(a) of the Revenue and Taxation Code.

[48] As previously indicated in Chapter 1, section 214 adds a fourth purpose, *scientific*, as specified in section 214(a)(7), to the three mentioned in the Constitution.

MULTIPLE OWNERS AND/OR OPERATORS

The property will not be exempt unless the owner and the operator meet the specific requirements of section 214. An operator is a user of the property on a regular basis, with or without a lease agreement. Typically, the owner and operator are one and the same and the filing of one claim for exemption will suffice. However, it is not necessary that the owner and the operator of the property be the same legal entity.[49] If property is owned by one exempt organization and operated by another exempt organization, each must qualify and file a claim for exemption.

Lease To Other Exempt Organizations

In general, if the owner of the property is a qualifying claimant, the property may be leased to another organization to operate without losing its exempt status, provided the lessee also meets the requirements and files a claim for the welfare exemption. However, any leasing arrangement should not be intentionally profit making or commercial in nature.[50]

Lease To Governmental Entities

Property also may qualify for exemption if the owner of the property is a qualifying organization and the property is leased to an exempt governmental entity for the purpose of conducting an activity which, if conducted by the owner, would qualify the property for exemption, or to a community college, state college, or state university for educational purposes. [51] Property leased by exempt government entities must be located within the boundaries of the exempt entity. The total income received from the lease may not exceed the ordinary and usual expenses of maintaining and operating the leased property.[52]

Lease By Non-Exempt Owner To Exempt Organizations

If the operator is not an exempt organization, the portion of the owner's property used by the operator is not eligible for the exemption. However, if the owner of the real property is not an exempt organization, the operator may still receive the exemption as to personal property and improvements it owns if the operator and the property meet the requirements of section 214. Property leased from an owner which is not an exempt organization cannot qualify under the welfare exemption, but may qualify for another exemption which depends solely upon use of the property, e.g., free libraries, museums, public schools, churches, and colleges.

Example 1: Lease - Exempt Owner and Non-Exempt Lessee

Qualifying organization "A" is the owner of 10 acres of land and a building used for qualifying religious purposes, namely, religious worship, instruction, meetings, a church school, and church administration. Nonqualifying organization, "B," operates a preschool in a portion of the

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[49] Section 214(a) as construed by *Christ The Good Shepherd Lutheran Church* v. *Mathiesen*, (1978) 81 Cal.App.3d 355.
[50] *Christ the Good Shepherd Lutheran Church*, *supra* at page 363.
[51] Section 214.6, see further discussion in Chapter 3, under "Property Leased to Governmental Entity."
[52] Section 214.6(b)(1), see also Chapter 3, under "Property Must be Used for Exempt Activity and Amount Must be Reasonably Necessary."

building in a private nonqualifying manner. Since "B" (the operator) is not qualified, "A" (the owner) does not receive an exemption on the portion of the property, building and land, used by "B." However, the remaining property, building and land, is exempt as it is used exclusively by qualifying organization, "A," for qualifying religious purposes.

Example 2: Lease - Non-Exempt Owner and Exempt Lessee

"A" is the owner of 10 acres of land and a building and does not qualify for the welfare exemption as to either organization or use. "B," a qualifying organization, operates a preschool in the building and this use does qualify as an exempt activity. Even though "A" is not qualified and the land and building are not exempt, all personal property owned by "B" and exclusively used in the exempt activity is entitled to the exemption.

PROPERTY SUBJECT TO LONG-TERM LEASES DOES NOT MEET THE OWNERSHIP REQUIREMENT

The express language of the Constitution,[53] which is also restated in section 214, requires property to be owned and operated by qualifying organizations meeting all the requirements for exemption. Additionally, the property must be irrevocably dedicated to religious, charitable, scientific, or hospital purposes.[54] Property that is owned by other than an organization meeting the requirements for exemption per section 214 typically is not irrevocably dedicated to exempt purposes. Thus, when leased, even to a qualifying organization, the property cannot be irrevocably dedicated to exempt purposes since at the end of the lease term the property reverts to the private owner. Further, the ownership interest of the organization claiming exemption must be of record on the lien date. These requirements are consistent with fee ownership of real property. (See exception for possessory interests in this chapter under "Recordation Requirement.")

As discussed, property leased or rented for any duration from an owner not qualified under section 214 does not meet the ownership requirement for the welfare exemption per the constitutional and statutory provisions.[55] Thus, while a 35-year lease is equivalent in value to fee ownership for change in ownership reassessment purposes,[56] it is not fee ownership for purposes of satisfying the ownership requirement of the welfare exemption. In summary, property that is leased would qualify for the welfare exemption only if the owner and the user/operator are qualifying exempt organizations which meet the requirements of section 214.

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[53] Section 4(b) of article XIII of the California Constitution.
[54] Section 214(a)(6). For additional information see section later in this chapter, *Irrevocable Dedication of Property to Specified Exempt Purposes*.
[55] See, however, section 236, exemption for property leased for 35 years or more for low-income housing.
[56] Section 61(c)(1).

RECORDATION REQUIREMENT

A qualified exempt organization claiming exemption for its real property must have recorded its ownership interest on the lien date in the recorder's office of the county in which the real property is located.[57]

- Failure of the claimant to establish the fact of such recordation constitutes a waiver of the exemption.
- The welfare exemption is not available to a purchaser under an unrecorded contract of sale.
- The claimant may be the vendee of the property under a conditional contract of sale, with the vendor having retained title for security purposes only.[58]
- The fact that the property is encumbered by mortgage liens will not preclude the granting of the exemption.
- Property acquired after the lien date may be exempted, in whole or in part, depending on the date of acquisition.

Possessory Interests Recordation Requirements

The *owner of the property* includes one who holds a taxable possessory interest in publicly owned real property, which is a right to possession and use of such property, based on the following:

- Possessory interests existing in land or improvements, similar to leaseholds, constitute only a part or ingredient of property; and
- Property, as used in section 214, must be deemed to encompass the totality of rights composing property, including possessory interests.[59]

Thus, an association holding a taxable possessory interest in an outdoor theater in a city park was eligible for the exemption,[60] and an organization operating a nursery school on local school district property was eligible for the exemption.[61]

In lieu of the recordation requirement of section 261(a), a claimant for the welfare exemption which on the lien date has a possessory interest in publicly owned land, owns water rights, or owns improvements on land owned by another, may file with the county assessor, a copy of the document granting the possessory interest or water rights or file a written statement attesting to the separate ownership of those improvements.[62]

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[57] Section 261(a).
[58] *Eisley* v. *Mohan* (1948) 31 Cal.2d 637; *Sherman* v. *Quinn* (1948) 31 Cal.2d 661.
[59] *English* v. *County of Alameda* (1977) 70 Cal.App.3d 226.
[60] *Greek Theatre Association, supra* at page 773.
[61] *Tri-Cities Children's Center, Inc*. v. *Board of Supervisors* (1985) 166 Cal.App.3d 589.
[62] Section 261(c).

NOT ORGANIZED OR OPERATED FOR PROFIT

A basic requirement for the welfare exemption is that the owner(s) and/or operator(s) of property must not be organized or operated for profit. Determination of nonprofit status can usually be made after a review of an organization's formative documents such as articles of incorporation, articles of association, bylaws, constitutions of unincorporated associations, or declarations of trust.

A review of a claimant's articles of incorporation will determine if the corporation was incorporated under the Nonprofit Corporation Law of this state[63] or under corresponding laws of another jurisdiction. A nonprofit corporation formed pursuant to state nonprofit corporation law is a legal entity eligible to claim exemption under section 214. Incorporation under corresponding laws of another jurisdiction will usually qualify the corporation as nonprofit as well, but additional investigation may be necessary for verification. Although no similar nonprofit law exists for the formation of unincorporated entities such as associations and trusts, as indicated, review of such an organization's formative documents, will usually be sufficient to determine its nonprofit status.

The Board staff reviews an organization's formative documents with the organization's claim for an *Organizational Clearance Certificate*. See Chapter 6, *Welfare Exemption Claim Process*, for additional information regarding the filing requirements for an *Organizational Clearance Certificate*.

PROFIT IS ALLOWED

Prior to 1953, an additional requirement to qualify for exemption was that the property could not be operated for profit.[64] In response to *Sutter Hospital* v. *City of Sacramento*,[65] where the court held that purposely charging fees in excess of expenditures in order to finance expansion constituted operation of the hospital's property for profit, the Legislature in 1953 revised the requirement. The new wording currently in section 214(a)(3) states that the property must be *used in the actual operation of the exempt activity*. This eliminated the restriction on the ability of a particular piece of property to operate at a profit and still qualify for the welfare exemption. At the same time, section 214(1) was expanded to authorize a hospital to make an annual profit of 10 percent of total operating expenses including depreciation based on cost of replacement and amortization of, and interest on, indebtedness.[66]

The 1953 amendment specified in addition, in an uncodified section expressing the Legislature's intention, that an organization did not make a profit if net revenues after expenses did not inure to any individual benefit, but went instead to provide for expansion, to fund future contingencies, or to amortize indebtedness. This interpretation was followed by the court in *San Francisco*

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[63] Title 1, Division II, Part 2, *Nonprofit Public Benefit Corporations* or Part 4, *Nonprofit Religious Corporations of the Corporations Code*.
[64] Former section 214(3).
[65] (1952) 39 Cal.2d 33.
[66] Formerly section 214(1), now section 214(a)(1).

Boys' Club, Inc. v. *County of Mendocino*,[67] which held that 2,000 acres of timberland comprising a boys' camp during the summer could be commercially logged without loss of the exemption. Similarly, in *Greek Theatre Association* v. *County of Los Angeles*,[68] the court held that revenues could be received by the Association from ticket sales to professional opera, ballet, musical productions, drama, and comedy without loss of the exemption. Again, there was no question but that the revenues were used to further the charitable purposes of the Association and did not inure to private benefit. Thus, while individual performances showed a surplus of revenues over expenses and an individual year might be profitable, the Association was not organized or operated for profit within the meaning of section 214(1), now section 214(a)(1), where there were no net earnings over any long period of time and where the Association could not exist without private contributions and governmental financial assistance.

In a case involving church property, the court held that rental income in excess of operating expenses in a given year could be received by the church for property leased to another qualifying religious organization without loss of the exemption where the leasing arrangement was not intentionally profit-making or commercial in nature.[69]

MUST QUALIFY AS AN EXEMPT ORGANIZATION UNDER 501(C)(3) OR 23701D

The welfare exemption shall not be granted to any organization which is not qualified as an exempt organization under section 23701d of the Revenue and Taxation Code or section 501(c)(3) of the Internal Revenue Code, unless specifically excluded from this requirement.[70] However, tax exempt status under federal or state law does not automatically qualify property for the welfare exemption. The income tax exemption is based on organization, operation, irrevocable dedication, and use of proceeds. The welfare exemption has additional requirements governing the use of the property for exempt purposes and is therefore, more restrictive. Section 214.8(a) expressly imposes the limitation that its provisions may not be construed to enlarge the welfare exemption to apply to organizations which qualify for the income tax exemption but do not meet all of the requirements of the welfare exemption.

To prove that the organization is exempt from federal income tax or state franchise and income taxes as required by section 214.8(a), the organization must file with the Board a copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or the Internal Revenue Service stating the organization is tax exempt under the appropriate section of the Revenue and Taxation Code or the Internal Revenue Code. The Board reviews the tax exemption letter with the organization's claim for an *Organizational Clearance Certificate*.[71]

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[67] (1967) 254 Cal.App.2d 548.
[68] *Greek Theatre Association*, *supra* at page 773.
[69] *Christ The Good Shepherd Lutheran Church*, *supra* at page 363.
[70] Section 214.8(a) specifies that section 213.7, providing for the exemption of volunteer fire department property, section 231, providing for the exemption of property leased to the government, and section 214(g)(1), providing for the exemption of low-income housing owned and operated by veterans organizations per section 215 and 215.1 are excluded from this requirement.
[71] See Chapter 6, *Welfare Exemption Claim Process*, for additional information regarding the filing requirements for an *Organizational Clearance Certificate*.

HOSPITALS—10 PERCENT PROVISION

Hospitals are deemed *not* to be organized or operated for profit if, during the immediate preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, do not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses.[72] Operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

This statutory provision was interpreted by an appellate court to mean that a nonprofit hospital with net operating revenues in excess of 10 percent of its operating expenses can still qualify for the welfare exemption.[73] The Court of Appeal stated that the legislative intent of section 214(a)(1) was not to deny the exemption to a nonprofit hospital using such excess revenue for debt retirement, plant and facility expansion, or operating cost contingencies, but merely to require a hospital earning such excess revenue to affirmatively show that it is not operated for profit and that it meets the other statutory requirements for the exemption.[74] (See also the discussion on use of hospital property in Chapter 3.)

NET EARNINGS DO NOT BENEFIT ANY PRIVATE PERSON

A restriction in both article XIII, section 4(b) of the California Constitution, and section 214(a)(2) of the Revenue and Taxation Code, is that no part of the net earnings of the owner may inure to the benefit of any private shareholder or individual. This language bars the owner and operator from giving any special privilege, either directly or indirectly, to its members or private individuals. This restriction is exemplified by the court's conclusion in a case where an organization's members were given hospital care at a cost less than that charged nonmembers:

> ... while no profits or dividends are distributed, nevertheless the net earnings of appellant arising from its hospital facilities, and services to "nonmembers" at rates in excess of those generally charged members inure to the benefit of the members in augmented service and privileges which would not be available to them but for the added "outside" sources.[75]

Expenses, including salaries, of the owner or operator must bear a reasonable relationship to the usual cost of the goods or services acquired. The reasonableness of such costs is a question of fact for the State Board of Equalization. Section 254.6(b)(1), in part, provides that the Board shall consider whether the services and salaries are excessive, based upon like services and salaries in comparable public or private institutions. Section 254.6(b)(2) provides that the Board shall consider whether the operations of the owner or operator, either directly or indirectly, materially enhance the private gain of any individual or individuals. In addition, section 254.5(a)

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[72] Section 214(a)(1).
[73] *Rideout Hospital Foundation, Inc.* v. *Yuba County* (1992) 8 Cal.App.4th 214.
[74] *Rideout Hospital Foundation, Inc.*, *supra* at pages 227-228.
[75] *LaSociete Francaise* v. *California Employment Commission* (1943) 56 Cal.App.2d 534, cert. denied 320 U.S. 736, page 543, involved an action to recover sums paid under the California Unemployment Insurance Act.

states that financial statements shall be submitted to the assessor if requested in writing by the assessor. The organization claiming the exemption has the burden of proving that the expenditures were reasonable. Consideration should be given to the Internal Revenue Service's 501(c)(3) exempt status letter.

Net earnings might inure to the benefit of a private person where the payment of the salary of an officer or employee and/or the income from any securities is contingent upon the amount of net earnings. However, a court case has determined that a part of the net earnings does not inure to the benefit of private shareholders or individuals simply by the payment of interest on a promissory note or debenture which is in the form of an obligation to pay only out of net earnings, provided the instrument represents a creditor's interest and not an ownership interest.[76]

The requirement that an organization's earnings not be used for the benefit of any private person should be distinguished from the requirement that property claimed to be exempt is not to be used or operated for the benefit of any private person. The focus of inquiry here on earnings is on the financial operation of the organization claiming the exemption, rather than on the use of the particular property for the benefit of a private person. (See Chapter 3, under "*Not Used or Operated to Benefit Any Private Person*.")

IRREVOCABLE DEDICATION OF PROPERTY TO SPECIFIED EXEMPT PURPOSES

Property eligible for exemption must be "... irrevocably dedicated to religious, charitable, scientific, or hospital purposes." Upon liquidation, dissolution, or abandonment by the owner, the property 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.[77] (See Appendix C: *Guidelines for Dedication and Dissolution Clauses*.)

This provision requires the organization's formative documents to contain:

- A statement of irrevocable dedication of its real and personal property to the specified purposes; and
- A dissolution clause stating that upon dissolution of the organization, its property is to be distributed to an organization organized and operated exclusively for religious, charitable, scientific or hospital purposes within the meaning of section 214.

An organization's sale of any particular portion of the property to a third party for nonexempt uses, is not relevant to requirements of section 214(a)(6), provided that the proceeds of such sale are irrevocably dedicated to exempt purposes.[78] In question is the scope of an organization's authority to use, sell, or transfer its assets as set forth in the articles of incorporation, articles of association, constitution, or declaration of trust under which the organization operates. Thus, in

[76] *St. Francis Memorial Hospital* v. *City and County of San Francisco* (1955) 137 Cal.App.2d 321.
[77] Section 214(a)(6).
[78] *Pasadena Hospital Association* v. *County of Los Angeles* (1950) 35 Cal.2d 779; *Solheim Lutheran Home* v. *County of Los Angeles* (1957) 152 Cal.App.2d 775; 8 Ops. Cal. Atty. Gen. 72.

the *Pasadena Hospital Association* case, the court refused to allow the exemption where the organization was empowered under its articles of incorporation to use and ultimately and permanently divert its assets to nonexempt uses.

STATEMENT IN THE ARTICLES OF INCORPORATION

Section 214(a)(6) provides, in part, that a nonprofit organization must irrevocably dedicate its property to religious, charitable, scientific or hospital purposes and its formative documents must contain a statement to that effect. Section 214.01(a) requires an express statement of irrevocable dedication to only those purposes:

> 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. (Italics added.)

Therefore, 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.

Prior to October 6, 1966, when section 214.01 became effective, an express declaration irrevocably dedicating the property to exempt purposes was not required. In *Pacific Home* v. *County of Los Angeles,*[79] the court noted that the organization's articles of incorporation contained no express provision for irrevocable dedication, but rather limited the corporate purposes to the operation of a charitable home. Thus the court held that when the organization accepted property under such articles of incorporation, the property became impressed with a charitable trust and was, therefore, irrevocably dedicated to the trust purpose. The legislative intent in enacting section 214.01 was to substitute a specific requirement for the rather subjective test of "construing the articles of incorporation as a whole to imply dedication" the courts had used when construing section 214(a)(6).

Following the enactment of section 214.01, the California Supreme Court ruled that charitable purposes embraced educational purposes in the *Stockton Civic Theatre* case.[80] At issue was the exemption of property for a year prior to the enactment of section 214.01. As discussed in Chapter 1, the Court held that for an educational activity to be charitable "it must benefit the community as a whole or an unascertainable and indefinite portion thereof."

While charitable purposes may include educational purposes, this does not mean that all educational purposes are charitable purposes within the meaning of the welfare exemption. Many human experiences may be characterized as "educational." Therefore, this term does not

[79] *Pacific Home*, *supra* at pages 852-53.
[80] *Stockton Civic Theatre*, *supra* at page 20.

have as restricted a meaning as the term *charitable*. In addition, the specific language of section 214.01 requires a more restricted statement in the irrevocable dedication than the term *educational* standing without limitation. As such, the use of educational purposes in a statement of irrevocable dedication must also include language limiting its meaning to the purposes qualifying under section 214. For example, an organization may use both educational purposes and charitable purposes in its statement of irrevocable dedication, if further defined by language limiting *educational* to the purposes qualifying under section 214.[81] Otherwise, section 214.01 requires that any purpose other than religious, charitable, hospital, and scientific purposes must be deleted from an organization's statement of irrevocable dedication in its articles of incorporation.

Similarly, a dissolution clause is required in the formative documents stating that upon the dissolution of the organization, its assets are to be distributed to a nonprofit entity organized and operated for religious, hospital, scientific or charitable purposes. Thus, a dissolution clause which provides that its assets are to be distributed to an organization organized and operated exclusively for charitable or educational purposes does not meet the requirement of section 214(a)(6) that requires distribution to only organizations organized and operated for religious, hospital, scientific, or charitable purposes. If an organization's property is to be distributed to an organization organized and operated in whole or in part for charitable and/or educational purposes, a limitation of the type previously indicated must be added so the dissolution clause will meet these requirements.

If, at the time of filing, the applicant is ineligible because the organizational documents do not contain an acceptable irrevocable dedication and/or dissolution clause, then the applicant shall have until the next succeeding lien date to amend the articles of incorporation or organizational documents and submit a certified copy of the amendment to the Board without incurring a late filing penalty. If the amendments are made before the next lien date and the applicant has met the requirements of section 214, 100 percent of the exemption will be allowed. If the articles of incorporation or organizational documents are amended after the next succeeding lien date and the applicant is otherwise qualified, 85 percent of the exemption is appropriate under the provisions of section 270(a)(2) or section 271(b).

If an organization amends its articles to include an acceptable statement of irrevocable dedication and an acceptable dissolution clause, the amended articles must be filed with the Secretary of State's Office and a certified copy must be sent to the Board's Assessment Policy and Standards Division. The Board staff reviews the organization's formative documents, including any amendments, with the organization's claim for an *Organizational Clearance Certificate*. See Chapter 6, *Welfare Exemption Claim Process*, for additional information regarding the filing requirements for an Organizational Clearance Certificate. (See Appendix C for guidelines and sample language for dedication and dissolution clauses.)

[81] An acceptable dedication clause would be, "charitable and educational purposes meeting the requirements for exemption in section 214 of the Revenue and Taxation Code."

30-YEAR USE

An exception to the dissolution clause requirements of section 214.01(a) is found in section 214.3. Section 214.3 states that irrespective of any reversionary provisions in the title respecting dissolution, the welfare exemption extends to property:

- Irrevocably dedicated to religious, charitable, scientific, or hospital purposes, and
- Used solely for charitable or hospital purposes for a minimum period of 30 years.

In other words, the exemption may be granted to the property of such organizations despite reversionary provisions in the title that conflict with the dissolution requirement of section 214(a)(6), provided that the ownership, operation, use and dedication of the property are otherwise within the purview of section 214.

SCIENTIFIC ORGANIZATIONS CHARTERED BY U.S. CONGRESS AND BENEFITS COMMUNITY AT LARGE

A scientific foundation or institution claiming exemption for its real and personal property used for scientific purposes, excluding medical research, must meet the following requirements to qualify for exemption:

- It must be chartered by the U.S. Congress.[82]
- Its objectives must be to encourage or conduct scientific investigation, research and discovery for the benefit of the community at large.

Further, the exemption for the scientific organization's real property (land, buildings and fixtures) is subject to a number of limitations and restrictions:

- Real property used for scientific purposes is exempt only if it is also used for religious, hospital, or charitable purposes.
- Real property claimed to be exempt must meet the requirements of section 214(a)(3) through (a)(5).

Thus, real property used exclusively for scientific purposes that does not meet the above requirements is not eligible for exemption.

Personal property does not need to qualify under religious, hospital or charitable purposes. It is sufficient that personal property is used exclusively for scientific purposes.

[82] Section 214(a)(7).

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CHAPTER 3: SPECIFIC REQUIREMENTS FOR USE OF PROPERTY

Nonprofit organizations claiming exemption for their properties under section 214 must satisfy the organizational requirements discussed in the previous chapter, and must meet additional requirements that govern the uses of their properties. The requirements, listed below, will be discussed in this chapter.

1. The property must be used exclusively for exempt purposes.
2. The property must be used for the actual operation of an exempt activity.
3. The property is not to exceed an amount reasonably necessary for the accomplishment of the exempt purpose.
4. The property is not to be used to benefit any person through distribution of profits, compensation or the more advantageous pursuit of his or her business or profession.
5. The property is not to be used for fraternal, lodge, or social club purposes except when that use is clearly incidental to the primary exempt purpose.

PROPERTY MUST BE USED EXCLUSIVELY FOR EXEMPT PURPOSES

One of the basic requirements for exemption is that the property must be *used exclusively* for religious, hospital, scientific, or charitable purposes by qualifying organizations for qualifying purposes and activities.

The Revenue and Taxation Code does not specifically define the term *used exclusively*, but the courts have done so in a series of decisions. The Supreme Court, applying the rule of strict but reasonable construction, stated that the phrase *exclusively used* may not be given a literal interpretation so as to mean that the property exempted must be used solely for the purposes stated to the total exclusion of any other use.[83] The Supreme Court held that *used exclusively* for exempt purposes includes any property which is used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment of the exempt purpose.[84]

PROPERTY INCIDENTAL TO AND REASONABLY NECESSARY FOR ACCOMPLISHMENT OF EXEMPT PURPOSE

Cedars makes it clear that the phrase *incidental to and reasonably necessary for* refers to property that is normally associated with or related to the accomplishment of an exempt purpose.

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[83] *Cedars, supra* at page 736l; *Honeywell Information Systems, Inc.* v. *Sonoma County* (1974) 44 Cal.App.3d 23, 28.
[84] *Cedars, supra* at page 736.

Qualifying Uses of Property

The courts have applied the *Cedars* test to find that the following uses of property were *exempt*:

- Property used for facilities for training nurses, housing of doctors, student nurses, and other essential employees; and tennis courts used primarily by hospital staff were exempt as incidental uses reasonably necessary for the accomplishment of the hospital purpose.[85]
- Dormitory rooms maintained and rented to young men by the YMCA were incidental to its charitable purpose of promoting the welfare of young men and boys, even though a moderate charge was made for such accommodations.[86]
- A snack bar, gift shop and beauty shop located on property used as a retreat which served the convenience of persons assembled for religious purposes and which were not open to the public were incidental to the religious purpose of the organization.[87]
- A bar maintained within a theater and open only to persons admitted to performances was reasonably necessary for the fulfillment of a generally recognized function of a complete modern theater and, therefore, exempt.[88]

The requirement of exclusive use, as construed by the above cases, means that a qualified organization's primary use of its property must be for exempt purposes and any other uses of property must be related to and reasonably necessary to the accomplishment of the exempt purpose.

Nonqualifying Uses

Applying the *Cedars* test, the courts have determined that the following were *not exempt* uses:

- Hospital property used for a thrift shop was not incidental to and reasonably necessary for the primary exempt use, but an independent undertaking to raise revenue.[89]
- Portions of YMCA property devoted to a restaurant, a barbershop, a valet shop, and a gym store, all of which were open to the public as well as to YMCA members, were not merely incidental and reasonably necessary for the accomplishment of exempt purposes, but were largely commercial in character and properly classified as business ventures.[90] (See Chapter 4, *Fundraising*, for a discussion of the fundraising aspects of this case.)

These cases indicate that ongoing uses of the properties that are not related to and reasonably necessary for the accomplishment of the exempt purpose will make those properties ineligible for exemption.

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[85] *Cedars, supra* at pages 736-41.
[86] *YMCA, supra* at pages 769-770.
[87] *St. Germain Foundation* v. *County of Siskiyou* (1963) 212 Cal.App. 911, 917.
[88] *Greek Theatre Association, supra* at page 780.
[89] *Cedars, supra* at page 745.
[90] *YMCA, supra* at pages 773-776.

EXCLUSIVE USE ALLOWS OCCASIONAL USES OF PROPERTY UNRELATED TO EXEMPT PURPOSES

While ongoing uses of an organization's property must be reasonably necessary or in furtherance of the exempt purpose, or they will disqualify the property from exemption, a well-settled precedent has established that occasional uses not within an organization's exempt purpose and activities are not disqualifying. The courts have construed the "exclusive use" test not to foreclose some additional or occasional use of the property which was not within the exempt purpose and activity.

In *Fellowship of Humanity* v. *County of Alameda*, the court construed the *exclusive use* requirement of the church exemption, to hold that occasional use of the church property for social activities such as dances and dinners did not disqualify the property from exemption. The court observed that:

> ... however strict the courts may be in determining whether the [primary] use of the property brings it within the exemption at all, if the court once holds that the property generally qualifies for the exemption, it will be extremely liberal in holding that some incidental use does not take it out of the exemption.[91]

However, a case involving the public schools exemption defined the term rather restrictively. In *Honeywell Information Systems, Inc*. v. *County of Sonoma*, the court denied the public school exemption for a computer system leased to a public school when it was shown that the public school had subleased the system 3 percent of the time to parochial schools and .56 percent of the time to private business. The court stated that while the term *exclusive use* has been interpreted to mean not only primary but also certain types of incidental use as well "... such incidental use must be directly connected with, essential to, and in furtherance of the primary use ...."[92] Use by business entities on a regular basis for purposes unrelated to public schools destroyed the exemption even though the use was but a small percentage of the total use.

In *Peninsula Covenant Church* v. *County of San Mateo*, the court followed the "exclusive use" precedent in the above case, holding that "the clear meaning of section 214 is that at the very least the exempt purpose must be the primary use made of the property."[93] Exemption was allowed for a church's community center building primarily used for church activities, but occasionally by non-church members; however, exemption was denied to church-owned recreational facilities including locker rooms, saunas, tennis courts, and a swimming pool used primarily by non-church members. The court stated the primary use of the property was not for the exempt [religious] purpose; therefore, the exclusive use test was not met. The court noted

[91] *Fellowship of Humanity* v. *County of Alameda* (1957) 153 Cal.App.2d 673, 699.
[92] *Honeywell Information Systems, Inc*. v. *County of Sonoma* (1974) 44 Cal.App.3d 23, 28
[93] *Peninsula Covenant Church* v. *County of San Mateo* (1979) 94 Cal.App.3d 382, 396.

that non-church members were the primary users and the primary use was recreational, not religious or charitable.[94]

In *Santa Catalina Island Conservancy* v. *County of Los Angeles*, the court held that a substantial portion of Santa Catalina Island preserved as open-space land for recreational and ecological purposes was used exclusively for charitable purposes, although motor tours and a hunting program were conducted by independent contractors on the property. The court ruled that these uses of the property were reasonably necessary and incidental to the preservational, instructive and recreational purposes of the Conservancy. The tours provided access to many persons to see and enjoy the property; and the hunting program in addition to its recreation value, was a game management tool.[95]

EXCLUSIVE USE OF PROPERTY MUST OCCUR ON LIEN DATE

Property must be used exclusively for religious, hospital, or charitable purposes and be in such use on the January 1 lien date. The exemption would generally be inapplicable to an unused vacant lot, to an unused building, and to an unused portion of a building.[96] A limited exception was added by the Legislature in section 214.15, which exempts vacant land owned by qualified nonprofit organizations that build housing for sale to low-income residents under specified conditions. (See discussion of requirements in Chapter 5) Where only a portion of a property qualifies for exemption, it is proper to apportion the value of the property according to its exempt and nonexempt uses and to allow the exemption on the portion used for exempt purposes and activities.

Property in Course of Construction

Section 5 of article XIII of the California Constitution was enacted in recognition of the fact that the welfare exemption authorized under section 4(b) of the Constitution does not apply to vacant, unused property held for future qualifying use. Section 5 extends the exemption to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption.

Section 5 is implemented by sections 214.1 and 214.2. Section 214.1 defines property used exclusively for religious, hospital or charitable purposes to include facilities in the course of construction, together with the land on which the facilities are located as may be required for their convenient use and occupation. Section 214.2 states that as used in section 214.1 "facilities in the course of construction" includes the demolition or razing of a building with the intent to replace the building with a facility to be used exclusively for religious, hospital or charitable purposes. "Facilities in the course of construction" must have activity connected with the

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[94] For discussion on the exclusive use test as applicable to church and religious exemptions, see Part II, *Church, Church Parking Area, and Religious Exemptions*.
[95] *Santa Catalina Island Conservancy, supra* at pages 234-35.
[96] *First Baptist Church* v. *County of Los Angeles* (1952) 113 Cal.App.2d 392; *Fredericka Home For the Aged, supra*, at page 790.

construction or rehabilitation of a new or existing building or improvement that results in physical changes visible to any person inspecting the site where the building or improvement is located. The phrase *in the course of construction* as used in section 214.1 has been construed to include the digging of trenches for the foundation of a building prior to the lien date.[97]

Construction or rehabilitation, having been commenced and not yet finished, unless abandoned, shall establish that a building or improvement is under construction. Thus, a property undergoing construction or rehabilitation for an extended period of time would continue to be eligible for exemption.

Exemption for Property in Course of Construction Applicable to Other Exemptions

Section 214.1 applies to free museum facilities in the course of construction on the lien date for which the welfare exemption is claimed, even though the free museum exemption[98] does not apply to buildings under construction. Under certain circumstances, the museum exemption and the welfare exemption can overlap since (1) the property intended to be used as a free museum is also intended to be used exclusively for charitable purposes and (2) the welfare exemption is in addition to any other exemption allowed by law.[99]

Delays in Construction

If construction delays are due to reasonable causes and circumstances beyond the assessee's control, such as adverse weather conditions or material shortages, that occur notwithstanding the exercise of ordinary care and the absence of willful neglect, then construction shall not be considered "abandoned." Delays due to a lack of funds by the claimant would not be considered reasonable. If construction has been abandoned, the property is no longer eligible for exemption.

PROPERTY MUST BE USED FOR ACTUAL OPERATION OF EXEMPT ACTIVITY & AMOUNT MUST BE REASONABLY NECESSARY TO ACCOMPLISHMENT OF EXEMPT PURPOSE

Exemption is allowed only for property used for the actual operation of the exempt activity and the amount of property must not exceed what is reasonably necessary to accomplish the exempt purpose.[100] The use of property for which exemption is claimed is the primary consideration when analyzing the status of an organization claiming exemption once it has been ascertained that the organizational requirements have been met. Any property owned by a qualifying organization but not used for exempt activities and exempt purposes is not eligible for the welfare exemption.

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[97] *National Charity League* v. *County of Los Angeles* (1958) 164 Cal.App.2d 241.
[98] Section 202 of the Revenue and Taxation Code; section 3(d) of article XIII of the California Constitution.
[99] Section 214(a)(7).
[100] Section 214(a)(3).

The courts have liberally construed what constitutes use in the actual operation of the exempt activity and the amount reasonably necessary for the accomplishment of the exempt purpose. For example,

- In the case of a charitable boys' camp, nearly 2000 acres including land used for roads, trails, and overnight campsites even though not a part of the main campground, were held to be necessary for the purpose and used in the actual operation of the camp.[101]
- The requirement that the property be used in the actual operation of the exempt activity is not always limited to actual physical use. The courts have held as exempt the nonphysical use of portions of a religious retreat property which included the passive use of nearby areas and surrounding trails where retreatants could meditate and the nonphysical use of the remote hilltops for a buffer zone to protect retreatants from the distractions of the outside world.[102]

OCCASIONAL USE OF PROPERTY BY OTHER ORGANIZATIONS FOR MEETINGS

An organization exempt from income taxes under specific provisions of state or federal law[103] may hold weekly meetings on another organization's exempt property without filing a welfare exemption claim with the county assessor, or a claim for an *Organizational Clearance Certificate* with the Board, and without jeopardizing the owner's welfare exemption for that property, provided specific conditions are met.[104] Previously, a qualifying organization permitting another organization to use its property on a recurring basis could retain its exemption only if the user also filed and qualified for the welfare exemption. The following criteria must be met by the occasional user of the property:

1. The meetings conducted by the occasional user organization on the exempt property must be incidental to its primary activities, cannot be fundraising meetings or activities as defined in section 214(a)(3)(B), and cannot be held more than once per week.

2. The occasional user organization and its use of the property must meet all the requirements of section 214(a)(1) to (5), inclusive. It should be noted the occasional user organization needs to meet only the requirements of section 214(a)(1) through (5) rather than all of the requirements of section 214(a). The omission of the first paragraph of section 214(a) allows organizations which are not exclusively religious, hospital, scientific or charitable in nature to use properties of those organizations which are, without jeopardizing the owners' exemptions. Similarly, the occasional user need not meet the irrevocable dedication and dissolution requirements of section 214(a)(6).

3. The occasional user organization must qualify as an exempt organization under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code, or section 23701(d) or

[101] *San Francisco Boys' Club, Inc., supra* at page 553.
[102] *Christward Ministry* v. *County of San Diego* (1969) 271 Cal.App.2d 805.
[103] Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or sections 231701d, 23701f or 23701w of the Revenue and Taxation Code.
[104] Section 214(a)(3)(D), added by Stats. 1990, Ch. 161, effective January 1, 1991.

23701(f) of the Revenue and Taxation Code and provide to the assessor a copy of valid, unrevoked letters or rulings stating that the operator, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under one of the above stated code provisions.

4. Small satellite groups such as Alcoholics Anonymous and the American Association of Retired Persons (AARP), which are a local chapter or affiliate of a national organization may not have federal or state tax exemption letters and may not be required to file federal income tax returns. Such groups should provide copies of their national organization's tax letter along with copies of a letter or certificate identifying them as a chapter or affiliate.

5. The occasional user organization must also file with the assessor a copy of its most recent federal income tax return, if the organization is required by law to file a return.

It should be noted that not all section 501(c)(3) or 501(c)(4) organizations meet all the requirements of section 214(a)(1) through (5). If the organization using the property cannot do so, the portion of the owner's property so used will not be eligible for exemption. (See also Chapter 2, *Specific Requirements of Owner and Operator*.)

NOT USED OR OPERATED TO BENEFIT ANY PRIVATE PERSON

Property exempt under section 214 cannot be used or operated to benefit any private person through the distribution of profits, payment of excessive charges or compensation, or the more advantageous pursuit of his business or profession.[105] This requirement is similar to the one that no part of the net earnings of the owner and operator may inure to the benefit of any private person.[106] However, this section differs in that it relates to the operation of the property itself rather than the earnings resulting from the operation of the organization claiming the exemption. Even if a qualifying organization has no net earnings, the exemption must be denied if the property for which the exemption is claimed is used or operated to the advantage, pecuniary or otherwise, of a private person. These provisions barring use of the property for private benefit have been construed by the courts:

- Preferential seating provided to patrons of a theater association and complementary tickets given to local governmental officials and association employees did not constitute payment of excessive charges or compensation. Preferential seating could not be construed as compensation where full prices had been paid for tickets, and the furnishing of complementary tickets to such officials was directly related to the receipt of government support, not for the purpose of compensation. Also, the furnishing of complementary tickets to association employees was not excessive compensation in this instance, and it is only excessive compensation which precludes the exemption. The court

[105] Section 214(a)(4).
[106] See Chapter 2, "Net Earnings Do Not Benefit Any Private Person."

held further that while performers using the Association's theaters received professional advantages, they received no more compensation or publicity than that which they usually received, and it is only the providing of a more advantageous opportunity which precludes the exemption.[107]

- Independent contractors with exclusive rights to conduct motor tours and a hunting program on the Conservancy's property were not benefiting through the more advantageous pursuit of their business or profession. The motor tour contractor was, upon the Conservancy's acquisition of the property, obligated to pay road use fees and a portion of its tour revenues for the privilege of conducting the tours. The hunting program contractor's revenue had steadily declined after the Conservancy had acquired the property. The court stated that the advantageous or profitable pursuit of one's business is not what is prohibited; rather it is only the more advantageous pursuit.[108]
- A scientific organization's use of its property to conduct research for a private for-profit firm did not constitute use of its property for the more advantageous pursuit of that company's business.[109] Under agreements between the organization and the firm, the firm funded basic research by the organization in exchange for a license to develop and market applications of the organization's research. The firm did not receive excessive compensation, consideration or other advantage in excess of that which would result from arms-length negotiations by the organization with other companies. The agreements were the result of good faith arm's length negotiations and compensation to the firm was not above fair market value, therefore, the agreements did not benefit the firm through "the more advantageous pursuit of its business."[110]

Property Operating Costs

In addition, the operating costs of the property must bear a reasonable relationship to the operating costs of similar property used by comparable public institutions. If charges are made to defray the costs of operation, no special privilege can be given any officer, employee, or member of the institution or any other private person. This means that the payment of excessive charges or compensations or the more advantageous pursuit of one's business or profession is barred. If the property happens to have been operated at a net profit, such profit must be devoted to the exempt purposes of the institution.[111] The assessor may request financial statements relevant to a specific property location.

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[107] *Greek Theatre Association, supra* at page 783.
[108] *Santa Catalina Island Conservancy, supra* at pages 245, 246.
[109] *Scripps Clinic and Research Foundation, supra* at page 415.
[110] Section 214(a)(4).
[111] 23 Ops. Cal. Atty. Gen. 136. See also *Sutter Hospital* v. *City of Sacramento* (1952) 39 Cal.2d 33, and *St. Francis Memorial Hospital* v. *City and County of San Francisco* (1955) 137 Cal.App.2d 321.

NOT USED FOR FRATERNAL, LODGE OR SOCIAL CLUB

Property used for fraternal, lodge, or social club purposes is specifically declared to be taxable except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.[112] Occasional social activities incident to theater performances are considered incidental to an organization's primary charitable purpose.[113] A hunting program open to the public on a "first come" or "by lot" basis is incidental to an organization's primary charitable purpose of preservation and hence, not within the provisions barring the exemption for social club purposes.[114] (See also this chapter under "Exclusive Use Allows Occasional Uses of Property Unrelated to Exempt Purposes.")

EXEMPT USES OF HOSPITAL PROPERTY

The property must be used exclusively for hospital purposes and be in such use on the lien date. The requirement of exclusive use does not mean that the exemption necessarily must be denied where another use occurs as an incident to the hospital use. As discussed previously, the test employed by the California Supreme Court is whether the property in question is exclusively used for a facility which is incidental to and reasonably necessary for the accomplishment of the exempt purpose of the organization claiming the exemption. With respect to hospital property, the court concluded that property devoted to a nurses' training school, housing for hospital interns, resident doctors, student nurses, and certain other essential employees required to be readily available, and recreational facilities used primarily by hospital personnel was incidental to and reasonably necessary for the fulfillment of a generally recognized function of a complete modern hospital and, therefore should be exempt.[115]

Hospital property also is subject to the requirement that it must be used for the actual operation of the hospital activity.[116] Thus, portions of hospital property used for other than hospital activities by the nonprofit hospital organization or by another organization, and in some cases vacant or unused hospital property, would not be considered eligible for the exemption as property used for hospital purposes.

> **Example 1**: Hospital emergency room equipment used infrequently but always maintained and ready for use at any time would be considered used for the actual operation of the hospital activity.
>
> **Example 2:** A floor or wing of a hospital that is unfinished is not ready for use, thus would not be considered used for the actual operation of the hospital activity.

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[112] Section 214(a)(5).
[113] *Greek Theatre Association, supra* at pages 783-784.
[114] *Santa Catalina Island Conservancy, supra* at page 244.
[115] *Cedars, supra* at page 745.
[116] Section 214(a)(3).

Example 3: A hospital wing or floor added for future expansion, that is completely built but lacking fixtures and equipment, is not ready for use, thus, would not be considered used for the actual operation of the hospital activity.

USE OF HOSPITAL PROPERTY BY LICENSED PHYSICIANS

The use of hospital property by licensed physicians for the practice of their profession and to earn fees or other lawful compensation for their services does not constitute grounds for denial of the exemption.[117] Accordingly, if hospital property otherwise qualifies for exemption, the fact that physicians use the premises for the treatment of hospital patients is not a ground for denying the exemption. However, portions of hospital property leased or rented to physicians for their offices for the general practice of medicine are not eligible for exemption. (See discussion below.)

HOSPITAL GIFT SHOPS

Within certain restrictions, hospital gift shops operated in nonprofit hospitals are regarded as within the scope of the exemption because such a shop is incidental to and reasonably necessary to a complete modern hospital. The exemption will apply if:

1. The gift shop is operated by the hospital or a hospital auxiliary on a nonprofit basis with net revenues, if any, being expended for the direct benefit of the hospital.

2. The shop does not actively seek to make sales to other than hospital patients and their visitors or to members of the medical staff or other hospital employees. Compliance with this requirement is best demonstrated by a total lack of advertising, the placement of the shop in the interior of the hospital, and the maintenance of an inventory particularly suited to the needs of the patients and hospital personnel.

NON-EXEMPT USES OF HOSPITAL PROPERTY

Those portions of a hospital's facilities which are leased to a profit making enterprise or not directly contributing to the functioning of the hospital do not qualify for the hospital purposes exemption. Examples are areas leased to physicians for use as offices for their private medical practices, commercial space leased to retail businesses, and space used for managing a managed care health plan. Section 214.7, which specifies that use of hospital property by physicians is not a ground for denial of the exemption, does not apply to such portions of hospital property leased or rented to a physician for his office for the general practice of medicine. Accordingly, office space within hospital facilities leased or rented by physicians and used for their private medical practices does not qualify for exemption.

HOSPITAL THRIFT SHOPS

This type of activity, unlike hospital gift shops, does not come within the scope of the exemption. The use of hospital property for thrift shops *is not considered as incidental to and*

[117] Section 214.7.

reasonably necessary to a complete modern hospital.[118] Additionally, the property for which exemption is claimed must be used for the actual operation of the exempt activity.[119] In the *Cedars* case, the Supreme Court denied the exemption to the portion of the hospital premises which was devoted to a thrift shop, on the basis that it was being used for a commercial fund raising activity rather than a charitable or hospital activity, even though the proceeds were used to accomplish an exempt purpose. Thus, eligibility for exemption is determined on the basis of the use of the property rather than on the use of income from property.

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.

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[118] *Cedars, supra* at page 745.
[119] Section 214(a)(3).

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. [120]

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; all sites subject to the same operational procedures, patient charge rates and personnel policies; and, each site dependent on the support and assistance rendered to it by professional personnel at the other sites in order to operate as a health facility.

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

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

CHARITABLE HEALTH CARE ORGANIZATION

If a nonprofit health care facility does not qualify for exemption as property used for hospital purposes under section 214 et seq., it must satisfy the charitable purposes and activities requirements of section 214 for its property to qualify for the welfare exemption. If it is claimed that a nonprofit health care organization satisfies the charitable purposes and activities requirements for exemption, details regarding the charitable aspects must be provided by the claimant. The claimant's claim, financial statements, and/or other statements should indicate donations/grants received and services or programs provided to the public on a sliding fee schedule or at no charge. Health education provided to the public is within the charitable purposes and activities requirement of section 214. Thus, information should be included regarding free classes/seminars on health topics offered to the public on a regular basis; periodic health fairs and/or free publications on a variety of health topics available to the public. The documents should also indicate the number of patients who were provided services at full cost versus reduced cost or no cost, including the representative dollar amount, numbers attending free classes, seminars, etc.

A copy of the claimant's written charity care policy should also be submitted with the claim. Charity care may be defined as health care services provided at no charge or at a reduced charge

[120] Board of Equalization decision in the *Matter of St. Jude Hospital Yorba Linda, dba St. Jude Heritage Health Foundation* (1997).

to patients who do not have, or cannot obtain, adequate resources to satisfy the financial obligations they incur as a result of receiving medical care provided. Charity care does not include bad debts, which involve patients and/or guarantors who, having the requisite financial resources to pay for health care services received, have demonstrated by their actions an unwillingness to comply with the contractual arrangements previously entered into to resolve bills for such services. When acceptance of Medi-Cal and Medicare allowances results in less than full payment, this may constitute an indication of charity which, when combined with other indications of charity, may constitute a charitable purpose.

CHARITABLE ACTIVITIES INCLUDE SOME EDUCATIONAL ACTIVITIES

The courts have broadly interpreted the term *charitable* as used in the Constitution and the Revenue and Taxation Code, to include some educational purposes and activities.[121] The charitable exemption, therefore, includes educational activities such as nonprofit schools of less than collegiate grade,[122] and amateur theatrical presentations of ballet, light opera and musicals, which the court stated were instructive to the participants and the audience.[123] Professional presentations of operas, symphonies, rock concerts, ballets, musical productions, and plays also are charitable-educational activities.[124]

The Legislature enacted section 214(j) which codifies the community benefit test for determining whether educational activities are charitable. Educational activities within the charitable purpose of section 214 are those that benefit the community as a whole or an unascertainable and indefinite portion thereof. Such educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public. Consistent with judicial precedent, educational activities which primarily benefit an organization's shareholders are not exempt. (See discussion on this topic in Chapter 1.)

PROPERTY SPECIFICALLY ELIGIBLE FOR EXEMPTION

Certain types of property which will be discussed below are specifically identified in the statutes as qualifying for the welfare exemption. These specific exemptions have been enacted under the authority granted to the Legislature in article XIII, section 4(b).

PROPERTY IN ITS NATURAL STATE

The welfare exemption has been extended to properties used for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific or educational interest, and to open-space lands used solely for recreation and for the enjoyment of

[121] *Lundberg, supra* at page 653.
[122] *Lundberg, supra* at page 653.
[123] *Stockton Civic Theatre, supra* at page 21.
[124] *Greek Theatre Assn., supra* at page 778.

scenic beauty, provided that the land is open to the general public, subject only to reasonable restrictions. Such properties must be owned and operated by a scientific or charitable organization with a primary interest of preserving those natural areas and meeting all the requirements of section 214.

The Legislature enacted section 214.02 to provide exemption for such kinds of properties up to a limit of 2,000 acres.[125] As a result of a 1981 decision by an appellate court that held exempt 42,000 acres of Santa Catalina Island, a subsequent amendment of section 214.02 was enacted.[126] Pursuant to this amendment in 1982, the exemption is not available to any property that is reserved for future development, nor does it apply to any property of a qualified organization which owns 30,000 acres or more in one county unless the organization is fully independent of the owners of taxable adjacent real property.[127] The qualified organization that holds the property is considered fully independent if the exempt property is not used or operated by that organization or by any other person so as to benefit any person[128] through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession.

The court held in *Santa Catalina Island Conservancy* v. *County of Los Angeles* that 42,000 of the island's acres used for preservation of a unique, partially wild, environment containing exceptional geological features and many varieties of rare endemic and native plant and animal species were within the purview of section 214.02 and hence, eligible for the exemption.[129] In so doing, the court rejected contentions that section 214.02 was not intended to apply to large land holdings of that kind and that some of the property was not being used but was being held for future use.

Statutory Changes Enacted

A 2001 statutory amendment has extended the duration that this section will be operative through lien date, January 1, 2012.[130]

SCHOOLS OF LESS THAN COLLEGIATE GRADE

The Legislature has extended the charitable purposes aspect of the welfare exemption to include nonprofit schools of less than collegiate grade in an amendment to section 214.[131] Thereafter, the Supreme Court upheld the Legislature's action by ruling that charitable included nonprofit schools of less than collegiate grade.[132]

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[125] Stats. 1971, p. 5133.
[126] Stats. 1982, Ch 1485, in effect January 1, 1983.
[127] Section 214.02(b).
[128] Includes any officer, trustee, director, shareholder, member, employee, contributor, bondholder of the exempt organization or operator, or the owner of any adjacent property.
[129] *Santa Catalina Island Conservancy*, *supra* at page 237.
[130] Stats. 2001, Ch. 533, SB 198.
[131] Section 214(b).
[132] *Lundberg*, *supra* at page 653.

Section 214.5 defines a school of less than collegiate grade as one that either exempts a student from attendance at a public school under Education Code section 12154 or one in which the majority of students have been excused from attendance at a public school under Education Code sections 12152 or 12156. Section 214.5 extends this exemption to schools that are both collegiate grade and less than collegiate grade, provided that the qualified organizations meet all the requirements of section 214. The section also states that it is not to be construed to enlarge the college exemption. Thus, collegiate level education by itself does not qualify for the welfare exemption, but may qualify for the college or public school exemptions.

PROPERTY USED FOR A PARK AND LEASED FOR 35 YEARS OR MORE

In 2001, section 236.5[133] was added to the Revenue and Taxation Code to exempt an interest in real property that is leased for a term of 35 years or more by a charitable foundation and used exclusively by the lessee as a public park, if all the following conditions are met:

- The charitable foundation is exempt from federal income taxation under Internal Revenue Code section 501(c)(3);
- The operation of the public park by the lessee is within the tax exempt purposes of the lessee;
- The lessee acquired the leasehold in the property by means of a charitable donation; and,
- Under the terms of the lease, the lessee foundation will obtain fee ownership on or before the end of the lease term.

NURSERY SCHOOL PURPOSES

Exemption is available for property used exclusively for nursery schools or preschools, owned and operated by a qualifying religious, hospital, or charitable organization.[134] If professional child care personnel are employed, fees are charged for the instructional or supervisorial services provided, and the school has obtained a license,[135] then the organization must file for the welfare exemption. If the nursery school or preschool operator is a separate qualifying organization per section 214, then both the owner organization and the operator must file for the welfare exemption. A nursery school or preschool which is operated by a church on property where religious worship is also conducted may qualify for the religious exemption (see Part II, *Church, Church Parking Area, and Religious Exemptions*, Chapter 2, *Religious Exemption*).

POLLING PLACES

Property, or a portion thereof, used as a polling place at any election conducted by the registrar of voters is considered used exclusively for religious, hospital or charitable purposes under section 214.[136] The registrar must make written request for the use of such property at least 60 days before the date of the election. Registrar of voters means county clerk in counties having

[133] Stats. 2001, Ch. 609, SB 882.
[134] Section 214(c).
[135] License or permit from the State Department of Social Welfare.
[136] Section 213.5.

no registrar of voters. A county is required to insure itself, its employees, the owner and the person in possession of the property against any liability for any injury connected with the use of the property as a polling place.

VOLUNTEER FIRE DEPARTMENTS

Property of a volunteer fire department which is used exclusively for such purposes may be eligible for exemption under section 213.7, provided that the department meets all the requirements of section 214, as well as the following requirements:

- The organization must have qualified as an exempt organization on or before January 1, 1969, either under 23701d or 23701f of the Revenue and Taxation Code or under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code and must now have tax exempt status under either of these specified provisions.
- The organization must file with the Board a copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or the Internal Revenue Service.
- The organization must have official recognition and full or partial support of the government of the county, city or district in which such volunteer department is located.

Volunteer fire departments which are not eligible for exemption under section 213.7 because they were not qualified as an exempt organization by January 1, 1969, may qualify for exemption under the charitable aspect of section 214.

NONCOMMERCIAL EDUCATIONAL FM BROADCAST OR TELEVISION STATION

Property of noncommercial educational FM radio stations and TV stations is eligible for exemption if owned and operated by qualifying organizations meeting all the requirements of section 214.[137] Television stations must not accept paid advertising and must receive at least one-fourth of their operating expenses from contributions from the general public or dues from members in order to qualify for the exemption.[138] Additionally, educational FM stations must be licensed and operated under Title 47, Part 73 of the Code of Regulations.

Section 214(d) provides an exemption for both real and personal property owned and operated by qualifying organizations. Section 215.5 provides an additional exemption for personal property owned or leased by a nonprofit corporation that (1) does not accept paid advertising, (2) is engaged exclusively in the production of educational TV programs or the production of programs for noncommercial educational FM or AM radio stations, and (3) no part of its net earnings inure to the benefit of any private shareholder or individual.

[137] Section 214(d).
[138] Section 225.5.

PROPERTY OWNED BY A COLLEGE BUT USED BY A QUALIFYING EXEMPT ORGANIZATION

Section 214(e) was added to allow the welfare exemption for college properties used by qualifying welfare organizations.[139] Properties owned by educational institutions of collegiate grade, as defined in section 203 (College Exemption) as well as properties owned by qualifying religious, hospital, scientific, or charitable organizations, are eligible for the welfare exemption if the property is used exclusively for religious, hospital, scientific, or charitable purposes and activities and if the property and organization(s) meet all of the requirements for the welfare exemption.[140] In the case of a college property, section 214(e) provides that a statement of irrevocable dedication to educational purposes in the college's articles is acceptable.

Property owned by a college and used by a church for religious purposes and activities or used by a hospital for hospital purposes and activities or used by a charitable organization for charitable purposes and activities can qualify for the welfare exemption. However, property owned by a qualifying organization (religious, hospital, scientific or charitable) and used by a college for educational purposes of collegiate grade is ineligible for the welfare exemption. Section 214(a) expressly provides that the welfare exemption is not to be construed to enlarge the college exemption.

EMERGENCY OR TEMPORARY SHELTER

Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families is eligible for exemption, if the property is owned and operated by qualified organizations meeting the requirements of section 214.[141] *Emergency or temporary shelter* means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with section 50800) of Part 2 of Division 31 of the Health and Safety Code. Property used for other than housing and related facilities for emergency or temporary shelters is not exempt, therefore, the property would receive a partial exemption to the extent of any such nonqualified use. This provision does not exempt rescue missions, halfway houses, shelters for abused women and/or children which may be eligible for exemption under other provisions of section 214. (For discussion of other housing exempt under section 214, see Chapter 5.)

PROPERTY LEASED TO GOVERNMENTAL ENTITY

Property owned by qualified organizations that lease to government is exempt under two statutory provisions that serve different purposes. The Legislature enacted section 214.6 to allow a nonprofit organization receiving exemption for its property, to lease its property, subject to specified requirements, to government without loss of exemption. Whereas Section 231 exempts property owned by a nonprofit organization for the sole purpose of constructing and/or leasing property to governmental agencies, in order to relieve them of the burden of financing and constructing facilities.

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[139] Qualifying welfare organizations refers to nonprofit organizations meeting all the requirements of section 214.
[140] Stats. 1987, Ch. 703, effective January 1, 1988.
[141] Section 214(h), Stats. 1988, Ch. 77 of SB 753, effective April 14, 1988.

Exemption of Property Leased by Organizations to Government

Under section 214.6, property may be eligible for exemption if (1) leased to an exempt governmental agency for the purpose of conducting an activity which if conducted by the owner would qualify the property for exemption, or (2) leased to a community college, state college, or state university for educational purposes. The exemption is subject to the following requirements:

- The property must be owned by an organization meeting the requirements of article XIII, section 4(b) of the California Constitution and section 214(a)(1) to (7), inclusive.
- The total income received by the organization from such a lease must not exceed the ordinary and usual expenses in maintaining and operating the property.
- If the governmental entity leasing the property is a political subdivision of the state, the property must be located within its boundaries.

The exemption is subject to the condition that the property be leased to an exempt government entity for the purpose of conducting an activity which if conducted by the owner would qualify the property for exemption. The test to be met under this condition is not whether the qualified organization would conduct such an activity; rather if the organization did conduct such an activity, would it be a qualifying activity.

A church claiming the exemption for property leased to a school district need only file a lessor's exemption claim and affirm that (1) the total rental income does not exceed the ordinary costs of operating the property, and (2) the property is located within the boundaries of the lessor exempt governmental entity leasing the same.

Exemption of Property to be Owned by Government

Section 231 exempts properties that are owned by nonprofit organizations for the purpose of leasing it to governmental agencies which will become the owners at the end of long-term leases. Such properties owned by qualified organizations and leased to government agencies or public corporations for buildings or structures includes, but are not limited to the following uses: city halls, courthouses, administration buildings, police stations, jails, fire stations, parks, playgrounds, water and wastewater facilities and toll bridges. To qualify for the exemption:

- the property must not be intended to produce revenue in the form of rents or admission, user or service fees, or charges,
- the requirements of section 214 must be complied, with the exception of the irrevocable dedication requirement. This requirement is deemed to exist if the lease provides that the property shall be transferred in fee to the government entity leased the same upon the sooner of either the time of the last rental payment is made under the lease or upon the liquidation, dissolution or abandonment of the owner, and
- the property must be located within the boundaries of the governmental entity leasing it.

The exemption applies to possessory interests of the qualified organizations,[142] as well as buildings in the course of construction, together with land on which it is located as may be required for the use and occupation of the building.[143]

Section 231(d) provides that the nonprofit organization must have the sole purpose of leasing property to government, and must qualify as an exempt organization under section 23701f or 23701u of the Revenue and Taxation Code or section 501(c)(4) of the Internal Revenue Code.

MUSEUMS AND PUBLIC LIBRARIES

Property used for free public libraries and free museums is exempt by the Constitution.[144] Libraries and museums that charge admission may qualify for the welfare exemption, if their properties are owned and operated by organizations meeting all the requirements of section 214. Property owned by museums and public libraries are not precluded from receiving the welfare exemption even though free public libraries and free museums are specifically exempt in section 202(a)(2).[145] A library or museum under construction and not yet open to the public is not exempt under section 202, but may qualify for the welfare exemption.[146]

Property used exclusively for the charitable purposes of museums and owned and operated by a qualifying organization is specifically declared eligible for the welfare exemption in section 214.14.

- Property used exclusively for the charitable purposes of museums includes property used for activities and facilities related to the primary charitable purpose of museums and reasonably necessary and incidental to those purposes. [147]
- Property is not required to be indispensable to the primary charitable purposes of museums.
- Property is not used exclusively for the charitable purposes of museums if it is used for activities and facilities not related to the primary charitable purposes of museums and not reasonably necessary or incidental to those purposes.
- Property used exclusively for the charitable purposes of museums includes property owned by a nonprofit association or organization performing auxiliary services to any city or county museum in the state and used for the storage of items donated for an annual rummage sale. The storage of such items is not considered a "fundraising activity" as used in section 214(a)(3) and the proceeds, after expenses, from the sale of these items must be used to provide support to those museums.

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[142] Section 231(b)(3).
[143] Section 231(b)(4).
[144] Section 3(d) of article XIII of the California Constitution and section 202 of the Revenue and Taxation Code.
[145] Section 214(a)(7).
[146] *J. Paul Getty Museum, supra* at page 605.
[147] See *Fellowship of Friends, Inc.* v. *County of Yuba* (1957) 235 Cal.App.3d 1190, 1196.

PROPERTY WITHIN REDEVELOPMENT AREAS

Section 214.13 provides that property may be eligible for the welfare exemption if the property is under development pursuant to the Community Redevelopment Law,[148] is dedicated to religious, charitable, scientific, or hospital purposes in the redevelopment plan and is required by the plan to be conveyed to the state, a county, a city, or nonprofit agency within three years of the completion of construction. Title of the property must pass to the state, a county, a city, or nonprofit organization entitled to a welfare exemption within three years of the completion of construction or the owner of the property will be liable for the taxes that would have been imposed and a penalty of 25 percent of the amount due.

[148] Part. 1 (commencing with Sec. 33000), Div. 24, H.&S.C.

CHAPTER 4: FUNDRAISING

Publicly-supported charitable organizations generally cannot exist without income from outside sources (i.e., contributions, gifts, grants, revenue earned from exempt activities, and/or fundraising).[149] For this reason, such nonprofit organizations consider fundraising to be critical to their existence. However, in certain instances, the courts have interpreted section 214 and the Constitution to mean that fundraising activities of a qualifying organization are not part of the organization's exempt activity; therefore, the use of an organization's property for fundraising activities which are commercial in nature and compete with business enterprises may be cause to deny the exemption. Such competitive commercial fundraising activities have been viewed by the courts as mere revenue-generating activities, unrelated to an organization's exempt purpose, which disqualify the property so used from exemption under section 214.[150]

The Board's position, based on past practice in administering the welfare exemption is that exemption should not be denied if a qualified organization's property is used for occasional fundraising or if a qualified organization's property is used regularly for fundraising that is not of a commercial character and not in competition with a business enterprise. As will be discussed in this chapter, judicial decisions have reflected the same policy in construing the basic requirements of section 214 and the Constitution, as they relate to a qualified organization's use of its property for fundraising or earning income.

STATUTORY REQUIREMENTS

Several basic requirements within section 214 are applicable to an organization's use of its property for purposes of fundraising or earnings/income:

1. The property must be *used* exclusively for religious, hospital, scientific, or charitable purposes.
2. The property must be owned and operated by community chests, funds, foundations, or corporations, organized and operated for religious, hospital, scientific, or charitable purposes.
3. No part of the net earnings of the owner shall inure to the benefit of any private shareholder or individual.
4. The property must be used for the actual operation of an exempt activity.
5. Use of the property for fundraising activities will not be taken into account if that use is occasional.

[149] In contrast to a private foundation which is funded from one source and receives its funding from investment income.
[150] *YMCA*, *supra* at page 776; *Cedars*, *supra* at page 745, decided the same day.

6. The proceeds from fundraising activities on the property must be used to further the exempt activity of the organization.

EXCLUSIVE USE REQUIREMENT - PRIMARY USE OF PROPERTY

One of the critical requirements for exemption relevant to the use of property for fundraising is that the property must be *used exclusively* by qualifying organizations for qualifying purposes and activities. The Revenue and Taxation Code does not specifically define the term *used exclusively*, but the courts have done so in a series of decisions. The Board has also defined the term in two published decisions. The Courts have said:

> Under the rule of strict but reasonable construction the phrase "exclusively used" may not be given a literal interpretation so as to mean that the property exempted must be used only, solely and purely for the purposes stated to the total exclusion of any other use. Rather, the expression "exclusively used" has been interpreted to mean not only primary but also certain types of incidental use as well.[151]

In applying this principle, the courts have determined that the following were *not exempt* purposes and uses:

- Portion of hospital property used for a thrift shop since its purpose was fundraising.[152]
- Portions of the YMCA's property used for a barbershop, a tailor shop, and a restaurant, since such uses of the property competed with similar businesses, were commercial in character and properly classified as business ventures.[153]
- Computer system leased to Sonoma County schools and used by schools (96.44 percent of total time), by parochial schools (3 percent of total time), and by private business (.56 percent of total time); the latter use was "merely a revenue generating device," and not exempt, although the proceeds were used by the County for its general purposes.[154]

In summary, a nonprofit organization's use of its property to generate income in an activity unrelated to its exempt purpose may disqualify the property so used from exemption, if used more than occasionally and such use is commercial in character in competition with business enterprises, even if the proceeds are used for exempt purposes and activities. The court established this rule in the landmark *Cedars* case in which exemption was denied for hospital property used to house a thrift shop whose proceeds funded a free children's clinic.

> ... such enterprise, laudable as its purpose manifests it to be, cannot escape the classification as an independent undertaking to raise revenue, and it cannot be said to have been incidental and reasonably necessary for the accomplishment of

[151] *Honeywell Information Systems, Inc., supra* at page 28.
[152] *Cedars, supra* at page 745.
[153] *YMCA, supra* at page 775-776.
[154] *Honeywell Information Systems, Inc, supra* at page 745.

hospital purposes. In truth, it was conducted solely for revenue purposes, as distinguished from hospital purposes.[155]

EXCLUSIVE USE REQUIREMENT - INCIDENTAL USE OF PROPERTY

The California courts have consistently interpreted the term *used exclusively* to apply not only to primary exempt uses, but also to other uses of property. This same judicial precedent makes it clear that the phrase *incidental to and reasonably necessary for*[156] refers to a use that is normally associated with or related to the accomplishment of an exempt purpose.

Examples of qualifying uses involving revenue-generating activities are:

- The operation of a small bar within the theater for the convenience of theater patrons is reasonably necessary for the fulfillment of a generally recognized function of a complete modern theater.[157]
- A snack bar, gift shop and beauty shop operated primarily to serve the convenience of persons assembled for religious purposes were reasonable incidental activities in connection with an exempt primary purpose.[158]
- Property used for the primary exempt activity of operating a boys' camp which was logged for purposes of selling the timber constituted a use of the property that was incidental to and reasonably necessary for the accomplishment of the exempt purpose. The clearing and prudent management of the land used for recreation does not destroy the exclusiveness of that use.[159]

Such uses will not disqualify an organization's property from exemption if incidental or reasonably necessary for the accomplishment of the exempt purpose.

NONQUALIFYING USES

Example 1

A qualified organization uses its property for the primary exempt purpose of providing a museum to the public while regularly leasing portions of the property to private firms for their business activities. The portions of the property leased to non-qualifying entities would be disqualified from exemption because:

- The organization's leases of the property to non-qualifying entities is not incidental to and reasonably necessary for the accomplishment of the exempt purpose, except as a method of generating rental income, and

[155] *Cedars, supra* at page 745.
[156] *Cedars, supra* at page 736; *Honeywell Information Systems, Inc., supra* at page 28.
[157] *Greek Theatre Assn.. supra* at page 781.
[158] *Saint Germain Foundation, supra* at page 917.
[159] *San Francisco Boys Club, Inc., supra* at pages 569-560.

- The use of the property by non-qualifying entities is not reasonably necessary for or in furtherance of the primary exempt purpose but rather, is in furtherance of non-exempt business purposes.

Example 2

A qualified organization uses its two-story office building for the primary exempt purpose of operating a seminary and operates a publishing business and bookstore that occupies about one fourth of the first floor. The publishing business publishes books on multi-denominational religious topics which are sold mail order and through the bookstore and which generates substantial revenue annually that is used to fund the seminary. The portion of the property used for the publishing business and bookstore would not qualify for exemption. The organization's use of the property to operate publishing and bookstore businesses is not incidental to and reasonably necessary for the accomplishment of the exempt purpose, except as a method of generating income.

QUALIFIED ORGANIZATION'S EARNINGS DO NOT CONFLICT WITH OWNED AND OPERATED FOR EXEMPT PURPOSES REQUIREMENT IN SECTION 214

The courts have held that the requirement that the property be owned and operated for a specified exempt purpose does not serve to automatically disqualify an organization's property from exemption if the property earns income or even a profit in the conduct of its exempt activity, provided that the entire proceeds are used to fund the exempt purpose.

- The mere payment of fees by elderly residents to a nursing home does not destroy its status as a charitable organization if such sums are used to pay the expenses of the operation and not to provide profit to the founders or shareholders.[160]
- A retirement home does not cease to be a charitable organization so long as its charges do not yield more than the actual cost of operation.[161]
- Private school student tuition income that results in an operating surplus does not mean the nonprofit owner is not organized and operated for charitable purposes or that its property is not used for charitable purposes and charitable activities. Neither the Constitution nor section 214 prohibits the earning of an operating surplus in the prudent management of exempt property, where no part of such earnings may inure to the benefit of private shareholder or individual and all the property, including the operating surplus, is devoted to the exempt purpose.[162]
- Net earnings derived from charging admission to theatrical and musical presentations by professional performers is not in violation of the requirement that an organization is not to

[160] *Fredericka Home for the Aged, supra* at page 795.
[161] *Fifield Manor* v. *County of Los Angeles* (1961) 188 Cal.App.2d 1, 13.
[162] *Sarah Dix Hamlin School* v. *City and County of San Francisco* (1963) 221 Cal.App.2d 336, 341-342.

> be organized and operated for profit, where none of the net earnings inure to the benefit of anyone other than the charitable organization.[163]

QUALIFIED ORGANIZATIONS' EARNINGS DO NOT DISQUALIFY PROPERTIES FROM EXEMPTION

An organization's "nonprofit" status does not mean that the organization cannot earn a profit, or an excess of revenues over expenses pursuant to federal and state income tax law. The essential difference between a nonprofit organization and a for-profit organization is found in the private inurement doctrine which applies to nonprofit entities. Under federal and state income tax law, the private inurement doctrine generally bars a nonprofit organization from the distribution of earnings to those who control and/or financially support it, in contrast to a for-profit organization which has the purpose of generating a profit for its owners.

Additionally, there is no requirement in either federal or state law that an organization, to qualify as a charitable entity, must provide its services without charge. In fact, many qualified organizations that operate their properties for purposes such as museums, planetariums, symphony orchestras, and nonprofit theaters, charge admission, but their properties are still eligible for exemption.[164] Similarly, the properties of qualified charitable health care entities do not lose their eligibility for exemption merely because they impose charges for their services.

The effect of an organization's earnings on its qualification for the exemption from property taxes under section 214 generally is consistent with state and federal income tax law. The California Supreme Court, in one of the earliest cases to address this question, provided the following guidance:

> ... the mere fact that the exempt institution may have income or earnings from its property is not necessarily decisive in determining the tax status of its property or any portion thereof. Both the constitutional provision and the statute contemplate that the exempt institution may have income and even "net earnings" without losing benefit of its exemption, provided such earnings are derived from the normal pursuit of its exempt purposes and provided further that all other conditions, enumerated in section 214 of the Revenue and Taxation Code, are met.[165]

In this case, the court found that the YMCA's income from dormitories maintained for its members was derived from a facility "*incidental to and reasonably necessary for* the accomplishment of its exempt purposes."[166]

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[163] *Greek Theatre Assn., supra* at page 782.
[164] *Stockton Civic Theatre, supra* at page 15; *Greek Theatre Assn., supra* at page 774.
[165] *YMCA, supra* at page 771.
[166] Other YMCA property used as a tailor shop, restaurant and barber shop were characterized as business ventures and were denied exemption, see discussion in this chapter under "Exclusive Use Requirement-Primary Use of Property."

PROPERTY MUST BE USED FOR ACTUAL OPERATION OF EXEMPT ACTIVITY - CONCURRENT USE FOR NONEXEMPT PURPOSE IS NOT ALLOWED

Section 214 requires that a qualifying organization's property must be used for the actual operation of an exempt activity.[167] A failure to meet that requirement can constitute a basis for disqualifying the property from exemption. Property that earns income in the conduct of an exempt activity would meet the requirement of property used in the actual operation of an exempt activity. However, if the property is not used for the actual operation of an exempt activity, the property will not be eligible for exemption. For example, a fundraising activity unrelated to the exempt purpose that is commercial in nature and in competition with business enterprises, such as leasing a portion of the property to generate rental income to a nonqualified user, would result in a denial of the exemption for the area leased. Property that is used for both exempt activities and non-exempt fundraising activities is not eligible for exemption.

OCCASIONAL USE OF PROPERTY FOR FUNDRAISING

In 1950, the California Supreme Court held that fundraising activities which are commercial in character and in competition with business ventures do not qualify for the welfare exemption even if the proceeds are used for laudable purposes. The Legislature responded by providing an exception to the rule established by the court that allowed an exemption for occasional fundraising activities. The Board has not applied any limitation on fundraising activities unless they were competitive commercial activities.

The exemption may still be granted if a qualified organization's property is used for occasional fundraising activities, even if these fundraising activities are commercial in nature and competitive with business enterprises. The Legislature amended section 214 in 1988, with the intent of permitting limited fundraising activity to occur, subject to stated limitations.[168]

A qualified organization may use its property for *occasional* fundraising activities without disqualifying it from exemption, provided that:[169]

- Those activities do not generate unrelated business taxable income, as defined in section 512 of the Internal Revenue Code, and
- The proceeds are used to further the owner's exempt activity.

Any other qualifying organization may conduct *occasional* fundraising activities using the property owned by a qualified organization, provided that:

- Those activities do not generate unrelated taxable business income, as defined in section 512 of the Internal Revenue Code, and
- The proceeds are used to further its exempt activity.

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[167] Section 214(a)(3).
[168] Section 214(a)(3)(A) and (a)(3)(B)(i), Stats. 1988, Ch. 1591, in effect January 1,1989.
[169] Section 214(a)3(A).

Occasional means use of the property by the qualifying owner or any other qualifying organization on an irregular or intermittent basis, that is incidental to the primary activities of the owner or the other organization.[170] *Fundraising activities* means both activities involving the direct solicitation of money or other property and the exchange of goods or services for money between the soliciting organization and the organization or person solicited.[171]

Unrelated Business Taxable Income (UBTI)

Unrelated business taxable income, as used in the Internal Revenue Code and for purposes of section 214, means the gross income derived from any unrelated trade or business less directly connected allowable deductions, with certain exceptions, additions and limitations as specified by the Code.[172] An *unrelated trade or business* is defined as (1) any trade or business that is regularly carried on for the production of income from the sale of goods or performance of services to produce income, whether or not profit results, and (2) the conduct of which is not substantially related to the exercise or performance of its exempt purpose or function.[173]

- A nonprofit organization's business or trade activities will be deemed to be "regularly carried on" if they manifest a frequency and continuity, and are conducted in a manner similar to comparable for-profit businesses.[174]
- The conduct of a trade or business is not substantially related because the nonprofit organization uses the proceeds for its exempt purposes and activities.
- An unrelated business does not include an activity where substantially all the work is performed for the organization without compensation, i.e., by volunteers.

While unrelated business taxable income does not affect an organization's tax exempt status, it does disqualify a property used to produce such income from receiving a full exemption from property taxes.[175] This chapter contains only a brief and general discussion on this topic. Organizations with specific concerns as to whether their fundraising activities would fall within the definition of unrelated trade or business, thus, generating unrelated business taxable income should consult their tax advisors. (See discussion of partial exemption available for property used to generate unrelated business taxable income in this chapter under "Exemption of Property Used to Generate Unrelated Business Taxable Income.")

Definition of Occasional Use

The statute defines *occasional* as use of the property on an irregular or intermittent basis that is incidental to the primary activities of the owner or other organization. *Irregular* is defined as uneven in occurrence, while *intermittent* means stopping and starting again at intervals, periodically. Thus, fundraising activities that are conducted only discontinuously, or periodically

[170] Section 214(a)(3)(B)(i).
[171] Section 214(a)(3)(B)(i).
[172] IRC, section 512.
[173] IRC, section 513(c) and (a).
[174] IRC, section 512; Reg. section 1.513-1(c)(1).
[175] Section 214.05.

would meet this statutory test. In general, fundraising activities lasting only a short period of time, or conducted on an annual recurrent basis, would not be treated as disqualifying activities. By contrast, an organization's use of its property on more than an irregular or intermittent basis for fundraising activities may not be a qualifying *occasional* use, particularly where that activity is commercial in character and in competition with business enterprises.

Examples of Occasional Fundraising Activities

Example 1

A qualifying organization annually operates a fireworks stand on its property for one week prior to the fourth of July.

Example 2

A qualifying organization conducts a dance on its property quarterly, hiring an orchestra to provide the music and charging admission.

Example 3

A qualifying organization which provides scholarships to disadvantaged youths uses a portion of its property, a large multi-purpose room, for its annual fundraising dinner, that includes a silent auction of items solicited from local businesses and individuals. The organization also uses this room for its annual winter book sale which features both new and used books solicited from individuals and businesses. The organization also allows another qualified organization to use this room for its annual fundraising dinner/dance and for its annual fundraising drive, which involves the setup of a large phone bank staffed by volunteers soliciting pledges of contributions.

Example 4

A qualifying organization operates an art museum on its property which is used quarterly for early evening wine and cheese receptions, each of which is co-sponsored by a large firm that recruits its employees to attend. All the proceeds go to the museum. The organization allows the museum to be used by three other qualified organizations for their annual fundraising receptions, which pay a use fee that merely covers the costs of using the facility.

Example 5

A large national charitable organization raises millions of dollars by conducting marches throughout the world. Full-time permanent staff in their California office organize the marches that are conducted within the state. These marches take place on a regular basis; at any given point of time there may be many marches conducted at various locations throughout the state. A small portion of the proceeds of the marches are used by the organization for the administration of its fundraising activities and the balance of the proceeds are contributed to other charitable organizations. Even though this organization regularly carries on fundraising activities, the property used to administer the marches qualifies for the welfare exemption.

Examples of Non-Qualifying Fundraising Activities

Example 1

A qualifying organization uses its parking lot every weekend from May through September for fundraising purposes. Members of the organization cook barbecue dinners for sale to the public from 11 a.m. to 6 p.m. An ad is placed in the local newspaper that indicates the price of each meal is $6.00. A phone number is listed so persons can order the meals for takeout, or for their added convenience, free delivery is provided to homes and businesses. Signs advertising the barbecue dinner sales are placed along streets and at the off ramp of the nearby freeway. This activity would disqualify the property used for the fundraising activity, which use is continuous rather than occasional.

Example 2

A qualifying organization operates a museum which contains a theater auditorium designed and equipped for showing education films in connection with its program of public education in the arts and sciences. The theater operates daily during the hours the museum is open to the public. The organization permits another nonprofit organization to operate the theater as an ordinary motion picture theater for public entertainment during evening hours every weekend.

Example 3

A qualifying organization has parking area property located near the municipal auditorium which generally features cultural and community events on a weekly basis. The organization uses its property in the evenings and during weekends as a commercial parking business when such events are being held.

Example 4

A qualifying organization allows another qualifying organization to use its large multipurpose room the first Saturday of every month for a computer fair, which is co-sponsored by a computer business that systematically and consistently advertises the event. Computers are displayed and sold, with $50 from every computer sold going to the charitable organization. This is not a qualifying fundraising activity since the for-profit company is not a qualifying organization, the use of the property is not occasional, and some of the proceeds will benefit the for-profit company.

Example of Non-Interfering Fundraising

A qualifying youth organization needs to raise funds for annual week-long camping trips and sponsors a car wash the first Saturday of every month, weather permitting. A donation of $5.00 is requested and fliers advertising the fundraising event have been distributed at the local supermarket. The father of one of the youths permits the use of part of the parking lot of his gas station. The statute seeks to reasonably limit the use of a nonprofit organization's property for fundraising, not the use of for-profit property, which is not eligible for exemption under section 214.

USE OF PROPERTY FOR COMMERCIAL ACTIVITIES

An organization's success in generating earnings does not, in and of itself, disqualify its property from exemption under section 214. The question as to whether and to what extent an organization may earn a profit will depend on the facts and circumstances of the particular case. An organization's use of its property for profit-making activities are scrutinized to determine if they were primarily carried on to advance its exempt purpose, or whether the organization was engaged in an unrelated business activity that was conducted in a manner similar to a commercial enterprise.

In *YMCA* v. *County of Los Angeles,* the Court held that facilities open to the public that are in competition with taxpaying entities are "commercial" rather than incidental to and [reasonably] related to the accomplishment of the YMCA's charitable purpose, and consequently do not qualify for the exemption.

> Under the agreed facts here, the conclusion is inescapable that the restaurant, as well as the tailor and barber shops, all available to the public as well as to plaintiff's members, and charging standard prices for their respective services in competition with like enterprises maintained in the community, are largely commercial in character and properly classified as business ventures…. Likewise commercial in aspect was the expanded "gym store"….[176]

The Court disapproved the exemption for portions of the YMCA facilities used in commercial activities, noting they were in competition with entities involved in similar business activities which paid property taxes. The fact that the income was used to fund the YMCA's exempt purpose did not make the activity producing it a qualified activity.

The Board has more recently considered this aspect of the exemption in the *Crystal Cathedral* and *Monterey Bay Aquarium* cases. In the former, the Board held that portions of the Cathedral's property, rented on a commercial basis to nonqualifying organizations not using the property for qualifying activities, were ineligible for the exemption:

> ... facilities opened to the public in competition with for-profit taxpaying entities are commercial rather than charitable and consequently do not qualify for the exemption....
>
> All of the facilities engaged in these activities pay property taxes, and those taxes represent a substantial portion of their cost of doing business. An organization exempt from those taxes under the welfare exemption consequently enjoys an unfair competitive advantage when it sells tickets to concerts by popular entertainers or rents space at commercial rates for business conferences or meetings.

[176] *YMCA*, *supra* at pages 775-776.

> The welfare exemption was never intended to convey such an advantage, and the Board must strongly support this conclusion. "[I]f the property of a tax exempt institution competes in the common business with the property of other owners, it must bear the tax as much as theirs bears; and when it is used to raise money it becomes taxable." (Citations omitted.)[177]

With respect to the Monterey Bay Aquarium, the Board, relying upon the foregoing principles, held that portions of the Aquarium's property, including a bar, food preparation area, restaurant, and a bookstore were ineligible for the exemption.[178]

In the Board's published opinion *In The Matter of the Crystal Cathedral*, the Board concluded that any planned systematic commercial use of portions of the property would disqualify those portions of the property so used.

> When the Board is evaluating the primary use of the property of an institution enjoying the welfare exemption, evidence that establishes any planned systematic commercial use of that property is cause for the welfare exemption to be denied for those portions of the institution's property so used, even if that use is clearly subordinate to the property's majority use for charitable or religious purposes.[179]

Both case law and Board precedent require adherence to the principle that the welfare exemption was never intended to provide exempt organizations which use their property for commercial purposes with an unfair competitive advantage over for-profit business entities engaged in similar activities. However, a charitable organization does not lose its exemption merely because it engages in competition with businesses that are subject to taxation. In another case involving the YMCA's qualification for the welfare exemption, the court rejected the argument that the YMCA was not operated for a charitable purpose because it engaged in an activity in competition with health club businesses.

> Viewing the New Oakland YMCA as a single complex and giving appropriate weight to its admirable youth programs, we hold that it satisfies the standard implicit in the statutory term "charitable purposes." It is immaterial under California law that some YMCA facilities compete with private health clubs. "A charitable enterprise does not lose its exemption merely because it engages in competition with businesses subject to taxation."[180]

This case can be distinguished from the first YMCA case, discussed on the previous page, that involved the use of the property for businesses unrelated to its charitable purposes and activities. The key difference in the second YMCA case is that the activity challenged as competing with

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[177] 1984 Board Decision regarding *The Crystal Cathedral of the Reformed Church in America* and the *Robert H. Schuller Tele Vangelism Association, Inc.*, at page 2.
[178] 1988 Board Decision regarding *The Monterey Bay Aquarium Foundation*, at page 2.
[179] 1984 Board Decision regarding *The Crystal Cathedral of the Reformed Church in America* and the *Robert H. Schuller Tele Vangelism Association, Inc.* at page 3.
[180] *Clubs of California for Fair Competition* v. *Kroger et al.* (1992) 7 Cal.App.4th 709, 721.

health club business is within the YMCA's charitable purpose and activity to provide athletic and recreational facilities and programs.

FACTORS USED IN DETERMINING WHETHER ACTIVITY IS COMMERCIAL

An organization's financial success does not, by itself, cause disqualification of its property from exemption. The issue of whether a revenue generating activity is a disqualifying commercial activity is decided on a case by case basis, taking into account all the facts of the situation. Board staff considers a number of factors in determining whether an organization is involved in an activity that is commercial in nature:

- The presence of substantial profits
- Consistent profit margins over a period of years
- If prices charged for goods sold or services provided are in line with commercial enterprise
- If activity is in direct competition with commercial enterprise
- Advertising of goods or services in a commercial manner
- Whether employees' compensation is reasonable for the market
- The existence of future plans for growth with the purpose of increasing profits
- Whether the source of the profits is unrelated to the organization's primary, exempt purpose and activity

In summary, the manner in which the organization operates its revenue generating activities are compared to similar for-profit enterprises to determine if such activities are conducted in a manner indistinguishable and in competition with commercial enterprises.

MUSEUM GIFT SHOPS

Museum gift shops may qualify for the welfare exemption as property related to the primary charitable purpose of the museum and reasonably necessary and incidental to that purpose. The following factors are considered when determining whether a museum gift shop qualifies for the exemption:

1. The gift shop location
   - within the museum and accessible only to museum patrons who enter through the museum (factor in favor of granting the exemption)
   - within the museum, but also has a separate entrance to the street that allows for access from the general public without entering the museum (factor against granting the exemption)
2. Hours of operation of the gift shop
   - operates the same hours as the museum (factor in favor of granting the exemption)

- separate hours of operation; operates the hours that the museum is open, and additional hours when the museum is closed (factor against granting the exemption)

3. Kind of merchandise sold in the gift shop

- substantially all the merchandise is related to the museum's exempt purpose and activity (factor in favor of granting the exemption)
- substantial amounts of the merchandise are unrelated to the museum's exempt purpose and activity (factor against granting the exemption)

4. Advertising of the gift shop in a commercial manner with intent to attract the general public to the gift shop, typically through the media, Web site, or yellow pages (factor against granting the exemption)

If the gift shop is located within the museum, without street access, and selling related merchandise, typically, it is found eligible for exemption as a facility related to the primary charitable purpose of the museum and reasonably necessary and incidental to that purpose. However, if the gift shop has street access, factors two through four are applied to determine if the gift shop is a commercial enterprise in competition with taxpaying businesses. A gift shop determined to be in competition with taxpaying businesses is considered commercial rather than charitable and is, therefore, not eligible for the exemption.[181]

EXEMPTION OF PROPERTY USED TO GENERATE UNRELATED BUSINESS TAXABLE INCOME

The topic of unrelated business taxable income was discussed briefly earlier in this chapter under the discussion of occasional fundraising. That discussion was to inform that activities that generate UBTI are not within the scope of the statutory provisions that allow organizations to fundraise occasionally without jeopardizing the exemption for their properties.[182] This discussion explains how to determine the partial exemption pursuant to section 214.05 for properties which have been found eligible for the exemption, but are used for activities that generate unrelated business taxable income.

For example, if the museum is exempt under the charitable purpose aspect of section 214, and the museum gift shop is exempt as a facility related to the primary charitable purpose of the museum and reasonably necessary and incidental to those purposes, but the gift shop generates UBTI, the provisions of section 214.05 apply to determine the amount of a partial exemption for the gift shop.

[181] *YMCA* v. *County of Los Angeles* (1950) 35 Cal.2d 760; 1988 Board Decision regarding Monterey Bay Aquarium Foundation.
[182] Section 214(a)(1)(A) and (B).

An unrelated trade or business is defined as (1) any trade or business that is regularly carried on for the production of income from the sale of goods or performance of services to produce income, whether or not profit results,[183] (2) the conduct of which is not substantially related to the exercise or performance of its exempt purpose or function.[184] The term does not include any trade or business which is carried on, in the case of an organization described in 501(c)(3), by the organization primarily for the conveniences of its members, patients, officers or employees.

An organization exempt from income tax under section 501(c)(3) of the Internal Revenue Code is taxed on income generated from unrelated business activity.[185] *Unrelated business taxable income* is defined in section 512 of the Internal Revenue Code as the gross income derived from any unrelated trade or business, less directly connected allowable deductions, with certain exceptions, additions and limitations as specified by the Code. Property receiving the welfare exemption that is used to generate that income may be subject to property taxes.[186] If the property of an organization is granted an exemption pursuant to section 214, that property is deemed to be used exclusively for the organization's exempt purposes.[187] However, the organization's use of the property to generate unrelated business taxable income (UBTI) triggers the application of section 214.05, which contains three sets of circumstances for determining the amount of exemption allowable for property that has qualified for the welfare exemption.

1. If the property is used for activities that produce both tax-exempt income[188] and UBTI, and those activities are attributable to a "reasonably ascertainable portion" of the entire property, then that portion of the property is entitled only to a partial exemption.

   The exemption of that portion of the property is equal to that proportion of its total value which represents the organization's gross tax-exempt income attributable to that portion divided by the organization's total income attributable to that portion. The remaining proportion of the total value of that portion of the property is subject to taxation.

   - 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 UBTI. 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.

2. If the property is used for some exempt activities[189] that produce no income and some of which produce income taxable as UBTI or produce both income that is taxable as UBTI

[183] IRC, section 513(c).
[184] IRC, section 513(a).
[185] IRC, sections 511 and 512.
[186] Section 214.05.
[187] The application of the welfare exemption is not expanded if section 214.05 is applied only to properties that first are found eligible under section 214, consistent with subdivision(e) of section 214.05, which provides that the statute is not intended to enlarge [the scope of] the welfare exemption.
[188] Throughout this discussion "income tax exempt" refers to income exempt from income or franchise taxation.
[189] Exempt for property tax purposes.

and tax-exempt income, and those activities are attributable to a "reasonably ascertainable portion" of the entire property, then that portion of the property is entitled only to a partial exemption.

The exemption is equal to that proportion of the total value of the portion of the property which the amount of time actually devoted to the organization's exempt non-income-producing activities attributable to that portion bears to the total amount of time actually devoted to all of the organization's activities attributable to that portion. The remaining proportion of the total value of that portion of the property is subject to taxation.

- This paragraph differs from paragraph (1) in that the "reasonably ascertainable portion" of the property used to produce income is also used for non-income-producing activities. Thus, a time measure is used to determine the amount of exemption allowable.

- Assume the museum gift shop in the example above is also used for non-income-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 does not provide a method of calculating time ratios, the method illustrated above is reasonable and promotes uniformity.

3. 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 to only a partial exemption. This should be calculated by applying the formulas described in paragraphs (1) or (2) to the entire property.

Notwithstanding the above, section 214.05, subdivision (c) provides that if more than 75 percent of an organization's income 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. The exemption is equal to that proportion of its property's total value which the amount of the organization's tax-exempt income attributable to its activities in California bears to the amount of the organization's total income attributable to its activities in California.

This provision in subdivision (e) pertains to a few organizations which operate in several counties and cannot allocate UBTI to a specific location or even to a specific county. For example, a health maintenance organization's accounting staff might be aware that a certain percentage of the organization's income is taxable as UBTI, but that taxable income cannot be allocated to a specific location. Therefore, all properties of the organization 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.

FILING REQUIREMENTS FOR PROPERTY PRODUCING UBTI

Whenever exemption is claimed for property under section 214 and the activities conducted by the organization on that property produce unrelated business 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 non-income-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 section 214.05, 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; and
5. Any other information as prescribed by the Board.[190]

NO EXPANSION OF EXEMPTION

Section 214.05, subdivision (e) provides that nothing in section 214.05 shall be construed to enlarge the welfare exemption provided in section 214. We recommend inquiry of the Internal Revenue Service on a case by case basis if you question whether certain merchandise held for sale is subject to the unrelated business income tax.

HOSPITAL PROFITS

For the discussion of applicable law as to profits of qualified hospital organizations, see Chapter 2, under "Hospitals–10 Percent Provision."

MISCELLANEOUS FUNDRAISING ACTIVITIES

Thrift Stores

Generally, property used for thrift stores is not exempt because it is used for fundraising purposes.[191] For purposes of qualifying for exemption under section 214, the thrift store must be part of a formal, planned rehabilitation program operated by the qualifying organization in which

[190] Section 214.05(d).
[191] *Cedars*, *supra* at page 745.

persons are rehabilitated through training and employment and leave to become gainfully employed elsewhere. Merely providing permanent employment to a person in a wheelchair, for example, would not make a thrift store exempt.

It is not necessary that the persons being rehabilitated be physically employed in the store. The goods being sold merely must be processed by persons being rehabilitated. Often, the goods sold at such thrift stores have been processed by persons being rehabilitated at processing and distribution centers, then shipped to the stores to be sold.

Certain thrift stores may be eligible for exemption under the following conditions:

- The thrift store sells goods which have been processed in some manner by persons who are being rehabilitated through a rehabilitation program conducted by the claimant.
- The persons being rehabilitated are employed in the operation of the thrift store.
- The number of persons being rehabilitated compared with the number of other employees indicates that a true rehabilitation program exists.
- The rehabilitation program is recognized by state Department of Rehabilitation or is under the auspices of a city or county rehabilitation program.
- The rehabilitation program is not unlimited in duration and includes follow-up or monitoring of persons rehabilitated to determine if their placement in employment has been successful.
- The rehabilitation program includes an evaluation process to gauge its effectiveness.

The manager's compensation is reasonable: a management contract *may* provide for remuneration to the manager on a reasonable percentage of gross sales, provided there is a maximum dollar amount of salary and that amount is reasonable. The determination of whether a property qualifies for exemption as a thrift store will be made by looking at all the facts of the particular situation; therefore, this list of criteria is not all inclusive.

In certain circumstances, property used for rehabilitation living quarters may be eligible for exemption. For additional discussion regarding exemption of living quarters associated with a rehabilitation program see Chapter 5, *Housing*.

Bingo

Bingo games may or may not come within the purview of the welfare exemption. Section 215.2 authorizes the conduct of certain bingo games on properties that otherwise qualify on the basis of a charitable or religious use and ownership by a qualifying organization, provided the local jurisdiction has adopted a local ordinance. Bingo can qualify only as an incidental activity on the property, and that activity must conform to the provisions of section 326.5 of the Penal Code.

In non-authorizing localities, use of a qualified organization's property for this fundraising activity can occur occasionally, as permitted in section 214(a)(3)(A), however, the use of the property for bingo cannot interfere with the primary exempt use of the property. If the property

of a qualified organization in a non-authorizing locality is used for bingo on a regular basis, the property will not be eligible for exemption. Thus, use of the property for a bingo as a primary activity (i.e. a bingo parlor) would be taxable, regardless of the use of the proceeds.

CHAPTER 5: HOUSING

INTRODUCTION

The welfare exemption is available for property used for various housing purposes: (1) housing property used exclusively for exempt purposes,[192] (2) housing for employees of qualified organizations,[193] (3) housing for lower-income households,[194] (4) housing for low and moderate income elderly and/or handicapped families,[195] (5) emergency or temporary shelter and related facilities for homeless persons and families.[196] This chapter discusses the requirements for qualifying for exemption for each kind of housing program.

HOUSING PROPERTY USED EXCLUSIVELY FOR AN EXEMPT PURPOSE

The question of whether the welfare exemption extends to property used for housing and related facilities[197] provided by religious, hospital, scientific, and charitable organizations has presented property tax administrators and the California Courts with some difficult decisions over the years. Property tax administrators have historically taken a narrow view of the exemption, and have viewed much housing to be non-exempt on the grounds that the property is being used primarily for private residential purposes rather than exempt purposes, and is not being used exclusively for exempt purposes as required by section 214.

The courts, however, have taken a broader view, consistent with the Supreme Court's directive that statutory and constitutional provisions granting exemption are to be construed strictly, but reasonably. The Court stated that

> …[t]he rule of strict construction does not require that the narrowest possible meaning be given to words descriptive of the exemption, for a fair and reasonable interpretation must be made of all laws, with due regard for the ordinary acceptance of the language employed and the object sought to be accomplished thereby.[198]

The Court recognized that too narrow an interpretation (1) would be inconsistent with the ordinary language of the provisions; and (2) would frustrate the underlying purpose of the constitutional and statutory provisions, to provide a property tax exemption to the properties of qualifying nonprofit organizations. Thus, the courts, in a number of cases, have applied the

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[192] Section 214(a).
[193] Section 214(i).
[194] Section 214(g).
[195] Section 214(f).
[196] Section 214(h).
[197] Related facilities have not been defined, but it is reasonable to assume that what is intended to be included are facilities such as dining rooms, kitchens, showers and toilets, and common rooms such as lounges, living rooms, recreation rooms and laundry facilities. When used in this discussion, the term *housing* includes *related facilities*.
[198] *Cedars*, *supra* at page 735.

principle that the term *exclusively used* is not to be applied literally so as to mean only, solely and purely for the stated exempt purposes to the total exclusion of any other use. Rather, the courts have said that the term not only applies to the primary use or purpose, but also to uses that *are incidental to and reasonably necessary for* the accomplishment of the exempt purposes of the organization. Thus, the courts have exempted properties used for a wide range of housing as property used exclusively for exempt [religious, charitable or hospital] purposes within the meaning of section 214(a).

JUDICIAL AND ADMINISTRATIVE STANDARDS

Decisions of Courts

As the following cases illustrate, the courts have applied two similar, but slightly divergent statements of the standard for exemption; that the housing must be *incidental to and reasonably necessary for the accomplishment of the exempt purpose* of the nonprofit organization or that housing be *institutionally necessary* in accomplishing the organization's exempt purpose in order to qualify for exemption as property used exclusively for [exempt] purposes within the meaning of section 214(a). The California Supreme Court used these terms interchangeably and/or simultaneously in four decisions issued on the same day in connection with the application of the exemption to property used for housing. These terms should be construed as having the same meaning, and constituting a single, uniform standard for exemption purposes.

- The California Supreme Court first considered the application of the welfare exemption to housing in the landmark case *Cedars of Lebanon Hospital* v. *County of Los Angeles,*[199] which determined how the welfare exemption applied to hospitals and hospital facilities. The court, under the rule of strict but reasonable construction, interpreted the exclusive use requirement of section 214(a), to include any facility which is incidental to and reasonably necessary for the accomplishment of hospital purposes; in other words, any facility which is reasonably necessary for the fulfillment of a generally recognized function of a complete modern hospital. Applying this test, the court exempted housing for interns, resident doctors, student nurses, and certain other hospital employees deemed essential to the operation of a complete modern hospital on a 24-hour basis.
- On the same day in 1950, the court issued an opinion in the case of *Serra Retreat* v. *County of Los Angeles*[200] holding that the exemption applied to living quarters for four priests and six lay-brothers who attended to the needs of laymen who attended religious retreats. The court held that the provision of housing for essential retreat personnel is an institutional necessity and constitutes property used exclusively for religious purposes. The free retreats lasted 50 hours - typically on weekends - and were directed toward laymen for the purpose of a silent religious meditation and reflection. The priests provided sermons, meditations and religious services. The lay-brothers did cooking, housekeeping, laundry, gardening and maintenance work, and generally provided for the "temporal needs" of the retreatants.

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[199] *Cedars, supra* at page 759.
[200] (1950) 35 Cal.2d 755. *Serra Retreat, supra* at page 759.

- In a third case on that day in 1950 concerning the applicability of the exemption to property used for residential purposes, the California Supreme Court applied the Cedars test to exempt YMCA dormitory rooms rented to young men at minimum cost.[201] The court found that such housing constituted facilities incidental to and reasonably necessary for the accomplishment of the YMCA's charitable/religious purposes, and therefore, were within the exemption as property used for an exempt purpose. The court observed that the dormitory facilities were designed to provide young men with a place of study, recreation and residence; thus, the dormitories were reasonably necessary for the accomplishment of the YMCA's religious and charitable purposes of promoting good citizenship and Christian ideals and character. The court stated that the fact that plaintiff dormitories, as a secondary consideration, also serve the residential purposes of the occupants, does not destroy the effect of their dominant purpose as property used exclusively for religious ... or charitable purposes within the contemplation of the welfare tax exemption law.
- The Supreme Court also exempted property used for housing in a fourth case decided on that day, *Fredericka Home for the Aged* v. *County of San Diego.*[202] In addition to finding that the exemption applied to the main facility providing a home for elderly people, the court upheld the exemption for that portion of the property used as living quarters for personnel needed to care for the elderly on a 24-hour basis. Such personnel, the court said, lived on the premises as a matter of *institutional necessity.*
- Thus, under the principles set forth in these leading cases, the welfare exemption has been found to apply to a broad range of property used for housing, as further illustrated by the following cases: Temporary low-cost housing for missionaries, clergymen, other religious workers and their families while in the United States was held exempt as property used exclusively for the church's religious and charitable purposes.[203] The court held that the property maintained to provide temporary housing for workers on furlough status was an integral part of the church's religious and charitable operations. Further, the court observed that the housing facility furthered the church's foreign mission program of spreading Christianity throughout the world.
- A private school's property used for student board and lodging was exempted as a use of property within the school's educational purpose.[204] Although most of the school's students were day students, some students relied upon the school for board and lodging. The court stated that board and lodging is a one of the services provided by the school and is reasonably related to the exempt school activity.
- Dormitories and related facilities for persons assembled for religious instruction held exempt as within the organization's religious purpose, while housing for caretakers and

[201] *YMCA*, *supra* at pages 769-770.
[202] (1950) 35 Cal.2d 789.
[203] *House of Rest of the Presbyterian Church in the USA* v. *County of Los Angeles* (1957) 151 Cal. App. 2d 523, 536.
[204] *Sarah Dix Hamlin School*, *supra* at page 342.

maintenance workers at a religious conclave site were exempted as institutionally necessary.[205]

Opinions of California Attorney General

The California Attorney General has concluded that the residence of a full time resident manager of the conference grounds owned by the California-Nevada Conference of the Methodist Church qualified for the welfare exemption. The manager's duties included complete responsibility for the maintenance and condition of all the property at the conference grounds. He saw that the facilities were in readiness for groups arriving and that supplies such as communion cups, hymnals, chairs and beds were available and ready. He was responsible for protection of the property from fire and snow damage in season. In essence, he was the representative of the management of the property and the administrative officer present. He was considered by the Methodist Conference to be necessary for the effective operation of the property.[206]

Housing For Employees: The Statutory Standard For Exemption

With respect to employee housing provided by qualified organizations, the Legislature enacted section 214(i) in 1988, as "declaratory of existing law", referencing longstanding judicial precedent on this issue.[207] Section 214(i) states in relevant part that:

> Property used exclusively for housing and related facilities for employees ... shall be deemed to be within the exemption ... to the extent the residential use of the property is institutionally necessary for the operation of the organization.

Thus, the statute provides that property used for employee housing will be exempt if it is *institutionally necessary* for the operation of the organization.

Property Tax Rule 137, *Application Of The Welfare Exemption To Property Used For Housing*

In 1999 the Board of Equalization adopted Property Tax Rule 137, *Application of the Welfare Exemption to Property Used For Housing*, effective December 31, 1999.[208] The purpose of Rule 137 is to clarify that the welfare exemption from property taxation applies to housing and related facilities owned and operated by qualified nonprofit organizations and to establish a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.

Rule 137 provides the following guidance for applying the welfare exemption to housing:

> (a) Housing and related facilities owned and used by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific or charitable purposes is eligible for the welfare exemption from

[205] *St. Germain Foundation*, *supra* at page 918.
[206] 959 34 Ops. Cal.Att.Gen. 175.
[207] Section 2, Stats. 1988, Ch. 1591.
[208] Rule 137 interprets sections 4(b) and 5 of Article XIII of the California Constitution and sections 214, 214.01, 214.1, 214.2, 254, 254.5, and 255 of the Revenue and Taxation Code.

property taxation as provided in Revenue and Taxation Code section 214. A single uniform statewide standard shall be used to determine whether the welfare exemption applies to housing and related facilities owned and used by qualified organizations. The standard is whether the use of the property by the organization for housing and related facilities is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization. For purposes of applying the uniform statewide standard, the phrase "Use of property that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization" includes the use of property that is institutionally necessary for the operation of the organization as provided in subdivision (i) of section 214 of the Revenue and Taxation Code.

(b) For purposes of determining whether property used for housing and related facilities is eligible for the welfare exemption, the terms "incidental to and reasonably necessary for" and "institutionally necessary" are identical and interchangeable; the term "institutionally necessary" means and includes "incidental to and reasonably necessary for" and vice versa. No distinctions in application of the welfare exemption to housing and related facilities shall be based on any difference or divergence between the terms.

(c) For purposes of determining eligibility for the welfare exemption, it is the use of the housing and related facilities by the organization owning the property that is to be considered, not the use by the occupants. If the organization's use of the property is incidental to and reasonably necessary for the accomplishment of the organization's exempt purposes, the property is eligible for exemption. The occupant's use for personal or residential purposes is secondary to the organization's primary exempt purpose and shall not disqualify the property from exemption either in whole or in part.

(d) The location of the property in relation to other property owned and used by the exempt organization is irrelevant to the application of the exemption. It is the use of the property by the organization which is the determining factor. The fact that the housing is located on property in a remote area may be considered in determining whether the housing is incidental to and reasonably necessary for the operation of the organization.

(e) EXAMPLES: The following examples illustrate the application of the welfare exemption to housing and related facilities

Example No. 1

The two-story building with seven completely-furnished apartments is used exclusively to provide temporary low-cost housing to missionaries, clergy, other religious workers and their families on furlough status while in the United States. The articles of incorporation of the nonprofit religious corporation which owns

and operates the property provide that its purpose is to provide housing for missionaries, clergymen, other religious workers and their families who work in establishing and furthering its religious purposes throughout the world. This housing is exempt as a facility incidental to and reasonably necessary for the accomplishment of the church's religious and charitable purposes.

Example No. 2

The property of a private school is used to provide board and housing to students. Although most of the school's students were day students, some students relied upon the school for board and lodging. These services provided by the school are reasonably related to the exempt educational activity, and are an exempt use of the property within the school's educational purpose.

Example No. 3

Property owned by a nonprofit corporation is used for housing and related facilities for persons who assemble two weeks each year for purposes of religious instruction and worship. The residential facilities are exempt as within the organization's religious purpose. Housing for caretakers or maintenance workers required to reside at the religious conclave facility is exempt as institutionally necessary.

Example No. 4

A nonprofit religious organization owns housing which it provides to its ministers and their families. Organizational documents require the church to provide housing as part of a system that allows the organization flexibility in assigning the clergy, aids in recruiting and keeping the clergy and provides the clergy with privacy and respite. The property also is used regularly for church functions such as youth meetings and organizational committee meetings. The church's use of its property to provide housing for its clergy is exempt as reasonably necessary for the furtherance of its religious purpose.

Example No. 5

The primary missionary activity of a nonprofit religious organization is to publish and disseminate its religious literature to the general public. The organization owns a complex consisting of a temple and six apartment buildings that provide work areas for about 250 devotees, about one-half of whom are involved in the publishing and distribution of the organization's religious books and magazines. The work areas are frequently used at night as sleeping areas since most of the devotees live in the rooms in which they work. The devotees follow a seven-hour daily regimen of communal and individual daily prayers, meditations, chanting, and attendance at temple services and observe a strict diet which necessitates

living in the temple complex. Property used for housing the devotees in the temple complex is exempt as reasonably necessary for the fulfillment of the organization's religious objectives.

The examples are merely illustrative, and are not intended to establish exclusive standards or guidelines.

REQUIREMENTS FOR EXEMPTION

Rule 137 specified a single statewide standard for exemption for property used for housing and related facilities. Previously more than one standard had been considered by some in administering the exemption, resulting in confusion and inconsistency in administration. The most important principle in the single statewide standard, a principle that was not universally recognized in the past, is that it is the use of the property by the organization owning the property that is the determining factor, not the use by the occupants of the housing. If the use by the organization is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization, the property is exempt.

The recognition by Rule 137 of this principle had some important implications, which changed how some had administered the exemption in the past. For example, the use of the property by the owner organization solely for a residence for a member of the clergy to provide respite is an exempt purpose where that use is in furtherance of the religious purposes of the organization as set forth in the organization's tenets. Recognition of this principle also eliminated the past practice of exempting portions of the living space used for consultation and meetings with parishioners, and assessing the private living quarters of the clergy. The entire property can be exempt where the organization's purposes include both residential and communal use.

The assessor can require a claimant to submit documentation in support of its claim for exemption for property used for housing and related facilities. Accordingly, all nonprofit organizations may be required to submit documentation that establishes why the organization's use of the property is incidental to and reasonably necessary for the exempt purposes of the organization. Required documentation could include: (1) a copy of the organization's tenets, canons or other written policy confirming that the organization has the established practice or obligation, to provide housing to certain employees and/or volunteers to carry out the exempt purpose of the organization; or (2) a statement explaining how the use of the property for housing and related facilities is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization; or (3) a statement or other information confirming that the property is used for housing, and if other uses are also made of the property, the nature of those uses.

HOUSING FOR LOWER-INCOME HOUSEHOLDS

Subdivision (g) of section 214 extends the welfare exemption to property owned and operated by qualifying organizations and used exclusively for rental housing which is occupied by lower-

income households.[209] Qualifying organizations include limited partnerships in which the managing general partner is a qualified nonprofit corporation meeting the requirements of section 214, as well as religious, hospital, scientific, or charitable funds, foundations or corporations. Section 214(g) provides a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower-income households represents of the total property.

CRITERIA FOR THE PROPERTY TO QUALIFY FOR EXEMPTION

The 2000 amendments to section 214, subdivisions (g)(1) and (g)(2), revised the requirements for low-income housing properties for the 2000-2001 fiscal year.[210]

Low-income housing properties owned by eligible nonprofit corporations or limited partnerships in which the managing general partner is an eligible nonprofit corporation may qualify for exemption pursuant to one of the following criteria:

1. The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower-income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance;[211] or

2. The owner of the property is eligible for and receives low-income housing tax credits pursuant to section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.[212]

3. Low income housing properties owned by eligible nonprofit corporations may also qualify for exemption under an additional criteria added by the 2000 amendments if 90 percent or more of the occupants of the property are low-income households within the prescribed rent levels of section 50053 of the Health and Safety Code.[213]

   - The total exemption amount may not exceed $20,000 of tax for any fiscal year allowed for a single property or multiple properties owned by nonprofit corporations *that are not financed by government loans, as specified in section 214 (g)(1)(A), or do not receive low income housing tax credits as provided in section 214 (g)(1)(B).* (This limitation does not apply to properties owned by a limited partnership in which the managing general partner is a nonprofit corporation.)

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[209] Section 237, effective January 1, 2000, provides exemption for certain low-income housing properties of federally recognized Indian tribes. This section is not within the welfare exemption, thus, it is administered solely by the county assessor.
[210] Chapter 601, Statutes of 2000 (AB 659).
[211] Section 214(g)(1)(A).
[212] Section 214(g)(1)(B).
[213] Section 214(g)(1)(C).

- Additional reporting is required. Claimants with properties qualifying for exemption under section 214(g)(1)(C) must list all the counties in which such properties are located. The $20,000 may be applied to one property or may be allocated among several properties.

The Assessors' offices must provide to the Board a listing of all properties to which all or a portion of the $20,000 of tax exempt cap has been applied, and the tax dollar amount applied to each property. The Board issued a County Assessors Only letter (CAO 2001/013), which includes a form for assessors to list the properties to which the $20,000 of tax exemption limitation applies. The form requires the name of the nonprofit corporation owning the property, the corporate identification number of the nonprofit corporation, the assessors' parcel number(s) for the property, the property's address, and the amount of the $20,000 exemption applied to the property. In addition, documentation is requested that indicates the tax exemption amount applied to each property. The Board will conduct a statewide match by corporation name and identification number to verify and ensure that the $20,000 tax exemption cap has not been exceeded statewide and provide the matching process results to the assessors' offices for any further action, if needed.

Restrictions on the Use of the Property

Owners of low income housing properties that are limited partnerships in which the managing general partner is a qualified nonprofit corporation must certify and ensure that there is either (1) an enforceable and verifiable agreement with a public agency; or (2) a recorded deed restriction that restricts the project's usage, as specified. (Section 214(g)(2)(A)(i))

The 2000 amendments to section 214(g)(2)(A)(i) allow nonprofit organizations that own and operate low income housing properties to also qualify through the use of an "other legal document" to restrict the property for rental to lower income households.

Pursuant to the Board's authority in sections 254 and 254.5, the Board requires that the claimant provide a copy of the regulatory agreement, deed restriction or other legal document. The document should be filed with the assessor of the county where the property is located with the annual claim (BOE-267-A) or first filing (BOE-267), supplemental affidavit(s), and any other relevant documents.

Enforceable and Verifiable Agreement with a Public Agency

The term *agreement* references a regulatory agreement with a government agency that has financed the acquisition, rehabilitation, development or operation of a low-income housing project. Such agreements generally contain the restriction that the property must be used for qualified low-income tenants for an extended period of time and are recorded with the county recorder in which the property is located.

Owners of properties awarded federal and/or state low income housing tax credits that are claiming exemption for the first time may submit a Preliminary Reservation Letter issued by the California Tax Credit Allocation Committee to satisfy the requirement of providing a regulatory

agreement, which is not available until later. The regulatory agreement generally is not recorded as a deed restriction until three to six months after completion of construction of the low income housing property.

Recorded Deed Restriction Requirement

A recorded deed restriction meeting the requirements of section 214(g)(2)(A)(i), must state that the property's usage is restricted to lower-income housing, as specified by applicable statutory provisions. Not all owners of low-income housing properties will be able to meet the requirement of a recorded deed restriction contemplated by the legislative revision to section 214(g)(2)(A). A deed restriction is a limitation on the use of property, typically imposed by a grantor in the deed used to convey the property to the new owner [grantee]. Thus, under California law, a deed restriction requires two persons, a grantor and a grantee, or two property owners, in order for a restriction on the use of property to be enforceable. Accordingly, an owner of a low-income housing project such as a nonprofit charitable and/or religious corporation, would not be able to meet the "recorded deed restriction" requirement by recording a new deed in which it unilaterally imposed the restriction on its property required under section 214(g)(2)(A).

The recorded deed requirement may be met by low-income housing properties operated by two entities, a limited partnership and a nonprofit [corporation] managing general partner. These entities may enter into a personal covenant or contract and record it in the county where the low-income housing property is located. Thus, if one entity failed to comply with the restriction on the use of the property for low-income housing, the other entity would have a cause of action based on contract law principles. (See example of deed restriction in Appendix D.)

Other Legal Document

Nonprofit organizations that own and operate low income housing properties may also use an "other legal document" to restrict the property for rental to lower income households.

- A document submitted as an "other legal document" must be adopted as a resolution or statement of policy by the organization's board of directors, or executed by the organization's chief executive officer, provided that the board of directors has delegated this authority in writing to the chief executive officer.
- The document should restrict the property, such that a minimum of 90% of the occupants (units) of the property are low income households, utilizing the language in section 214(g)(2)(A)(i). (See Appendices G and H, for examples of "other legal document" and a "Statement by Chief Executive Officer" that would satisfy these requirements.)

Thus, nonprofit corporations that own and operate low income housing properties may meet the requirement that the property be restricted to use for low income housing by through the use of one of the following documents:

- a copy of a regulatory agreement with a public agency,
- a copy of a recorded deed restriction, or

- a copy of an "other legal document."

Additional Requirements

Another requirement is that the owner must also certify that property tax savings are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower-income households.[214] The certification requirements are met by the property owner completing and signing Form BOE-267-L, *Welfare Exemption Supplemental Affidavit—Lower-Income Households*. The certifications are under penalty of perjury on the Supplemental Affidavit, which must be completed and submitted with the Welfare Exemption Claim (Form BOE-267 or BOE-267-A). (See Chapter 6, Welfare Exemption Claim Process, for filing requirements.)

Interpretation of Multiple Regulatory Agreements

Some of the low-income housing properties have received financing from several governmental agencies. It is common for each agency to have a regulatory agreement restricting rent levels and a portion of the property to occupancy by low-income households. Typically, the agreements are inconsistent and overlapping. In this situation where there are multiple regulatory agreements, the agreements should be reviewed to determine the following:

- Where an agreement states that it is exclusive, it controls.
- If any of the agreements do not specifically state that they are exclusive, meaning that it controls over all other such agreements, the agreement with the most restrictive income and rent limits should be used to determine eligibility for the exemption.
- Agreements that specify that they are subordinate or subject to other financing programs are subject to the latter's income and rent restrictions.

The following example illustrates how to interpret two agreements restricting tenant occupancy and rent levels:

> Project A has received tax credits from the California Tax Credit Allocation Committee ("TCAC"), based on a commitment that 100% of the units will be rented to tenants whose income does not exceed 60% of the median. The project has also qualified for local community-sponsored tax exempt bond issue administered by that city's housing department. The bonds are subject to a commitment that at least 20% of the units be occupied by tenants with income not exceeding 50% of median. In order to comply with both agreements, the owner must maintain 20% or more of the units with tenants not exceeding 50% of median, and the balance of the units not exceeding 60% of the median income. Neither agreement states that it is exclusive or controlling. Accordingly, the project (if it meets all other qualifications) would be eligible for 100% exemption. It is irrelevant which of the two agreements was executed first or second, as both must be given effect.

[214] Section 214(g)(2)(B) and (g)(3). In general, Board staff and the Assessor may require supporting documentation.

Requirements for Limited Partnership Owners

Two-Entity Structure; Limited Partnership and Managing General Partner

Subdivision (g) allows for a two-entity operational structure, where one entity, a limited partnership, owns the property used for low-income housing, and another entity, an eligible nonprofit corporation, is the "managing general partner of that limited partnership." This two-entity structure must be reflected in both the terms of the limited partnership agreement and in the statement of limited partnership filed with the Secretary of State's office.

The provisions of the Revised Limited Partnership Act, Corporations Code Sections 15611-15681, are applicable to limited partnerships formed for the purpose of owning low-income housing. The limited partnership is validly formed only if it meets the requirements of Corporations Code Section 15621. Its formation is completed when its Certificate of Limited Partnership is recorded with the Secretary of State.[215] Subdivision (c) of Corporations Code Section 15621 states that for *all purposes*, a copy of the certificate of limited partnership (Form LP-1) duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and constitutes prima facie evidence of its existence.

Even if the limited partnership requirements are met, the exemption under section 214(g) applies only if and when its managing general partner is an "eligible nonprofit corporation." By way of example, if the certificate of limited partnership is filed with the Secretary of State's Office, in June 1997, and the nonprofit organization was incorporated later, in August 1997, the limited partnership which owns the low-income housing property is not qualified under Section 214(g) in 1997. Only after the managing general partner of the limited partnership becomes an "eligible nonprofit corporation," and the limited partnership agreement establishes that the nonprofit corporation is a managing general partner, could the limited partnership thereafter be qualified for the exemption under Section 214(g).

Thus, if the limited partnership agreement is amended or restated to admit a qualified "managing general partner," and the certificate of limited partnership is amended, the limited partnership may qualify for property tax exemption under section 214(g), if the effective date of the amended or restated agreement is prior to lien date of the fiscal year for which the claim for exemption is filed, or prior to the date of acquisition of the property, as the case may be.[216] If as of the lien date the managing general partner of the limited partnership is not a qualified nonprofit corporation pursuant to section 214, the exemption claim shall be denied.

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[215] The Office of the Secretary of State maintains filings and files for limited partnerships. Corporations Code section 15621 provides in this regard that in order to form a limited partnership, the general partners shall execute, acknowledge, and file a certificate of limited partnership and, either before or after the filing of a certificate, the partners shall have entered into a partnership agreement. The certificate shall be filed in the Office of the Secretary of State and shall state, among other things, the names and addresses of the general partners.

[216] The original or amended certificate of limited partnership (LP-1 or LP-2) must be date stamped by the Secretary of State with a date prior to lien date (January 1) of the year the exemption is claimed. If this document is filed with the Secretary of State at the end of a calendar year, it may not be processed until after January 1, which means the property will not be eligible for exemption for that year. To avoid losing the benefit of the exemption when filing with the Secretary of State in December, the LP-1 or LP-2 should be submitted in person at that office and a request made that the document be stamped upon receipt.

Managing General Partner

If property is owned by a limited partnership, rather than a religious, hospital, scientific, or charitable fund, foundation, or corporation, the managing general partner of the limited partnership must be an eligible nonprofit organization meeting the requirements of section 214. For purposes of satisfying the requirements of subdivision (g), the limited partnership agreement provided to the assessor should:

- Determine the effective date of the formation of the limited partnership based on the date of filing of the certificate of limited partnership (Form LP-1) or certificate of amendment thereto, with the Secretary of State;
- Identify the managing general partner (in the case of multiple general partners) on the date of filing and indicate its specific corporate form (with articles of incorporation);
- Ascertain from the partnership agreement the specific responsibilities and duties of the managing partner to determine if the managing partner is, in fact, managing the partnership; and
- Identify the property owned by the limited partnership and each of the partners' respective capital contributions and profit and loss interests in the limited partnership.

As to contributions by general partners, applicable provisions of law do not require that the general partner of a limited partnership either have an interest in the profits and losses of the limited partnership or make a capital contribution to the limited partnership. However, a person[217] without some type of equity interest in a limited partnership, may not qualify as a general partner under general California law. In such cases, if that "general partner" is the only general partner of the limited partnership, then the limited partnership may not qualify as a partnership under California law.

In applying the managing general partner aspect of section 214(g), the following factors should be considered in determining the eligibility of a nonprofit corporation as a managing general partner of a limited partnership.

- If under the limited partnership agreement the nonprofit corporation is named as a managing general partner and has authority over some aspect of the limited partnership's general operations, the nonprofit corporation may be considered a managing partner for purposes of claiming property tax exemption.
- It should be clearly evident that the agreement provides for the designation of a managing partner and delineates its rights, responsibilities and, if appropriate, compensation. The limited partnership agreement typically contains a broad delegation of authority to the managing general partner; however, attention should be specifically focused on which decisions are reserved for the managing general partner, other general partners and the partnership as a whole.

[217] A nonprofit corporation is a "person" for section 214(g) purposes.

- The managing general partner's responsibilities and duties, as stated in the limited partnership agreement, must reflect that it is, in fact, managing the partnership. For example, if the managing general partner's sole duty is to maintain its status as a tax-exempt nonprofit organization under federal law (IRC, section 501(c)(3)), the organization does not meet the managing general partner requirement due to an absence of management responsibilities and duties.
- If there are co-general partners and none specified as the "managing general partner," then all of the general partners listed must file and qualify pursuant to section 214(g) before any of the partnership's property can be eligible for exemption.

Management Duties and Responsibilities of a Managing General Partner

The California Revised Limited Partnership Act, Corporations Code sections 15611 et. seq., (CRLPA) governs limited partnerships and prescribes the rights, powers, duties and liabilities of limited partners and general partners.

- A limited partnership is defined as "a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners." (Corp. Code § 15611(r).)
- Authority for a general partner to manage the business of a limited partnership is found in Corporations Code Section 15643(a), which states that a general partner of a limited partnership has the same rights, duties and liabilities of a general partner of a general partnership. Thus, section 15643(a) provides authority to the general partner of a limited partnership to manage the partnership business and to exercise the powers consistent with that authority.
- The term *managing general partner* is not defined in the CRPLA nor in the Uniform Partnership Act. However, in the application of these basic Corporations Code provisions to the requirements of section 214(g), the term can reasonably be construed to mean a general partner authorized by the limited partnership agreement to direct, conduct or control the business of the limited partnership. Such a managing general partner of a limited partnership would have all the statutory powers authorized to a general partner of a general partnership, except those expressly limited or eliminated by the provisions of the limited partnership agreement. As set forth in the CEB Practice Handbook, *Advising California Partnerships,*[218] those powers may include, subject to the applicable rights of the Limited Partners, the following:
    - Acquire, hold, assign or dispose of property or any interest in property
    - Borrow money on behalf of the partnership, encumber partnership assets, place title in the name of nominee to obtain financing
    - Prepay in whole or in part, refinance, increase, modify or extend any obligation

[218] *California Continuing Education of the Bar*, Second Edition, §5.104, with 1998 supplement.

- Manage the property, rental of units, maintenance and repair
- Retain and supervise property management agent
- Employ at partnership expense, building management agents, other on-site personnel, insurance brokers, loan brokers, real estate brokers, attorneys and accountants
- Pay organizational expenses incurred in the creation of the partnership and all operational expenses
- Sign deeds, notes, deeds of trust, contracts and leases; and other such legal documents that bind the partnership
- Maintain all partnership books and records
- Open and maintain partnership bank accounts
- Supervise preparation of all tax returns, budgets and reports, and provide to the limited partners
- Determine the amount and timing of distributions
- Cause the partnership to enter into other partnerships as a general or limited partner and exercise the duties required of the partnership as a partner in any other partnership

In summary, to be a managing general partner, the nonprofit corporation should possess the authority to exercise at least some of the management responsibilities listed above on a day to day basis. As discussed in the next section, that authority may be shared to some extent with other general partners in the limited partnership.

Shared Management Authority

Corporations Code section 15645 provides that a limited partnership agreement may create a hierarchy of classes of general partners; with some general partners having more rights, powers, and duties than others. Thus, a limited partnership may have multiple general partners who may decide among themselves which general partners will have which duties and responsibilities, provided that the nonprofit managing general partner has at least some substantial partnership management duties and responsibilities over some aspect of the partnership business.

Some limited partnership agreements authorize a sharing of management duties and responsibilities between the nonprofit managing general partner and another general partner. An example would be language stating that "the general partners acting unanimously within the authority granted to them shall have full, complete and exclusive discretion to manage and control the business of the partnership…and shall make all the decisions affecting the partnership." Such provisions requiring each general partner to obtain the consent of the other prior to taking any action or making any decision, provide equal authority to each in managing the business of the partnership. As such, the nonprofit managing general partner would have sufficient management responsibilities and duties to qualify for exemption as a managing general partner within the meaning of section 214(g).

Nonqualifying Shared Management Authority

Example: Clause providing that management obligations of the general partners are the "several and not joint obligations" of the general partners

Some agreements provide that "any obligations of a General Partner hereunder are the *"several and not joint obligations"* of the General Partners, except as herein expressly provided to the contrary." The term, "several but not joint" requires each general partner to be individually, but not jointly responsible, for the obligations of the other general partners. This language is ambiguous as to the scope of the management duties covered; particularly since the term, "any" is construed broadly. For example, does it reference only duties authorized to the general partners, since those duties specifically authorized to the managing general partner may be construed as those that fall within the exception of "expressly to the contrary?" The intent of this provision apparently is to ensure that the [for-profit] Co-general partner is separately responsible for all the duties of the [nonprofit] managing general partner, and vice-versa. As such, this provision is disqualifying since it would permit the Co-General Partner to manage the partnership business to the exclusion of the managing general partner, leaving it with no management of the partnership business. Assuming that the limited partnership agreement has provided specific separate management duties to the managing general partner, an example of qualifying language would be: "[e]ach obligation of the general partners under this agreement which is not stated to be only an obligation of the Co-general Partner or the Managing General partner, shall be the several and not joint obligation of each general partner." This provision would allow management duties delegated to the general partners to be the obligation of each general partner individually, without requiring the management duties authorized specifically only to the managing general partner to also be the obligation of the other general partners.

Example: Clause providing that management obligations of the general partners are the "joint and several obligations" of each general partner

Other agreements provide that, "if there is more than one General Partner, the obligations of the General Partners under the agreement shall be the *"joint and several"* obligations of each General Partner." By definition, the term, "joint and several" means that the general partners are responsible, together and individually, for the [management] obligations of each general partner.[219] This language is disqualifying since it may also be construed to authorize the for-profit general partner(s) to manage the partnership business to the exclusion of the [nonprofit] managing general partner, leaving it with no management of the partnership business.

[219] *Black's Law Dictionary*, 7th Edition, (1999) defines "joint and several" as follows: **joint and several,** adj. (Of liability, responsibility, etc.) apportionable either among two or more parties or to only one or a few select members of the group, at the adversary's discretion; together and in separation.

Assuming that the partners' intent is that all the general partners are obligated to perform the same management duties, please reference the section above, *Shared Management Authority*.

Insufficient Management Responsibility

Some limited partnership agreements for partnerships with two or more general partners, when read as a whole, do not provide sufficient management authority to the nonprofit managing general partner. Typically, such agreements contain provisions authorizing the sharing of broad management authority by the general partners, including the day to day management of the partnership business. However, this language is followed by other provisions which nullify the language which grants the nonprofit partner sufficient authority to be considered a managing general partner. The following examples are of limited partnership agreements that have not provided the nonprofit managing general partner with sufficient management authority to qualify for the exemption:

Example: Clause Delegating Entire Authority of Nonprofit Managing General Partner to Another General Partner

Some agreements, after granting broad management authority to the nonprofit managing general partner, contain a provision in which the nonprofit managing general partner delegates its entire management authority to an "administrative general partner." Such a provision, in effect, nullifies the preceding language granting the nonprofit managing general partner authority to manage the partnership business and causes the partnership not to qualify under section 214(g)(1).

Example: General Partner Delegations

A provision stating "Each General Partner may from time to time delegate [all] its responsibilities and duties" is unacceptable. It would permit, by a simple act of delegation, the transfer of all duties and responsibilities of the Managing General Partner to the for-profit General Partner. An acceptable provision would be one that required the Managing General Partner to remain fully responsible for any delegated duties or responsibilities.

For example, this language would be acceptable; "Each of the general partners may in the proper and reasonable exercise of their respective management authority, delegate certain of its powers, rights and obligations hereunder, and may appoint, employ, contract or otherwise deal with any person for the transaction of the business of the Partnership, which person may, under supervision of the respective general partner, perform any acts or services for the Partnership as the respective general partner may approve; provided, however, that such delegation shall not excuse the respective general partner from overseeing on an ongoing basis, the activities assigned."

Example: Incentive Management Agreements

Some limited partnership agreements grant substantial management authority to a general partner other than the nonprofit managing partner, pursuant to a separate "incentive management agreement." Pursuant to this agreement, the administrative general partner, serving in the capacity of a "supervisory management agent," is paid a fee to perform specified management services. The language in the limited partnership agreement generally provides a broad delegation of management authority to the general partners, but lacks provisions that grant specific management duties to the nonprofit managing general partner. Thus, the delegation of broad management authority to the nonprofit managing general partner is rendered meaningless by the incentive management agreement that authorizes the administrative general partner to perform a substantial number of management duties. The nonprofit managing general partner is left without decision-making authority over any aspect of the limited partnership's operation, causing it not to satisfy the requirement in section 214(g)(1).

Example: Diversion of Management Authority from the Nonprofit Managing General Partner to the Other General Partner

Some limited partnership agreements contain a provision that grants broad management authority over the partnership business to the general partners, followed by numerous separate provisions that grant decision-making authority over substantially all the functions of the limited partnership to the general partner other than the nonprofit managing general partner. When this agreement is read as a whole, substantially all the management authority of the limited partnership business has been diverted piecemeal to the other general partner, leaving none for the nonprofit "managing general partner." As such, the nonprofit managing general partner is not qualified within the meaning of section 214(g)(1) due to insufficient management duties and responsibilities.

Example: Non-Management Duties of the Managing General Partner

Some limited partnership agreements specify separate "managerial" responsibilities to the managing general partner that, in fact, are not management duties because they do not involve decision-making authority over some aspect of the partnership business. Such responsibilities include advising the general and limited partners about the requirements of low-income families, publicizing the availability of the low-income housing, and obtaining information from tenants. While these activities are beneficial to the operation of the low-income housing project, they do not constitute management of the partnership business. In this factual situation, the limited partnership agreement designates virtually all the management authority, function by function, to the other general partner. Absent provisions of the limited partnership agreement that provide decision-making authority to the managing general partner over some aspect of the limited partnership's general operations, the property will not qualify for exemption.

In conclusion, where management duties are shared with a for profit [administrative] general partner, the property will not qualify for exemption if the limited partnership agreement does not expressly provide that the nonprofit managing general partner is authorized to perform some substantial management duties in the day to day functioning of the partnership business.

PROPERTY ACQUIRED AFTER LIEN DATE

Section 271(a)(3) provides that, under certain circumstances, property taxes can be canceled or refunded in proportion to the number of days for which the property was qualified for exemption, even though the claimant did not own the property on the lien date and acquired the property after the beginning of the fiscal year, provided that certain requirements are met (discussed in Chapter 6).

Limited Partnerships Qualifying After the Lien Date

If the potential claimant is a limited partnership formed after the lien date with a qualified managing general partner and the limited partnership then takes title to the property, the project may qualify for a late-filed exemption pursuant to section 271(a)(3). As previously noted, however, if the project is recorded in the name of the limited partnership prior to having a qualified managing general partner, the property will not qualify for exemption. The fact that a qualified managing general partner was added to the limited partnership after the lien date means only that the limited partnership had a new member, not that a new limited partnership was created for purposes of eligibility under subdivision (g) of section 214. While Corporations Code section 15611 et seq. provides that the admission of a general partner to a limited partnership is effective as of the date that the general partner is admitted in accordance with the partnership agreement, the managing general partner under subdivision (g) of section 214 must also qualify as a non-profit corporation and must be the only "managing" general partner (unless all other managing general partners qualify).

Income Limits

The U. S. Department of Housing and Urban Development (HUD) annually transmits revisions in the income limits to the California Department of Housing and Community Development (HCD). The limits are used to define the terms *very low-income* and *low-income* in accordance with section 3(b)(2) of the United States Housing Act of 1937, as amended, and are listed by dollar amount and family size. They are issued for each metropolitan and non-metropolitan area using the fair market rent (FMR) area definitions applied in the section 8, Housing Assistance Payments program. The revised income limits are based on HUD estimates of median family income.

Lower-income households are defined in the Health and Safety Code section 50079.5 as persons and families whose incomes do not exceed the limits for lower-income families established and amended in section 8 of the United States Housing Act of 1937. HCD is required to publish these limits in the California Administrative Code. If the federal standards are discontinued, the income limits are 80 percent of the median family income for the geographic areas in which the families are located.

The California Tax Credit Allocation Committee, which administers tax credits allowed for qualifying low-income housing projects, defines *rent-restricted* to mean that the gross unit rent is not more than 30 percent of the imputed income limitation applicable to such unit pursuant to section 42(g)(2)(c) of the Internal Revenue Code. The Committee requires the owner of a project to annually determine and certify the income of each lower-income tenant. A lower-income unit that has been vacated will continue to be treated as a lower-income unit provided that reasonable attempts are made to rent the unit to a qualified lower-income family and the unit is restricted by deed or regulatory agreement.

APPLYING INCOME REQUIREMENTS

The following procedures should be followed in applying the income requirements for lower-income rental housing:

1. Form BOE-267-L, *Welfare Exemption Supplemental Affidavit —Lower-Income Housing Income Statement*, must be completed by the claimant (the nonprofit "managing general partner," not the limited partnership). The affidavit must include the lower-income household income limits based upon number of persons in the household.

2. The assessor should determine whether an officer or manager of the organization verified that the income limits used on each statement provided to each occupant were correct. Independent verification is required. Following the verification of the information by the assessor and the assessor's application of the low-income exemption calculation under subdivision (g) of section 214, the property shall be entitled to an exemption equal to that percentage of the value of the property which the portion of the property serving lower–income households is of the total property. The "percentage of value" referred to in the preceding sentence is calculated by dividing the square footage of the exempt units by the total square footage of the structure.

3. A manager's unit is exempt as incidental to and reasonably necessary for the accomplishment of the exempt purposes, even if the manager's income exceeds the prescribed low-income limits.

Property Held for Construction by Nonprofit Low-Income Home Builders

Section 214.15, effective October 19, 1999,[220] extends the welfare exemption to vacant land owned and operated by a qualifying nonprofit corporation, provided that:

- A qualifying nonprofit corporation meets the requirements of section 214; and
- Is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residences for sale at cost to low-income families,
- With financing in the form of a zero interest rate loan; and
- Without regard to religion, race, national origin, or the sex of the head of household.

[220] Added by Section 1 of Stats. 1999, Ch. 927, in effect October 10, 1999, operative January 1, 2000.

The effect of section 214.15 is that vacant property held for the future construction of residences meeting all the specified conditions described above is to be considered used for an exempt purpose and an exempt activity.

ELDERLY OR HANDICAPPED HOUSING

Property used exclusively for housing and related facilities for elderly or handicapped families may qualify for property tax exemption, provided that the property is owned and operated by qualifying organizations meeting all the requirements of section 214, under any of three different sets of criteria. (Section 214(f).)

PROPERTY USED EXCLUSIVELY FOR HOUSING AND RELATED FACILITIES FOR ELDERLY AND HANDICAPPED FAMILIES FINANCED BY THE FEDERAL GOVERNMENT

Property financed by the federal government pursuant to section 202 of Public Law 86-372[221] as amended, section 231 of Public Law 73-479,[222] section 236 of Public Law 90-448,[223] or section 811 of Public Law 101-625,[224] and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of section 214 shall be deemed to be within the exemption.

PROPERTY USED EXCLUSIVELY FOR HOUSING OF ELDERLY OR HANDICAPPED FAMILIES AT WHICH SUPPLEMENTAL CARE OR SERVICES ARE PROVIDED

Property used exclusively for housing and related facilities for elderly or handicapped families, at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are provided, may qualify for the welfare exemption. Although the Board has not adopted any specific requirements that would constitute a minimum element of charitable care ("supplemental care") that must be provided to the elderly or handicapped to qualify a project as exempt, facilities involved in most of the following activities would be considered as providing supplemental care:

- Providing meals and/or direct assistance in the preparation of meals, including or educational activities designed to make tenants aware of the need for balanced meals;
- Providing direct assistance in shopping for food on the basis of need;
- Providing direct assistance in locating and providing clothing and household furnishings;
- Providing daily or frequent companionship through a social program;
- Daily or frequent visitation of tenants who are ill;
- Providing housework on a temporary basis for tenants who are ill;
- Providing referral assistance when professional help is needed;

[221] 12 U.S.C. section 1701q, as amended.
[222] 12 U.S.C. section 1715v.
[223] 12 U.S.C. section 1715z.
[224] 42 U.S.C. section 8013.

- Providing emergency transportation for tenants to various facilities throughout the community; and/or
- Providing special attention at the time of death in the family.

The foregoing list of activities must represent a sustained good faith effort by claimants over a period of time to assist these residents by providing multiple services, rather than token, occasional service provided in an attempt merely to qualify properties for exemption.

PROPERTY USED EXCLUSIVELY FOR HOUSING AND RELATED FACILITIES FOR LOW- AND MODERATE-INCOME ELDERLY OR HANDICAPPED FAMILIES

Also under section 214(f), if the property is not financed by the federal government and the claimant does not provide supplemental care or services, the property may qualify for the welfare exemption only to the extent that the property is used for housing and related facilities low and moderate-income elderly or handicapped families. *Low and moderate income* has the same meaning as the term "persons and families of low or moderate income" as defined by section 50093 of the Health and Safety Code. Property which would otherwise be exempt, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. Limited partnerships may qualify for exemption only as low-income housing under section 214(g); they cannot qualify for exemption under section 214(f).

The partial exemption shall be equal to that percentage of the value of the entire property which is equal to the percentage which the number of qualifying low- and moderate-income elderly and handicapped families occupying the property is of the total number of families occupying the property. The "percentage of value" in this case is calculated by dividing the number of qualified units (including the manager's unit) by the total number of units. Form BOE-267-H, *Welfare Exemption Supplemental Affidavit-Elderly and Handicapped Housing Income Statement*, and procedures listed thereon should be used in the administration of the income requirements (see Appendix E).

EMERGENCY OR TEMPORARY SHELTERS

A full exemption is available for property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families, where the property is owned and operated by qualified organizations meeting the requirements of section 214.[225] In 1988, section 214(h) was added, providing that property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families is eligible for the exemption if the requirements of section 214, including section 214(h), are met. Section 214(h) pertains only to emergency or temporary shelters and related facilities for persons and families which are eligible for funding pursuant to Health and Safety Code Sections 50800 et seq. Rescue missions,

[225] Section 214(h). As used in this subdivision, *emergency or temporary shelter* means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

halfway houses, shelters for abused women and/or children, etc., may be eligible for exemption under existing provisions of section 214.

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CHAPTER 6: WELFARE EXEMPTION CLAIM PROCESS

SCOPE OF EXEMPTION

A qualifying organization's property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities.[226] The welfare exemption is in addition to any other exemption,[227] and in some instances, a qualifying organization may claim another exemption and/or the welfare exemption.[228]

The welfare exemption does not provide exemption from special assessments for local improvements, but only from property taxes. Taxes are imposed on real and personal property; with very few exceptions, special assessments apply only to land, or land and improvements. The property of nonprofit organizations remains subject to levies of special districts on land only or on land and improvements.[229]

OVERVIEW OF THE WELFARE EXEMPTION CLAIM PROCESS

The welfare exemption is unique in that it is co-administered by the county assessor and the State Board of Equalization. Welfare exemption claim forms, also known as affidavits, are available from the assessor of the county in which the property is located. The organization must complete the exemption claim form and return it to the assessor to be eligible for the full exemption on or before February 15 of each year.[230] The exemption claim is a public record, and is subject to public review as stated on the claim.[231] For more information concerning the requirement of public disclosure of exemption claims and related documents, please see the section, *Exemption Claims Open to Public Inspection* at the end of this chapter.

The assessor reviews the claim form and attached documents for completeness and compliance with the requirements of relevant provisions of the Revenue and Taxation Code. The assessor thereafter conducts a field inspection of the property to verify that (1) the information on the claim form is accurate, and (2) the property is used exclusively for religious, hospital, scientific, or charitable purposes and activities.[232]

Previously, the Board's role in the joint administration of the welfare exemption was to function as a secondary review of exemption claims and make an independent determination of whether

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[226] *Cedars of Lebanon* v. *County of Los Angeles* (1952) 35 Cal.2d 729, 746; *YMCA* v. *County of Los Angeles* (1952) 35 Cal.2d 760, 767.
[227] An exception is the housing property of limited equity cooperatives occupied by shareholder-members, that is eligible for the homeowners' exemption, but not eligible for the welfare exemption.
[228] Section 214(a)(7). See also *J. Paul Getty Museum* v. *County of Los Angeles* (1983) 148 Cal.App.3d 600, 604-605.
[229] *Cedars*, *supra* at 747; *YMCA*, *supra* at 776.
[230] Section 255. If the 15th falls on a weekend or holiday, the deadline is extended to 5 p.m. the next business day. (See Government Code section 6706.) As discussed later in this chapter, a partial exemption may be allowed on a claim, which is filed after the deadline.
[231] Public Records Act sections 6250 et. seq.; Revenue and Taxation Code section 408.2.
[232] Section 254.5.

the organization and its property met the requirements for exemption.[233] Currently, the Board is responsible for making the sole determination of whether an organization meets the requirements for exemption.[234]

JOINT ADMINISTRATION PRIOR TO JANUARY 1, 2004

The welfare and veterans' organization exemptions were jointly administered by the Board of Equalization (Board) and the county assessor, with each agency reviewing both annual claims (Form BOE-267-A) and first-time claims (Form BOE-267) and supporting documents filed by claimants to determine exemption eligibility. All exemption claims were filed in duplicate, with the county assessor; who forwarded a claim and any supporting documents for each property location to the Board.

The assessor reviewed the first time claim and supporting documents and made an initial determination of eligibility. The assessor then forwarded the application and supporting documents, along with the assessor's field inspection and recommendation, to the Board. Board staff conducted a review of the claim and related documents and issued a finding of eligibility. Similarly, all annual claims were submitted in duplicate, with the assessor forwarding an annual claim to the Board for each property location. Both agencies independently reviewed information on both annual and first time claims to determine whether organizational and property use requirements for exemption were met.

Prior statutory law, effective for claims filed before January 1, 2004, required the Board staff to make a finding regarding exemption eligibility on first time claims as to the organizations' qualification and its property use, and to forward its finding to the claimant and the assessor concerned. With respect to annual claims, findings were issued to notify the claimant and the assessor of the county in which the property was located upon a Board staff determination that a claimant was ineligible or a claimant's property was partially or completely ineligible to receive the welfare or veterans' organization exemption.

The elected members of the Board held hearings when the claimant filed an appeal contesting the Board staff's determination as to the organization's or the property's eligibility for exemption. The Board had the discretion to grant or deny a hearing request, but hearings were generally granted. But, neither the Board decision subsequent to a hearing on the exemption denial, nor the Board staff finding of eligibility was binding upon the assessor. The former section 254.5 (b), provided that the assessor may deny the claim of an applicant the board finds eligible, but may not grant the claim of an applicant the board finds ineligible. If the assessor denied an exemption granted by the Board, the claimant's remedy was to file a claim for refund with the county board of supervisors and, if denied, file a refund action in superior court.

[233] Law in effect for claims filed with the county assessor on or before December 31, 2003.
[234] Section 254.6.

JOINT ADMINISTRATION IN EFFECT JANUARY 1, 2004

Senate Bill 1062 (Stats. 2003, Ch. 471) amended statutes and added statutory provisions relating to the welfare and veterans' organization exemptions. The statutory amendments separated the exemption claim review process to eliminate duplicative review functions. Under the new administration, the Board determines whether an *organization* is eligible for the welfare or veterans' organization exemption, and the county assessor determines whether an organization's property use qualifies for the exemption.[235]

BOARD DUTIES

The Board's new administrative role centers on determining whether the organization is eligible to receive the welfare or veterans' organization exemption. In general, the organization is to file a claim form with organizational documents (articles of incorporation, tax exemption letters, etc.) one time with the Board rather than in duplicate in each county that the claimant has property. If the Board determines that an organization qualifies for exemption, the Board will issue an *Organizational Clearance Certificate* to the organization. The claimant is to provide a copy of the *Organizational Clearance Certificate* with an exemption claim form filed with the assessor if the claimant is filing for the first time in the county. In addition to reviewing and making determinations on claims for an *Organizational Clearance Certificate*, Board duties include notifying claimants and assessors of ineligibility and revocation, conducting hearings on denials of organizational clearance certificates, conducting audits/and or verification of exemption eligibility of organizations, and reviewing the assessor's administration of the welfare exemption.[236] The following includes a description of each of the Board's duties under the new administration.

Organizational Clearance Certificate Claims and Qualification

Board staff will review claims for organizational clearance certificates to determine if the organization is organized and operated exclusively for a qualified purpose(s), and otherwise meets the requirements of section 214.[237] Upon the Board's determination that an organization qualifies, the Board will issue an *Organizational Clearance Certificate* (Form BOE-277-OC) that will remain valid until the Board determines that the organization no longer meets the requirements. Further information as to filing requirements and Board review of claims for an *Organizational Clearance Certificate* is provided under the discussion of *Claim for an Organizational Clearance Certificate*.

The Board maintains a list of organizations with a valid *Organizational Clearance Certificate*. This list is posted on the Board's Web site and is updated on a quarterly basis.[238]

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[235] Sections 254.6 and 254.5, as amended by Senate Bill 1062 (Stats. 2003, Ch. 471), effective January 1, 2004.
[236] Sections 254.6.
[237] Section 254.6(b).
[238] The Board's Web site is www.boe.ca.gov. The list can be accessed by selecting 1) Property Taxes, 2) Welfare and Veterans' Organization Exemptions, 3) List of Eligible Organizations.

Notification of Ineligibility and Revocation

If Board staff determines that an organization is not eligible for an *Organizational Clearance Certificate*, the Board will notify the claimant of the ineligibility.[239] Similarly, if Board staff determines that an organization granted an organizational clearance certificate no longer meets the exemption requirements of section 214, the Board will notify the claimant of the ineligibility or revocation.[240] In addition, the Board notifies assessors, on a periodic basis, of organizations that have had their *Organizational Clearance Certificate* revoked. Further information regarding notification of ineligibility is provided in this chapter under the topic *Notification Following Review of Claim Form BOE-277*.

Board Hearings on Denial of Organizational Certificate

The Board will conduct hearings on appeals filed by claimants that have been denied an *Organizational Clearance Certificate* because board staff has determined that the organizations are not eligible for the exemption.[241] If the claimant disagrees with the Board staff's determination of ineligibility for an *Organizational Clearance Certificate*, the claimant may file an appeal of the Board staff's finding within 60 days of the mailing date of the final notice of ineligibility.[242] Further information regarding Board hearings on denial of an organizational certificate is provided under the sections *Claim for an Organizational Clearance Certificate* and *Claim for a Supplemental Clearance Certificate*, later in this chapter.

Audit and/or Verification of Organizations

As part of its statutory duties, the Board is authorized to conduct an audit or verification of an organization to determine if the organization meets the requirements of section 214.[243] Board staff will conduct a periodic audit of organizations by mailing a claim form to each organization once every 3 years. The claim form used for this purpose is BOE-277-P, *Periodic Filing for Organizational Clearance Certificate—Welfare or Veterans' Organization Exemption*. The Board form requests specific information concerning eligibility requirements that allows the board staff to determine whether the organization continues to meet the qualifications for exemption. The claim form verification process is conducted to ensure that organizations holding organizational clearance certificates continue to be qualified. In addition to the Board staff's review of the periodic filing form, the staff may conduct a more comprehensive audit as part of the claim review process.

Review of Assessors' Administration of the Welfare Exemption

Board staff will continue to review the assessors' administration of the exemption as part of the assessment practices surveys, to ensure proper administration of the welfare and veterans' organization exemptions at the local level.[244] The Board's assessment practices survey program

[239] Section 254.6(d)(1).
[240] Section 254.6(e)(2).
[241] Section 254.6(e)(4).
[242] Section 254.6(e)(3).
[243] Section 254.6(f); Government Code section 15618.
[244] Section 254.5(g).

is designed to promote uniformity, fairness, equity, and integrity in the property tax assessment process. Under this program, the Board periodically conducts reviews of every county assessor's offices and publishes a report of its findings.[245]

ASSESSOR DUTIES

The assessor's duties, briefly summarized, include making the sole determination concerning whether the *use of the property* qualifies for the welfare exemption, reviewing claims for the welfare and veterans' organization exemptions, notifying claimants of ineligible property, and conducting audits or verifications of an organization's operations.[246] The following includes a description of the assessor's duties.

Review of Welfare and Veterans' Organization Exemption Claims

The assessor will review claims for the welfare or veterans' organization exemption to determine whether the *use of the property* qualifies for exemption (i.e., is the property used exclusively for religious, hospital, scientific or charitable purposes and activities by a qualified organization). Further information regarding exemption claim forms and assessor review is provided later in this chapter on page 14 under the discussion of *Claim Forms Filed with the Assessor*.

The assessor's determination of whether an organization's property use satisfies the requirements of section 214 will be made without review by the Board staff; but, the assessor may not grant a claim unless the organization holds a valid *Organizational Clearance Certificate* issued by the Board.[247] The assessor may deny an exemption claim, based on non-qualifying use of the property, notwithstanding the claimant's *Organizational Clearance Certificate* granted by the Board.[248] (For information regarding enrolling of exemptions, see Appendix B.)

Notification of Ineligibility

If the assessor finds the claimant's property ineligible for the welfare or veterans' organization exemption, the assessor must notify the claimant in writing of that finding.[249] The assessor must also provide notification that the claimant may seek a refund of property taxes by filing a claim for refund with the county board of supervisors.[250] If the claim for refund is denied, the organization may file a refund action in superior court.[251]

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[245] Government Code sections 15640-15646 provide that the Board shall conduct surveys in each county and city and county to determine that the practices and procedures used by the county assessor in the valuation of properties are in conformity with all provisions of law. The Board's Property and Special Taxes Department's County Property Tax Division conducts the assessment practices survey program.
[246] Section 254.5.
[247] Section 254.5(a).
[248] Section 254.5(c)(1).
[249] Section 254.5(c)(2).
[250] Section 254.5(c)(2)(B).
[251] Section 254.5(c)(2)(C).

Audit and/or Verification of Operation

Section 254.5(b)(2) clarifies that the assessor may audit a claimant to ensure that the use of the property by the owner or operator continues to meet the requirements set forth in section 214. For example, the assessor may audit the claimant's financial statements and other documentation representative of activities and operations conducted at a specific property location to verify the use of the property.

CLAIM FORMS FILED WITH THE BOARD OF EQUALIZATION

CLAIM FOR AN ORGANIZATIONAL CLEARANCE CERTIFICATE (BOE-277-OC)

Effective January 1, 2004, all tax exempt nonprofit organizations claiming the exemption for the first time are to file a claim for an *Organizational Clearance Certificate* with the Board. An organization filing a claim for an *Organizational Clearance Certificate* (BOE-277-OC), must file claim form BOE-277, *Claim for Organizational Clearance Certificate – Welfare Exemption*, or claim form BOE-279, *Claim for Organizational Clearance Certificate – Veterans' Organization Exemption*. (The organization must hold a valid *Organizational Clearance Certificate* before the assessor can grant a welfare or veterans' organization exemption. The assessor may deny an exemption claim, based on non-qualifying use of the property, notwithstanding the claimant's organizational clearance certificate granted by the Board.) Although veterans' organizations may file for an *Organizational Clearance Certificate*, the following discussion will be limited to claim form BOE-277 since this handbook only pertains to the welfare exemption. (See Appendix E for a complete listing of claim forms filed with the Board and notification forms issued by the Board.)

Requirements of Claim Form BOE-277

A claim for an *Organizational Clearance Certificate* may be filed at any time during the year. The claimant should complete all parts of the form in sufficient detail to allow the Board to make an informed review of the organization's structure and purpose. The claimant should submit all information requested on the form. The claim is to be accompanied by organizational documents (articles of incorporation, or comparable instrument for unincorporated organizations, a federal or state tax exemption letter, and financial statements of the organization).

The claim form is to indicate the first fiscal year in which the claimant is seeking exemption from the assessor. If the fiscal year is not stated on the claim form, the filing is considered to be for the fiscal year immediately preceding the lien date.

The exact legal name of the organization must be stated. If the organization is incorporated, then the corporate name of the claimant should be the same as the name appearing in the articles of incorporation or any subsequent amendments. In addition, the claimant is to provide the corporate identification number issued to the claimant by the Secretary of State, which is an identification number unique to each organization. If the claimant is an unincorporated association, the name of the organization should be the same as the name appearing in the

organization's originating document. If the organization does not have a corporate identification number, then "none" should be indicated in the space provided on the claim form.

The claim must be signed and dated by an officer of the organization, or an authorized representative. The person executing the claim, declares under penalty of perjury that the information provided on the claim is true, correct, and complete. The name, address, telephone number and email address of a contact person should be provided on the form in case there is a question about the claim.

Signature on the Affidavit

The claim must contain an original signature of an officer of the organization or an authorized representative. If the affidavit is not signed, the filing is not valid and should be returned to the claimant. It is the organization's responsibility to provide complete and accurate information since the organization's representative authorized to execute the form, certifies under penalty of perjury that the information provided on the affidavit is true, correct and complete. The board staff's responsibility is to verify that all the information provided is accurate and complete.

Organizations' Formative Documents

An organization must attach a copy of the Articles of Incorporation and any amendments thereto certified by the Secretary of State, or comparable instrument for unincorporated organizations.[252] Board staff will review the organization's formative documents to verify that the documents include both an acceptable statement of irrevocable dedication and a dissolution clause. The statement of irrevocable dedication is to expressly state that the property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes.[253] The dissolution clause must state that upon liquidation, dissolution or abandonment of the owner, its assets will be distributed to a fund, foundation, corporation organized and operated for religious, hospital, scientific, or charitable purposes.[254] (See Appendix C for samples of acceptable irrevocable dedication and dissolution clauses.)

Tax Exemption Letters

An organization must include a copy of an unrevoked federal or state tax exemption letter with claim form BOE-277. The unrevoked tax exemption letter may be either from the Internal Revenue Service or Franchise Tax Board, stating that the organization is exempt under their

[252] Comparable instrument for an unincorporated organization (noncorporate fund or foundation) may include the organization bylaws, articles of association, constitution, or regulations and any amendments thereto.
[253] Sections 214(a)(6) and 214.01. See Chapter 2 of AH 267 for discussion of irrevocable dedication clauses.
[254] Section 214.01. See Chapter 2 for discussion of dissolution clauses.

respective provisions of law (Internal Revenue Code section 501(c)(3), Revenue and Taxation Code section 23701d).[255]

Financial Statements

In accordance with section 254.6(c)(1), an organization must include a copy of its financial statements with the claim for an *Organizational Clearance Certificate*. The financial statements are to include a balance sheet and operating statement; and must be for the accounting period closest in time to the lien date (January 1) for the fiscal year indicated on the front page of claim form BOE-277. For example, if the organization is making a claim for an *Organizational Clearance Certificate* for the 2004-2005 fiscal year, the financial statements must represent the accounting period ending closest in time to January 1, 2004

Board Review of Claim Form BOE-277

The Board staff reviews the claim and related documents to determine if the organization is organized and operated exclusively for a qualified purpose(s) and otherwise meets the requirements of section 214. In its review, the Board verifies that the organization has a valid tax exemption letter from the Internal Revenue Service or Franchise Tax Board, and is currently exempt from federal income taxes or state franchise and income taxes under the proper statutory provisions. The Board also verifies that the articles of incorporation, or other formative document for those organizations that are not incorporated, includes acceptable irrevocable dedication and dissolution clauses, and that the organization is organized and operated exclusively for religious, hospital, scientific, or charitable purposes as required in section 214. In addition, the Board will consider, among other matters, whether the organization's services and expenses are excessive and whether the operations of the organization directly or indirectly materially enhance the private gain of any individual(s).

Claim form BOE-277 includes questions on the front page and instructions on the back. The information provided on the claim form, and the documentation required with the claim, provides Board staff with the information necessary to determine if the organization meets the legal requirements for exemption, and is therefore, eligible for an *Organizational Clearance Certificate*.

Notification Following Review of Claim Form BOE-277

After reviewing a claim for an *Organizational Clearance Certificate*, the Board will notify the claimant of staff's finding as to eligibility for an *Organizational Clearance Certificate* on Form BOE-277-F, *Welfare or Veterans' Organization Exemption, Organizational Clearance Certificate Finding Sheet.* If the organization qualifies for exemption, a "Been Met" finding is indicated on Form BOE-277-F. The Board also issues an *Organizational Clearance Certificate*

[255] Section 214.8(a) specifies that section 213.7, providing for exemption of volunteer fire department property, section 231, providing for the exemption of property leased to the government, and section 214(g)(1), providing for the exemption of low-income housing owned and operated by veterans organizations per section 215 and 215.1 are excluded from this requirement. (See the discussion under the heading *Must Qualify as an Exempt Organization Under 501(c)(3) or 23701d* in Chapter 2 for additional information.)

(BOE-277-OC) to indicate that the organization is eligible for exemption. If the organization does not qualify for exemption, a "Not Been Met" finding is indicated on Form BOE-277-F. In addition, Form BOE-277-F1, *Welfare or Veterans' Organization Exemption, Organizational Clearance Certificate—Preliminary Notice* is issued to inform the claimant that it has 30 days to provide additional information in response to the initial notice of ineligibility, or to request a 30-day extension to provide additional information. If after review of the additional information, Board staff determines that the claimant remains ineligible, the Board issues a final notice of ineligibility, Form BOE-277-F2, *Welfare or Veterans' Organization Exemption, Organizational Clearance Certificate—Final Notice*.[256]

Board Hearings on Denial of Organizational Clearance Certificate

The elected members of the Board will make a determination on an appeal filed with the Board to contest the Board staff's findings that the organization is not qualified for exemption. An appeal of the Board staff's denial of exemption is to be filed within 60 days of the date of mailing of the final notice of ineligibility (Form BOE-277-F2). The petition for hearing must be written, state whether an oral hearing is requested, and addressed to the Board Proceedings Division. The Board staff and claimant may agree in writing to submit the matter to the Board for a decision without a hearing. Board hearings on welfare exemption appeals are conducted in accordance with the Board's Rules of Practice.[257] If the elected members of the Board deny the claimant's petition, the organization may file an action in superior court after exhausting administrative remedies, including paying the property taxes for the property, and filing a claim for refund of property taxes with the local county board of supervisors.

CLAIM FOR A SUPPLEMENTAL CLEARANCE CERTIFICATE (BOE-277-SCC)

Nonprofit organizations functioning as the managing general partner of limited partnerships that own and operate lower income housing, which have qualified for an *Organizational Clearance Certificate*, are also required to file a claim for a Supplemental Clearance Certificate (Form BOE-277-L1, *Claim for Supplemental Clearance Certificate for Managing General Partner).* The Board's role under the streamlined administration of determining an organization's eligibility for exemption, includes review of the qualification of the limited partnership with a nonprofit managing general partner. Board staff determines whether the nonprofit organization has sufficient management authority/duties to qualify as the managing general partner of the limited partnership, as required by section 214(g).

Requirements of Claim Form BOE-277-L1

A claim for a *Supplemental Clearance Certificate for Managing General Partner* may be filed at any time during the year. The claim form must indicate the first fiscal year in which the claimant is seeking exemption for the low income housing property from the assessor. If the fiscal year is

[256] The BOE-277-F2 provides information as to the claimant's right and procedures to file an appeal to Board staff's finding.
[257] California Code of Regulations, Title 18, Public Revenues, Article 6.

not stated on the claim form, the filing is considered to be for the fiscal year immediately preceding lien date.

Nonprofit organizations (managing general partners) that hold a valid organizational clearance certificate must file a claim for *Supplemental Clearance Certificate for Managing General Partner* on each low-income housing property for which exemption is claimed.[258]

A nonprofit organization (managing general partner) without an *Organizational Clearance Certificate* which is claiming exemption on low-income housing properties that have not received exemption previously, is to file a claim for an *Organizational Clearance Certificate* and claim for a *Supplemental Clearance Certificate for Managing General Partner* for each low income housing property.

The person filing Form BOE-277-L1 may be an officer of the non-profit organization (managing general partner of the limited partnership property) or an authorized representative. The exact legal name of the nonprofit managing general partner must be stated. In addition, the claimant must provide the name of the limited partnership that owns and operates the property.

The claim must be signed and dated by the nonprofit organization's officer or an authorized representative. The person executing the claim declares under penalty of perjury that the information provided on the claim is true, correct, and complete. The name, address, telephone number and email address of a contact person should be provided on the form in case there is any question about the claim.

The claim form requires a nonprofit organization to certify that its limited partnership agreement provides sufficient management authority and duties to qualify it as the managing general partner of the limited partnership. The initial claim for a supplemental clearance certificate is to include the following documents:

- a copy of a recorded deed restriction that restricts their property usage to lower income housing, or a copy of a regulatory agreement issued by a public agency that provides verification that the property receives either government financing or federal tax credits, and restricts the property usage to lower income housing, as required by section 214(g)(1)(A); 214(g)(1)(B), and

- a copy of Secretary of State form LP-1, *Certificate of Limited Partnership*, and if applicable, Secretary of State form LP-2, *Amendment to Certificate of Limited Partnership* for each amendment.

Signature on the Affidavit

The claim must contain an original signature of an officer of the nonprofit organization (managing general partner) or an authorized representative. If the affidavit is not signed, the

[258] Nonprofit organizations which were managing general partners of limited partnerships with low income housing properties that were eligible for exemption on December 11, 2003, automatically received a supplemental clearance certificate for each property. The organizations were not required to file claims.

filing is not valid and should be returned to the claimant. It is the organization's responsibility to provide complete and accurate information since the organization's representative authorized to execute the form, certifies under penalty of perjury that the information provided on the affidavit is true, correct and complete. The board staff's responsibility is to verify that all the information provided is accurate and complete.

Recorded Deed Restriction/Regulatory Agreement

The provisions of section 214(g)(2)(A)(i) expressly require the claimant only to certify that there is an enforceable deed restriction on its property. Pursuant to the Board's authority in section 254 and section 15618 of the Government Code, the Board requires claimants to provide copies of such documents with claim form BOE-277-L1, for verification that this requirement has been met. Section 254 provides, in relevant part, that a claimant for the welfare exemption shall submit to the assessor annually an affidavit, giving any information required by the board.[259] Thus, section 254 authorizes the Board to determine the information that is to be submitted with an exemption claim. (Section 15618 of the Government Code authorizes the board to audit or verify that the organization meets the legal requirements for exemption.)

These documents specify name of organization that owns the property, the location of the property, prescribed tenant's household incomes and rents, and minimum percentage of units to be used for qualifying lower income tenants. See Chapter 5 for additional information concerning these requirements.

Secretary of State Forms LP-1 and LP-2

Nonprofit organizations filing a claim for a supplemental clearance certificate must include a copy of Secretary of State Form LP-1, *Certificate of Limited Partnership*. Additionally, if the certificate of limited partnership has been amended, the nonprofit organization must include a copy of Secretary of State Form LP-2, *Amendment to Certificate of Limited Partnership*, for each amendment.

Board Review of Claim Form BOE-277-L1

The Board staff reviews the claim and accompanying documents to determine if the limited partnership property is a qualifying organization and its property meets the requirements of section 214(g). That is, Board staff determines if: (1) the nonprofit organization designated in the limited partnership agreement as the managing general partner of the limited partnership has sufficient management authority and duties to qualify as the managing general partner as required by section 214(g); and, (2) the property meets the requirements in sections 214(g)(1)(A) or 214(g)(1)(B) and 214(g)(2)(A). The Board issues a *Supplemental Clearance Certificate for Managing General Partner* (BOE-277-SCC) to nonprofit organizations, with a valid *Organizational Clearance Certificate*, upon a determination that the limited partnership and its property meet requirements for exemption. Once granted, the supplemental clearance certificate

[259] Section 254 references affidavits or exemption claims filed with the assessor under the former administration of the welfare exemption which required the assessor to forward a claim to the Board for processing and a separate determination of exemption eligibility of the organization and its property use.

shall remain valid until the Board staff determines that the limited partnership is no longer a qualifying organization or its property no longer meets the requirements of section 214, subdivision (g).

Notification Following Review of Claim Form BOE-277-L1

The procedures for notification of ineligibility for and revocation of a *Supplemental Clearance Certificate for Managing General Partner* are similar to the procedures for notification of ineligibility and revocation of an *Organizational Clearance Certificate*. However, the process is also discussed in this section because specific finding sheets and notices are designed for these purposes.

Board staff will issue a finding to notify the claimant of the eligibility for exemption of the organization and the property on form BOE-277-SF *Welfare Exemption Low-Income Housing (Managing General Partner) Supplemental Clearance Certificate Finding Sheet.* If the claimant and the property meet the requirements of section 214(g), a "Been Met" finding is indicated on form BOE-277-SF. The Board also issues *a Supplemental Clearance Certificate for Managing General Partner* (BOE-277-SCC) to indicate that the organization and the property are eligible for the exemption.[260] If the organization or property does not qualify for exemption, a "Not Been Met" finding is indicated on Form BOE-277-SF. In addition, an initial notice of ineligibility is issued to inform the claimant that it has 30 days from the date of the notice to provide additional information supporting the claim, or to request a 30-day extension to submit the material (Form BOE-277-SF-1, *Welfare Exemption Low-Income Housing (Managing General Partner) Supplemental Clearance Certificate – Preliminary Notice*).

If Board staff determines that the organization and/or property remain ineligible after a review of the additional information submitted, a final notice of ineligibility is issued to the claimant (Form BOE-277-SF-2, *Welfare Exemption Low-Income Housing (Managing General Partner) Supplemental Clearance Certificate – Final Notice*), along with staff's finding on form BOE-277-SF. The final notice advises that the claimant has 60 days from the date of the notice to petition the Board for an appeal hearing on the claim.

Board Hearings on Denial of Supplemental Clearance Certificate

The elected members of the Board will make a determination on an appeal filed with the Board to contest the Board staff's finding that the nonprofit organization does not meet the managing general partner requirement of section 214(g). The nonprofit managing general partner (claimant) may file an appeal contesting the staff's finding of ineligibility within 60 days of the mailing date of the final notice of ineligibility (BOE-277-SF-2). The petition for hearing must be written, state whether an oral hearing is requested, and addressed to the Board Proceedings Division. The Board legal staff and claimant may agree in writing to submit the matter to the

[260] The property requirements referenced are in section 214(g)(1)(A), 214(g)(1)(B) and 214(g)(2)(A).

Board for a decision without a hearing. Board hearings on welfare exemption appeals are conducted in accordance with the Board's Rules of Practice.[261]

If the elected members of the Board deny the claimant's petition, the assessor may not grant the exemption claim on the low-income housing property. The organization may file an action in superior court after exhausting administrative remedies that include paying the property taxes for the property, and filing a claim for refund with the local county board of supervisors.

PERIODIC FILING FOR ORGANIZATIONAL CLEARANCE CERTIFICATES (BOE-277-P)

Organizations holding an *Organizational Clearance Certificate* (BOE-277-OC) are required to submit periodic filings to the Board. The information provided in the periodic filing enables Board staff to verify that organizations continue to meet the requirements of section 214. Claim form BOE-277-P (*Periodic Filing for Organizational Clearance Certificate, Welfare or Veterans' Organization Exemption*) is used for the periodic filing once every three years. The claim forms are mailed to qualifying organizations on a three-year cycle, based on the name of the organization (the term, "the" is not considered the beginning of the name in the determination of the filing cycle).[262]

The claim form is mailed to applicable organizations in December and is due February 15.[263] Failure to file the periodic claim form (BOE-277-P) may result in Board staff revoking the *Organizational Clearance Certificate*. Board staff may conduct a more comprehensive audit as part of the claim review process.

Requirements of Claim Form BOE-277-P

Claim form BOE-277-P is a short form that contains questions on the front page and instructions on the back. The information provided on the claim form, in addition to the documentation that must be filed with the claim, provides Board staff with the information necessary to determine if the organization continues to meet the statutory requirements for an *Organizational Clearance Certificate.*

In general, the claim form requests information intended to update the Board's exemption claim records for the organization subsequent to the last claim filed with the Board. For example, the claim form requests copies of amendment(s) to the organization's articles of incorporation (or amendment to organization's other formative documents if not incorporated), information

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[261] Rules of Practice of the State Board of Equalization currently being amended to reflect the legislative amendments enacted in Senate Bill 1062. Rules of Practice can be accessed on the Board's Web site at www.boe.ca.gov.

[262] The first mailing cycle started in 2004 with filing group 1, organizations with names that begin with numeric characters or the letters A through E, that had a filing deadline of February 15, 2004. Filing group 2, organizations with names beginning with F through O, are required to file claim forms a three year cycle beginning with the February 15, 2005 filing deadline. Filing group 3, organizations with names that begin with P through Z, are required to file the periodic claim starting with the February 15, 2006 deadline.

[263] Non receipt of the BOE-277-P does not dismiss the claimant from filing the form; if a claimant does not receive the BOE-277-P on the organization's filing cycle the claimant should contact the Board to verify the mailing address and request a copy of the form.

regarding the income tax exemption status of the organization, and information regarding the activities of the organization.

The claim must be signed and dated by an officer of the organization or an authorized representative. The person executing the claim declares under penalty of perjury that the information provided on the claim is true, correct, and complete. The name, address, telephone number and email address of a contact person should be provided on the form in case there is any question about the claim.

Signature on the Affidavit

The claim must contain an original signature of an officer of the organization or an authorized representative. If the affidavit is not signed, the filing is not valid and should be returned to the claimant. It is the organization's responsibility to provide complete and accurate information since the organization's representative authorized to execute the form, certifies under penalty of perjury that the information provided on the affidavit is true, correct and complete. The board staff's responsibility is to verify that all the information provided is accurate and complete.

Board Review of Form BOE-277-P

The Board staff reviews the claim and accompanying documents to determine if the organization continues to be organized and operated exclusively for a qualified purpose(s) and otherwise meets the requirements of section 214. In its review, the Board staff verifies that the organization's tax exemption letter with the Internal Revenue Service or Franchise Tax Board continues to be in effect. The Board also will review any amendments to the articles of incorporation, or other formative documents, to ensure that the irrevocable dedication and dissolution clauses meet statutory requirements; and to verify that the organization continues to be organized and operated exclusively for religious, hospital, scientific, or charitable purposes as required in section 214. Additionally, the board staff considers, in their review of the claimant's financial statements, among other matters, whether the organization's services and expenses are excessive, and whether its operations directly or indirectly materially enhance the private gain of any individual(s).

If Board staff determines that the organization no longer qualifies for the *Organizational Clearance Certificate* after review of the periodic claim form and related documents, the organization will be notified.[264] Please reference the section titled *Notification Following Review of Claim Form BOE-277* for additional information regarding the forms and procedures used to notify organizations of Board findings of ineligibility.

[264] Board staff will not notify claimants if they continue to meet the requirements for the certificate, notification is provided only when the claimant no longer meets the organizational requirements of section 214. Claimants may verify their *Organizational Clearance Certificate* status, valid or revoked, by reviewing the list of eligible organizations, updated quarterly, on the Boards Web site (www.boe.ca.gov). The list may be accessed by selecting 1) Property Taxes, 2) Welfare and Veterans' Organizations Exemptions, and 3) List of Eligible Organizations.

Additional Filing Requirements for Holders of Supplemental Clearance Certificates

The nonprofit managing general partner of a limited partnership is required to file, in addition to form BOE-277-P, form BOE-277-L1, *Claim for Supplemental Clearance Certificate for Managing General Partner*. A form BOE-277-L1 is to be filed for each low-income housing property on which the managing general partner has claimed exemption and has received a *Supplemental Clearance Certificate for Managing General Partner* (BOE-277-SCC). This claim filing provides additional information that will allow Board staff to verify that the property continues to satisfy the organizational requirements of section 214, subdivision (g).

The claim form requests information to ensure that the nonprofit organization holding a *Supplemental Clearance Certificate for Managing General Partner* for the specific property continues to be a qualified managing general partner. The claim form, BOE-277-L1, is mailed to applicable organizations with the periodic claim form (BOE-277-P, *Periodic Filing for Organizational Clearance Certificate – Welfare or Veterans' Organization Exemption*); and a current listing of all limited partnership properties with supplemental clearance certificates issued to the nonprofit managing general partner.

Requirements of Claim Form BOE-277-L1

Claim form BOE-277-L1 contains questions on both the front and back pages. This claim form is used for both the initial request of the supplemental certificate for a limited partnership property and for the periodic filing of the organization. Form BOE-277-L1 requests information about the limited partnership property and provides certification that the nonprofit organization continues to have sufficient management authority and duties as the managing general partner of the limited partnership.

If the limited partnership agreement has been amended since the last filing of claim form BOE-277-L1, the organization must submit a copy of Secretary of State form LP-2, *Amendment to Certificate of Limited Partnership*. Additionally, the organization is required to list any substitutions of the General Partners since the last filing of the claim form.

The claim must be signed and dated by an officer of the non-profit organization (managing general partner of the limited partnership) or an authorized representative. The person executing the claim declares under penalty of perjury that the information provided on the claim is true, correct, and complete. The name, address, telephone number and email address of a contact person should be provided on the form in case there is any question about the claim.

Board Review of Claim Form BOE-277-L1

The filing of BOE-277-L1 as a supplemental to the periodic claim form (BOE-277-P) provides information necessary for the determination concerning whether the limited partnership continues to be a qualifying organization for purposes of section 214(g); specifically, whether the managing general partner continues to have sufficient management authority and duties to qualify the property for exemption. Board staff may also conduct a more comprehensive audit of

the nonprofit entity's management function in the limited partnership's operations as part of the claim review process.

If Board staff determines that the managing general partner no longer meets the requirements of section 214(g), after review of the supplemental claim form, and, therefore, no longer qualifies for the *Supplemental Clearance Certificate for Managing General Partner*, the certificate will be revoked, and the claimant will be notified of the revocation.[265] See the section titled *Notification Following Review of Claim Form BOE-277-L1* for additional information regarding the forms and procedures used to notify organizations of Board findings of ineligibility.

CLAIM FORMS FILED WITH THE ASSESSOR

Claims for the welfare exemption are filed with the county assessor where the property is located. Two forms are available for filing a welfare exemption claim: BOE-267, *Claim for Welfare Exemption (First Filing)*, and BOE-267-A, *Claim for Welfare Exemption (Annual Filing).* Claimants may file on BOE-267-A only if the property received exemption in the previous year.

Section 255(a) specifies that an affidavit for exemption shall be filed with the county assessor between the lien date (January 1, at 12:01 a.m.) and 5:00 p.m. on February 15. Section 260 provides that if a claimant fails to follow the required procedure, the exemption is deemed waived for that year. Exceptions are the statutory late-filing provisions of section 270 and section 271 (for property acquired after lien date).

Section 255(c) provides that any claimant who has been found ineligible for the church exemption or the religious exemption after timely filing an affidavit (February 15), may then file an affidavit for a welfare exemption. However, such affidavits for the welfare exemption must be filed within 15 days from the date of notification by the assessor of the claimant's ineligibility for the church exemption or the religious exemption in order for the welfare exemption claim to be considered timely filed.

CLAIM FOR WELFARE EXEMPTION (FIRST FILING) (BOE-267)

A claimant for an initial request for a welfare exemption on a specific property is to file using the *Claim for Welfare Exemption (First Filing)*, Form BOE-267, with the assessor where the property is located. Claim form BOE-267 may be obtained from the assessor in the county where the property is located. The claim form should be completed, with supporting documents attached, and returned to the assessor. The claim must include a copy of the organization's *Organizational Clearance Certificate*, if the claimant is filing for the first time in the county. If the claimant has already been granted exemption in the county and is filing for an added location

[265] Board staff will not notify claimants if they continue to meet the requirements for the certificate, notification is provided only when the claimant no longer meets the organizational requirements of section 214. Claimants may verify their exempt status, valid or revoked, by reviewing the list of eligible organizations (including quarterly updates to the listing), on the Boards Web site at www.boe.ca.gov.

in the county, the claimant is not required to file a copy of the *Organizational Clearance Certificate*, unless requested by the assessor.[266]

If a property is owned by one qualified organization and used regularly by another qualified organization (with or without a lease), then both must file a claim in order for the property to receive exemption, and the lessee/sub-lessee must also meet all the requirements for exemption.[267]

Requirements of Claim Form BOE-267

Form BOE-267 requires the claimant to report the property description, primary and incidental uses of the property by the organization and details about the owner and user(s) of the property. The claimant should complete all parts of the claim form in sufficient detail to allow the assessor to make an informed review of the organization's use of the property. A separate claim form must be submitted for each property location and each fiscal year that the claimant is seeking exemption.

Front Page of BOE-267 Claim Form

The front page of BOE-267 requires the claimant to report basic organizational information. The exact legal name of the organization must be stated. If the organization is incorporated, then the corporate name of the claimant should be the same as the name appearing in the articles of incorporation or any subsequent amendments. The claimant also must provide the corporate identification number issued to the claimant by the Secretary of State. This is an identification number unique to each claimant. If a claimant does not have a corporate identification number, then "none" should be indicated in the space provided. If the claimant is an unincorporated association, the name of the claimant should be the same as the name appearing in the organization's originating document. Additionally, the claimant is to provide the *Organizational Clearance Certificate* number issued by the Board of Equalization, or if the claimant does not have a certificate, the claimant must indicate if a claim has been filed with the Board.

The claim must be signed and dated by an officer of the organization, or an authorized representative. The person executing the claim declares under penalty of perjury that the information provided on the claim is true, correct, and complete. An unsigned claim is not a proper filing and will be rejected. The name, address, telephone number and email address of a contact person should be provided on the form in case there is a question about the claim.

Property Information

The form requests basic real property information, including the address, legal description, and size of the parcel. Pages 2 and 3 of the claim form also require information concerning the primary and incidental uses by the organization, and details about the owner's use of the property, and if applicable, about other user(s) of the property. If the organization is claiming

[266] Organizational Clearance Certificate is issued by the Board and is discussed on page 92.
[267] An exception may be the nonprofit incidental user who uses the exempt property no more than once per week and has met the requirements of section 214(a)(3)(D).

exemption for property at more than one location, a separate claim form must be submitted for each location. The information on each claim form must pertain only to the real and/or personal property at that location. All questions must be answered and all parts of the claim form must be completed. If any part does not apply, it should be designated "not applicable."

A copy of the income statement (revenue and expenses) relating exclusively to the subject property described in the claim must be filed with the claim. The income should include only those receipts that result from the operation of the subject property and should not include receipts from invested funds, gifts, or other items that do not result directly from the operation of the property. Similarly, the expenditures should be only those incurred as a result of operating the property. Any expenses of the organization not directly attributable to the operation of the property should not be included in these expenditures. If compensation of personnel or other administrative expenses are allocated to the property, such allocation should be indicated.

If there are other organizations that have an interest in the property, either as an owner or as an operator, their names and addresses must be reported. If any portion of the property is leased or rented to another person or organization, then a copy of the lease or rental agreement must be attached to the claim.

Taxable equipment and other property that is leased, rented, or consigned to the claimant also must be reported. This property is taxable since the claimant does not own it. The assessor must, therefore, know the names and addresses of the lessor of the property in order to ensure proper assessment of the leased property.

Filing for Multiple Years and Properties

The claimant must submit a separate claim for each property location, for each fiscal year for which the exemption is claimed. An exception is provided when the property consists of contiguous parcels of land with the same use and ownership, such as a nature conservatory or land trust.

Signature on the Affidavit

The claim must contain an original signature of an officer of the organization or an authorized representative. If the affidavit is not signed, the filing is not valid and should be returned to the claimant. It is the organization's responsibility to provide complete and accurate information since the organization's representative authorized to execute the form, certifies under penalty of perjury that the information provided on the affidavit is true, correct and complete. The assessor's responsibility is to verify that all the information provided is accurate and complete.

Assessor Review of Claim Form BOE-267

The assessor reviews claim form BOE-267 to determine whether the *use of the property* qualifies for exemption (i.e., is the property used exclusively for religious, hospital, scientific or charitable purposes and activities on the lien date or upon acquisition). The assessor should review the form for information concerning other activities and uses occurring on the property, e.g., commercial leases. The assessor's review should identify any property or portion of the property

that is leased or rented, vacant or unused, or in excess of that reasonably necessary to conduct the organization's exempt activities.

The information provided on the Form BOE-267, and supplemental affidavits, if applicable, that may be filed with the claim provides the information necessary for assessor's staff to determine if the use of the property is consistent with the exempt purpose of the organization identified on the *Organizational Clearance Certificate*. A copy of the *Organizational Clearance Certificate* must be filed with Form BOE-267 if the claimant is filing for the first time in the county, and is used by the assessor for verification purposes.

The claimant is required to provide a copy of the income statement (revenue and expenses) relating exclusively to the subject property described on the claim upon the assessor's written request.[268] Review of the financial statements of the property will be of assistance in the assessor's determination of whether any private shareholder or individual is benefiting from the operation of the property.

The assessor's determination of whether an organization's property use satisfies the requirements of section 214 will be made without review by the Board staff; but, the assessor may not grant a claim unless the organization holds a valid *Organizational Clearance Certificate* issued by the Board.[269] The assessor may deny an exemption claim, based on non-qualifying use of the property, notwithstanding the claimant's *Organizational Clearance Certificate* granted by the Board.[270]

As part of the review, the assessor will verify that the organization has a valid *Organizational Clearance Certificate*. Additionally, review of information on the claim form will aid in the determination of whether a supplemental claim form is required. Please see the discussion on *Additional Filing Requirements for Certain Uses*, which is provided later in this chapter.

The assessor reviews the claim and attached documents to verify that they are complete and properly signed, and that the stated property use(s) is eligible for exemption. Thereafter, the assessor conducts a field inspection of the property to verify that the claimant uses the property exclusively for exempt purposes and activities.

Assessor's Field Inspection of Property

The assessor is to conduct a field inspection of the property on which an exemption is claimed for the first time. The staff of the assessor's office generally conducts the field inspection. The onsite inspection of the property serves to verify the information provided on the claim form. Since the assessor now makes the sole determination whether the property use qualifies for exemption, a field inspection of the property is essential to ensure that the property use meets exemption requirements. If there will be a lengthy delay before a physical inspection of the property can be conducted, the assessor's staff should indicate "pending inspection" in the space

[268] Section 254.5(a).
[269] Section 254.5(a).
[270] Section 254(c)(1).

for the date of the last inspection of the property. This serves as a reminder at a later date for the assessor to inspect the property when it is convenient.

Requirements of Assessor's Field Inspection Report

The assessor's staff should complete the *Welfare Exemption Assessor's Field Inspection Report*, Form BOE-267-FIR, to accurately document the claimant's property use observed during the field inspection.

Basic Property Information

The assessor's staff conducting the field inspection of the property is to verify basic property information, including identification of the claimant, property address, type of assessment, and the name of any other organization using the property.

Section A: Claimant

In completing Section A of the Field Inspection Report, the assessor seeks to clearly identify the primary purpose of the organization indicated on the form. The purpose of the organization also is identified on the *Organizational Clearance Certificate*.

Section B: Use of the Property

When conducting the field inspection, it is important that the assessor verify that the activities conducted by the organization at the identified property location are consistent with the stated purpose of the organization on Form BOE-267.

In reviewing and completing section B, the county assessor should consider the following items:

- **Primary Activity.** The assessor should indicate the primary use of the property by checking the appropriate box.
- **Other Activities.** The assessor should list and carefully explain other activities and uses occurring on the property, e.g., commercial leases.
- **All or Partial Uses.** In addition to indicating the primary and other activities of the organization conducted on the property, the assessor should identify any property or portion of the property that is leased or rented, vacant or unused, or in excess of that reasonably necessary to conduct the organization's exempt activities, or used to house personnel whose presence is not institutionally necessary.

Section C: Operation of Property for Benefit of Persons

This section of the field inspection report documents the opinion of the assessors' staff as to whether operation of the property provides a benefit to any person.[271] The assessor is required to answer each of the questions as with either a "yes" or "no." If further explanation is needed, the

[271] Section 214(a)(4) provides that the property is not to be used or operated by the owner or by any other person so as to benefit any person (i.e. officer, trustee, director, shareholder, member, employee, contributor) through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

assessor may use the appropriate space or attach an additional page. If the assessor has a concern that the property appears to be used to provide a private benefit for a person, the assessor may ask the claimant to provide additional information to verify if the property is used for any person's private benefit.

Section D: Ownership of Real Property

This section of the field inspection report identifies the ownership of the property as of the lien date, and documents whether the property is recorded in the exact name of the claimant. The assessor should provide the name of the owner of record if the property is not recorded in the organization's exact name.

Section E: Supplemental Assessment

This section requires review and completion if there was a change of ownership, remodeling or new construction affecting the claimant's property. If the claimant's property is receiving a full exemption, then that exemption is extended for remodeling or new construction to such property per section 271, and no filing for exemption is required. If a subsequent reinspection of the property discloses nonexempt use of portions of the property, whether new construction or pre-existing improvements, escape assessments must be enrolled at that time.[272]

If a property has been granted only a partial exemption, section E must be completed in order to determine whether the new construction pertains to the exempt or the nonexempt portions of the property. Attention to detail should be exercised in carefully and completely answering these questions, including, but not limited to accuracy in regard to the dates entered. In the case of new construction, page 2 of claim form BOE-267 should explain in detail what property was demolished and what was added. The use of the property should also be explained in sufficient detail so that assessor staff is able to determine whether the use of all or a portion of the property meets the requirements. If the claimant has filed a claim for exemption from the supplemental assessment after the filing date, then a late penalty should be calculated and applied.

Section F: Prior Filings

This section requires information in regard to whether a welfare exemption claim was filed on this property in a prior year or on a different property location. A field inspection report should be completed for each property for which an exemption claim is filed, on any new property or any property claimed as exempt by a particular claimant for the first time. This section should designate this fact, even though the claimant has filed on other properties in previous years.

Section G: Recommendation

The entry indicating recommendation of approval, or partial or total denial of the exemption should be in sufficient detail that it will be supported by sections A, B, C, D, E, and F of the assessor's report. In the case of a recommendation for partial denial or a late filing penalty, the facts should be clearly stated. The assessor should attach additional information or

[272] Section 254.5(e).

documentation, as necessary, to support the reason for denial. Finally, it is important that the report be signed and dated by the assessor or his designee.

Notification Following Review of Claim Form BOE-267

If the assessor finds the claimant's property ineligible for the welfare or veterans' organization exemption, subsequent to a review of the claim form/related documents and the field inspection of the property, the assessor must notify the claimant in writing. The assessor must also provide notification that the claimant may seek a refund of property taxes paid on its property by filing a claim for refund with the county board of supervisors, and thereafter may file a refund action in superior court if the refund claim is denied. (See Attachment E for recommended Board form BOE-267-F to be used for this purpose.)

CLAIM FOR WELFARE EXEMPTION (ANNUAL FILING) (BOE-267-A)

Claimants seeking exemption for property that has received a finding of full or partial exemption approval in the prior year are to file a claim with the assessor using claim form BOE-267-A, *Claim for Welfare Exemption (Annual Filing).* A claimant should retain a copy of each claim filed and approved for its records as proof that it is eligible to file the annual claim form BOE-267-A.

Requirements of Claim Form BOE-267-A

Claimants must submit a separate claim form for each property location, except when the property consists of contiguous parcels of land with the same use and ownership, such as a nature conservancy or land trust.

Claimants must answer all of the questions on the one-page claim form with a yes or no answer, and in some cases, a yes answer requires that the claimant provide additional information, a supplemental affidavit, or additional documents, as directed by the form.

Supplemental affidavits are to be filed with the annual claim for certain property uses such as low income rental housing, low and moderate income housing for the elderly or handicapped, and thrift shops with formal rehabilitation programs. Other supporting documents may be required with the claim, such as a copy of the financial statements for the property location if the income and expenses have increased more than 25 percent since the prior year. A copy of Internal Revenue Service Form 990T, *Exempt Organization Business Income Tax Return,* must be attached to the claim if any portion of the property generates unrelated business taxable income UBTI).[273] In addition, if other persons or organizations are regularly using the property, a listing of the other users must be provided to the assessor with the claim.

Signature on the Affidavit

The claim must contain an original signature of an officer of the organization or an authorized representative. If the affidavit is not signed, the filing is not valid and should be returned to the

[273] See discussion of unrelated business taxable income in Chapter 4, pp. 50 and 56-59.

claimant. It is the organization's responsibility to provide complete and accurate information since the organization's representative authorized to execute the form, certifies under penalty of perjury that the information provided on the affidavit is true, correct and complete. The assessor's responsibility is to verify that all the information provided is accurate and complete.

New or Different Location

A claimant filing an annual claim (BOE-267-A) must inform the assessor if the organization has moved to a new location or has acquired new property, which may qualify for the exemption. When an organization has moved since the prior year's filing, and no longer seeks exemption for that property, it must still file the annual claim form (BOE-267-A) to report this information to the assessor. But, if a claimant is seeking exemption on property at a new location, the claimant is not to use Form BOE-267-A (Annual filing). The organization must complete claim Form BOE-267, (First Filing) for each new location. Claim forms may be obtained from the assessor's office in the county where the new property is located.

Assessor Review of Claim Form BOE-267-A

The assessor verifies that each question on Form BOE-267-A (Annual Filing) is answered and that any required supplemental affidavits or information is included with the claim.

The assessor reviews claim form BOE-267-A to determine whether the *use of the property* continues to qualify for exemption as property used exclusively for one or more of the exempt purposes and activities.[274] The information provided on the claim form, the supplemental affidavits, or additional documents that may be filed with the claim, provides the assessor's staff with the information necessary to determine if the property use continues to meet the legal requirements for exemption, and is consistent with the purpose of the organization identified on the *Organizational Clearance Certificate*. The Assessor's review of BOE-267-A may include a review of a copy of the claimant's *Organizational Clearance Certificate*. The claimant is not required to file a copy of the *Organizational Clearance Certificate* with the annual claim form; however, the claimant should submit a copy upon request of the assessor. The assessor staff may also verify the eligibility of an organization by viewing the list of valid organizations on the Board's Web site, which is updated on a quarterly basis.

The assessor's determination of whether an organization's property use satisfies the requirements of section 214 will be made without review by the Board staff; but, the assessor may not grant a claim unless the organization holds a valid Organizational Clearance Certificate issued by the Board.[275] The assessor may deny an exemption claim, based on non-qualifying use of the property, notwithstanding the claimant's *Organizational Clearance Certificate* granted by the Board.

As part of the annual claim review, the assessor may conduct a field inspection of the property to verify that the property continues to meet the qualifications for exemption. The inspection

[274] Sections 214(a); 214(a)(3). See discussion in Chapter 3.
[275] Section 254(a).

should be timed to coincide as closely as possible with the lien date. However, some properties such as summer camps located in mountainous country and inaccessible during winter can be viewed during the prior summer rather than on the January 1 lien date when the camp may be closed because of winter weather conditions.

Notification Following Review of Claim Form BOE-267-A

In any year that the assessor determines that a property use is not qualified for exemption and denies the claim for the entire property, the assessor is required to notify the claimant in writing.[276] The Board has designed a finding sheet suggested for use by Assessors. (See recommended form BOE-267-F in Attachment E.) The assessor also must provide notification that the claimant may seek a refund of property taxes paid on its property by filing a claim for refund with the county board of supervisors, and thereafter may file a refund action in superior court if the refund claim is denied.

ADDITIONAL FILING REQUIREMENTS FOR CERTAIN USES

The general purpose of supplemental affidavits is to document more specifically the qualifying use of the property. If a supplemental affidavit is to be filed with the initial claim for exemption for a property (Form BOE-267); thereafter, the filing of the affidavit will be required annually with the annual claim form (BOE-267-A), unless the property use changes. Both claim forms provide information concerning when the filing of supplemental affidavits is required. Supplemental affidavits are to be submitted for the following property uses and attached to the first time filing claim form, BOE-267, or the annual claim form, BOE-267-A.

1. Thrift store in conjunction with rehabilitation/associated housing.

   Form BOE–267-R, *Welfare Exemption Supplemental Affidavit, Rehabilitation-Living Quarters.* The "Rehabilitation" section of this form requests detailed information about the claimant's rehabilitation program and activities, number of persons in the program, length of their employment, hours worked and salaries. If persons in a rehabilitation program reside on the property, the "Housing-Living Quarters" section of the form is to be completed, with the number of persons residing on the property, length of stay, employment, fees paid for room and board, number of staff residing on the premises and details concerning compensation.

2. Housing for low-income households owned and operated by a qualifying nonprofit corporation or a limited partnership with a nonprofit corporation as managing general partner.

   Form BOE–267-L, *Welfare Exemption Supplemental Affidavit, Housing-Lower-Income Households*. The eligibility is based on family household income; the claim requires the claimant to certify that: (1) the property usage is restricted to low income housing by a regulatory agreement, recorded deed restriction or "other legal document" if property owned by nonprofit corporation; (2) the funds that would have been necessary to pay property taxes

[276] Section 254(c)(2).

are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower-income households; and (3) the property receives either federal low income housing tax credits or government financing as specified; or 90% or more of tenants are qualified lower income tenants within the prescribed rent levels if the property is owned by an eligible nonprofit corporation. The form also requests specific documentation of qualifying lower income tenants, number of persons in the household, their household incomes, identification of dwelling units used for qualifying tenants, and total number of qualifying households.

3. Housing for low or moderate income elderly or handicapped persons

   Form BOE–267-H, *Welfare Exemption Supplemental Affidavit, Housing-Elderly or Handicapped Families*. The eligibility is based on family household income; the claim requests specific documentation of qualifying elderly and/or handicapped tenants, number of persons in the household, their household incomes, identification of dwelling units used for qualifying tenants, and total number of qualifying households.

4. Housing for low-income households owned by a limited partnership with a nonprofit corporation as managing general partner.

   Form BOE–267-L1, *Welfare Exemption Supplemental Affidavit, Housing-Lower-Income Households (Limited Partnership)*. The claim documents whether a supplemental clearance certificate has been issued to the nonprofit managing general partner claimant for the property, and requires the claimant to certify that the limited partnership agreement provides the claimant with sufficient management authority and duties in the partnership operations to qualify the property for exemption under section 214(g).

As noted above, if low-income housing property is owned by a limited partnership, then the nonprofit managing general partner must file two supplemental affidavits, forms BOE–267-L and BOE-267-L1. If additional space is needed to provide information requested, the claimant may provide that information on attached sheets.

Signature on the Affidavit

The claim must contain an original signature of an officer of the organization or an authorized representative. If the affidavit is not signed, the filing is not valid and should be returned to the claimant. It is the organization's responsibility to provide complete and accurate information since the organization's representative authorized to execute the form, certifies under penalty of perjury that the information provided on the affidavit is true, correct and complete. The assessor's responsibility is to verify that all the information provided is accurate and complete.

FILING DEADLINES FOR EXEMPTION CLAIMS AND LATE FILING PROVISIONS

Section 255(a) provides that a claim for exemption must be filed with the county assessor where the property is located between the lien date (January 1) and 5 p.m. on February 15. If February 15 falls on a Saturday, Sunday, or legal holiday, the claims are due at 5 p.m. on the next business day. Section 260 provides that if a claimant fails to follow the required procedure, the exemption

is deemed waived for that year. Exceptions are the statutory late-filing provisions of section 270 (for most late-filed claims) and section 271 (for property acquired after lien date).

Section 270(a) contains remedial provisions of late-filed welfare exemption claims. Where a timely claim is not filed on or before February 15:

1. 90 percent of any tax, penalty, or interest shall be canceled or refunded if the claim is filed on or before January l of the next calendar year.
2. 85 percent of any tax, penalty, or interest shall be canceled or refunded if the claim is filed after January l of the next calendar year.

Therefore, if a claim is filed with the assessor between February 16 of the current year and January 1 of the following year, 90% of any tax, penalty, or interest shall be canceled or refunded. If a claim is filed with the assessor after January 1 of the next assessment year, 85% of any tax, penalty, or interest shall be canceled or refunded.

If a claim is not filed timely, the combined tax, penalty, and/or interest may not exceed $250. Section 270(b) provides that notwithstanding (l) and (2) above, the maximum total amount of tax, penalty, or interest on property entitled to relief shall be $250. The $250 should not be based on each parcel in a claim, or on each claim if there is more than one claim, but on the claimant's total property that is exempt in the county. Any excess shall be canceled under the provisions of section 4985 or refunded under the provisions of section 5097.

There is no statute of limitations for filing a claim late where it involves a cancellation of taxes. This factual situation involves a claimant that has not paid property taxes owing on its property for multiple prior years and subsequently files exemption claims for those years. But, a claim for refund of property taxes must be filed within four years after making the payment sought to be refunded. The filing of the late claim must be made in sufficient time for review, and approval of the claim and for the filing for the refund.[277]

When the claimant files an exemption claim after the filing deadline, the claim is considered "late filed." Therefore, it is important that the assessor stamp claims with the date they are received so that the "late filing" provisions of the Revenue and Taxation Code may be correctly applied. Postmarks may be retained by the assessor to substantiate timely or late filings. Claims should be date stamped when received by the assessor's staff. Upon request, the assessor's staff should provide a receipt to the claimant showing the date a claim was filed in the assessor's office.

A timely claim for the church or religious exemption that the assessor denies, will not cause a subsequent claim for the welfare exemption to be considered a late filing under certain conditions. Section 255(c) provides that any claimant who has been found ineligible for the church exemption or the religious exemption after timely filing an affidavit (February 15), may then file an affidavit for a welfare exemption. However, such affidavits for the welfare

[277] Sections 5096 and 5096.5.

exemption must be filed within 15 days from the date of notification by the assessor of the claimant's ineligibility for the church exemption and/or the religious exemption.

Property Acquired After Lien Date

Assembly Bill 1744 (Stats. 2003, Ch. 316, effective January 1, 2004) amended section 271 relating to the late filing provisions of the welfare and veterans' organization exemptions, to change the exemption claim filing deadline for a property owner eligible to file an exemption claim on newly acquired property. The statutory amendments to section 271 provide two separate filing deadlines, one for the regular roll and one for the supplemental roll.

Regular Roll

Section 271 allows for the cancellation or refund of taxes on property on the regular roll that is newly acquired after the lien date (January 1), but prior to the beginning of the fiscal year (July 1).[278] The provisions of section 271 provide for either a full or partial exemption, depending on when the exemption claim was filed. The property taxes are cancelled or refunded under section 271, in the proportion that the number of days the property was qualified for exemption during the fiscal year bears to 365 days.[279]

This provision allows for a similar cancellation or refund of taxes for organizations that are not in existence until after the lien date and subsequently acquire property before the beginning of the next fiscal year.[280] Section 271(a) provides that an exemption claim filed on property acquired after the lien date is considered filed timely, if filed

1. within 90 days from the first day of the month following the month in which the property was acquired, or

2. by February 15 of the following calendar year, whichever occurs earlier.

If an organization does not file within the prescribed time periods, but it files an exemption claim later, 85 percent of any tax, penalty and/or interest is cancelled or refunded.[281] Also, the combined tax, penalty, and/or interest imposed on the eligible property may not exceed $250.[282]

Supplemental Roll

Section 75.21 of the Revenue and Taxation Code allows for the cancellation or refund of taxes on the supplemental roll. Assembly Bill 1744 (Stats. 2003, Ch. 316) also made a conforming amendment to section 75.21, to provide that a separate exemption claim for the supplemental roll is not required for newly acquired property or completion of new construction under either of the following conditions:

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[278] Section 271(a)(1).
[279] Section 271(a)(3).
[280] Section 271(a)(2).
[281] Section 271(b).
[282] Section 271(c).

1. the organization is already receiving an exemption on other property in the county (i.e., supplemental assessment on additional property in the county),[283] or

2. the supplemental assessment results from completion of new construction on property that has previously been granted exemption.[284]

If the filing of a claim is required, it must be filed on or before the 30th day following the date of the notice of the supplemental assessment in order to receive 100% of the exemption.[285] Section 75.21 provides the following late filing provisions:

1. if the claim form is filed on or before the date on which the first installment of the taxes on the supplemental tax bill becomes delinquent, 90% of any tax, penalty or interest may be cancelled;[286] otherwise

2. if the claim form is filed thereafter, 85% of any tax, penalty or interest may be canceled.[287]

If claim not filed timely, as provided in the above provisions, the combined tax, penalty, and/or interest may not exceed $250.

EXEMPTION CLAIM OPEN TO PUBLIC INSPECTION

The assessor and the Board are subject to the provisions of the Public Records Act.[288] Public records are broadly defined to include any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.[289] Under the Public Records Act, members of the public have the right to inspect any public record unless it is expressly exempt from disclosure or "on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."[290] Certain taxpayer records are confidential because of statutory provisions that prohibit disclosure, but there is no statutory provision pertaining to the welfare exemption that expressly exempts from disclosure, an exemption claim and documents filed in support of the claim.[291] Thus, the claim for an organizational clearance certificate or a supplemental clearance certificate and supporting documents submitted to the Board, as well as the Board staff's determination of an organization's eligibility for exemption, are public records open to public inspection.[292] Documents submitted

[283] Section 75.21(f)(1).
[284] Section 75.21(e).
[285] Section 72.21(c).
[286] Section 75.21(c)(1)(A).
[287] Section 75.21(c)(1)(B).
[288] Section 6250 et seq. of the Government Code.
[289] Government Code section 6252(e).
[290] Government Code section 6255.
[291] Government Code section 15619, the Board's general confidential information statute, also does not provide that welfare exemption claims or information provided in support of such claims is confidential.
[292] Section 6250 et seq. of the Government Code.

in support of a claim may include organizational documents, federal or state tax exemption letters, financial statements, and Internal Revenue Service Form 990, *Return of Organization Exempt from Income Tax*.

Section 408.2(a) specifically applies to the records of the assessor. Section 408.2(a) provides, in relevant part, that any information and records in the assessor's office that are required by law to be kept or prepared by the assessor, are public records and shall be open to public inspection.[293] A court of appeals has construed section 408.2 to require public disclosure of an exemption claim and a document stating the assessor's determination of a property's eligibility for exemption. The court held that these documents are "information and records in the assessor's office that are required by law to be kept by the assessor."[294] The court reasoned that:

> "…[a] statutory requirement of confidentiality as to a required property statement and a lack of such statutory requirement as to voluntary application for welfare tax exemption, indicate a legislative intent that information furnished by a welfare organization in seeking the special privilege or benefit of tax exemption should not be held confidential. Such circumstances also indicate a public policy that a welfare organization, which contemplates applying for such special privilege, must elect whether it will forego the matter of keeping its property affairs confidential in order to be classified as a nontaxpaying owner of property."[295]

Documents open to public inspection that are required to be kept by an assessor would include exemption claims, supplemental affidavits, financial statements, and other information submitted in support of an exemption claim. Records "prepared by the assessor" that are open to public inspection would include the assessor's determination of exemption eligibility of a property and the assessor's field inspection report.

All exemption claim forms and supporting documents, as well as Board and assessor determinations of exemption eligibility are a public record open to public inspection,[296] whether the records are located at the Board or at the assessor's office.

The assessor may request access to the Board's exemption records and the Board may request access to the assessor's exemption records without filing a written Public Records Act request since the assessor and the Board co-administer the welfare exemption.

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[293] *Gallagher v. Boller*, (1964) 231 Cal.App.2d 482 held that the exemption claim and assessor's determination of eligibility for exemption were open to public inspection under section 408.2.
[294] *Gallagher v. Boller*, supra at page 493.
[295] *Gallagher v. Boller*, supra at page 492.
[296] This information also is clearly stated on the claim form.

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PART II

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PART II: CHURCH, CHURCH PARKING AREA, AND RELIGIOUS EXEMPTIONS

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CHAPTER 1: CHURCH AND CHURCH PARKING AREA EXEMPTIONS

PROPERTY ELIGIBLE FOR THE CHURCH AND CHURCH PARKING AREA EXEMPTIONS

REAL AND PERSONAL PROPERTY USED EXCLUSIVELY FOR WORSHIP PURPOSES

Sections 3(f) and 5 of article XIII of the California Constitution exempt from property taxation buildings, land on which they are situated, and equipment used exclusively for religious worship.[297] This provision does not require that property be owned by a church organization to be eligible for the exemption, it merely requires use exclusively for religious worship.[298] Buildings actually used, and those in the course of construction intended to be used exclusively for religious worship are eligible for exemption.[299] The exemption is available for as much of the land as is necessary for the convenient use of the buildings.[300] The amount of land required for the buildings is determined by the assessor after he or she has made an inspection of the church premises and surrounding environment. Evidence of regular maintenance and landscaping is indicative of actual use and should be considered in relation to the need for a buffer zone from the surrounding activities. The local building code and zoning ordinances should be given presumptive weight in making the determination of the extent of the exempt land.

Any personal property necessary to equip the church also is eligible for exemption, including pews, religious objects, furniture, pianos, organs and hymn books.[301]

RELIGION AND WORSHIP DEFINED

The content of a religious belief is not a matter of a governmental concern and should not be subject to an inquiry concerning its validity. Religion does not require a belief in a deity or supreme being. It is only necessary to determine whether the belief occupies the same place in the lives of its holders that the orthodox beliefs occupy in the lives of their holders, and whether a given group that claims the exemption conducts itself the way groups conceded to be religious

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[297] The property tax exemption for religious organizations does not constitute excessive entanglement by the state with religion, as proscribed by the First Amendment. *Walz* v. *Tax Commission* (1970) 397 U.S. 664. The U.S. Supreme Court, in upholding the constitutionality of the exemption, stated that the state has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and finds this exemption useful, desirable, and in the public interest.

[298] A 1974 constitutional revision deleted the ownership requirement.

[299] Revenue and Taxation Code section 206 implements sections 3(f) and 5 of article XIII of the Constitution. *Course of construction* means physical work on the property including the demolition or razing of a building, but does not include mere preparation of plans.

[300] Section 5 of article XIII of the California Constitution.

[301] Sections 3(f) and 5 of article XIII of the California Constitution.

conduct themselves. In *Fellowship of Humanity* v. *Alameda County*,[302] the court enumerated the elements of a religion:

> The proper interpretation of the terms "religion" or "religious" in tax exemption laws should not include any reference to whether the beliefs involved are theistic or nontheistic. Religion simply includes: (l) a belief, not necessarily referring to supernatural powers; (2) a cult involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from adherence to the belief; and (4) an organization within the cult designed to observe the tenets of the belief. The content of the belief is of no moment.

Although examination of the truth or validity of religious beliefs is foreclosed by the First Amendment of the United States Constitution, the assessor must (of necessity) determine whether the claimant holds the belief honestly and in good faith or whether he seeks religious immunity merely for purposes of tax avoidance. The courts have recognized that tax exemption of churches and religious organizations necessitates some government involvement with religion.[303] The courts have agreed that a taxing authority, when processing a claim for exemption, is obligated to make inquiries and gather information to determine whether the organization's purposes and activities are within the statutory requirements, and the courts have held that such an investigation is not precluded by the First Amendment's guarantee of freedom of religion.[304] The burden of clearly demonstrating that the use of property comes within the terms of the exemption is upon the applicant.

WORSHIP DEFINED

In the *Fellowship of Humanity* case, the court also defined the term *worship*:

> Assuming this definition of "religion" is correct, then it necessarily follows that any lawful means of formally observing the tenets of the cult is 'worship' within the meaning of the tax exemption provision.

The operative guidance of this definition is found in the phrase *formal observance* which limits the activity to traditional ceremonial functions: such as regularly scheduled services with attendance and participation of the complete congregation. However, other ancillary services which are sacramental in nature (e.g., baptisms, confirmation, Bar Mitzvahs, weddings, funerals and other comparable ceremonies) meet the definition although the presence of the entire congregation is not required.

A narrow construction of the term *worship* also is compelled by the existence of the parallel exemptions for properties owned and used exclusively for *religious purposes*, California Constitution, article XIII, section 4(b), implemented by section 207 (Religious Exemption), and section 214 (Welfare Exemption) of the Revenue and Taxation Code.

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[302] (1957) l53 Cal.App.2d 673.
[303] *Fellowship of Humanity* v. *The County of Alameda* (1957) 235 Cal.App.3d 673.
[304] *Church of Scientology of California* v. *Commissioner* (1984) 83 T.C. 381, aff'd, 823 F.2d 1310 (9th Cir. 1987); *United States* v. *Homes*, 614 F.2d 985 (5th Cir. 1980); *United States* v. *Freedom Church*, 613 F.2d 316 (1st Cir. 1980).

In *Serra Retreat* v. *County of Los Angeles*,[305] the California Supreme Court pointed out the difference between the church exemption and the religious exemption provided in section 214:

> Our constitutional provision exempting churches from taxation limits the benefit to buildings used solely and exclusively for religious worship while the later enacted welfare exemption law is described as *in addition* to such exemption and so, in evidence of a *broader concept*, refers to property used exclusively for religious purposes. (Emphasis added.)

The distinction is a necessary requirement of the constitutional scheme and must be carried out in accord with the mandate of the electorate. Property used for religious purposes within section 214 would include, for example, property used for:

- Church administration for two or more churches
- Licensed nursery schools
- Schools of less than collegiate grade, for social halls and community centers
- Retreats or summer camps
- Convents and monasteries
- Reading rooms at locations other than church premises

(For property owned and so used to be eligible for the welfare exemption, all the requirements must be met.)

EXCLUSIVE USE REQUIREMENT

Although article XIII, section 3(f) of the California Constitution limits the exemption to buildings, land, and equipment used exclusively for religious worship, this does not mean that the property may not be subject to any other use. The California Supreme Court has interpreted the term *used exclusively*:

> ... to include any property which is used exclusively for any facility which is *incidental* to and *reasonably necessary* for the accomplishment of (exempt) purposes …. (Emphasis added.)

In this case, *Cedars of Lebanon Hospital* v. *County of Los Angeles*,[306] the court's ruling may be applied to the church exemption by paraphrasing the statement:

> ... for any facility which is reasonably necessary for the fulfillment of a generally recognized function of a complete modern [church].

Therefore, once it is established that the primary use of the facility is for purposes of religious worship, exemption should not be denied merely because other incidental and necessary uses are being made of the facility on a non-interfering basis (e.g., administrative office, reading room).

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[305] *Serra Retreat*, *supra* at page 759.
[306] *Cedars*, *supra* at page 736.

Incidental Uses - Church Activities

In general, incidental uses are those supportive of the primary religious worship use and usually involve only present or prospective members of the congregation. Business meetings of the church governing body, religious instructional sessions, practice sessions of the choir and most activities of auxiliary organizations accountable to the local church authority would meet the test of an incidental and necessary use. In contrast, however, the regular operation of a thrift shop cannot qualify as an incidental activity because it is not directly connected with religious worship, not essential to the tenets of religion, and only furthers religious worship indirectly as a revenue generating activity.

Incidental Uses - Qualified Charitable or Religious Organizations

The requirement of exclusive use for purposes of religious worship does not mandate that a church remain vacant when it is not subject to primary or incidental uses. Use of the church facilities by nonprofit, charitable groups for occasional meetings which do not interfere with the primary use of the property is not a disqualifying use if no charge is made for the use, or any charge is intended merely to cover the ordinary and necessary costs of making the facility available for use, such as janitorial and utility costs. For example, use of the facility by a boy or girl scout group (even if it is not sponsored by the church), a 4-H club, or a civic improvement group would not be disqualifying. On the other hand, if portions of the property are leased to third parties not part of the congregation, the church exemption may not be available. In the case of leased portions of the property, however, the welfare exemption may apply and the owners and users should consider applying separately for that exemption. For example, church property leased to a school district can qualify for the welfare exemption.[307] The process for applying and qualifying for the welfare exemption is discussed in Part I of this handbook.

Concurrent or shared use of a single facility by two or more religious organizations is not disqualifying if each body meets the test of exclusive or incidental use. If the ownership is jointly held, a single exemption claim filed by the joint owners would be proper. A shared use by lease would require an independent filing by each user.

Disqualifying Incidental Uses

The following are examples of uses of church property that may cause disqualification from the exemption:

- Use of church property by non-religious social or fraternal groups, since such use is not for religious purposes, as required by the Constitution[308]
- Use of church property by individuals, such as candidates for public office, or non-qualified organizations such as political organizations, since such use is for political purposes and activities rather than religious purposes and activities

[307] Section 214.6(b).
[308] Section 3(f) of article XIII of the California Constitution.

- Use of church property by individuals, including church members, or by for-profit entities for business purposes such as marketing, or earning income from the sale of goods or services since such use is not for religious purposes and activities

Use of the Property by the Church for Fundraising Purposes

The church exemption in section 206 references the Constitutional provision, section 3(f) of article XIII, which exempts buildings, land on which they are situated and equipment used exclusively for religious worship. The courts have not addressed the issue of whether occasional fundraising would fail the test of using the property exclusively for worship purposes, thereby disqualifying the property from the church exemption, or whether occasional fundraising would be viewed by the courts as a qualifying incidental use.

As indicated, however, incidental uses are supportive of the primary religious worship use and usually involve only present or prospective members of the congregation. Thus, the following are examples of activities that could be regarded as qualifying incidental fundraising uses:

- Meals before or after church services for those in attendance.
- An annual festival which includes worship services followed by musical and dance entertainment. Food and beverages are sold.

Non-Qualifying Fundraising Uses

The use of church property for ongoing systematic fundraising purposes and activities will disqualify the property from the church exemption. Examples:

- The regular operation of a thrift shop because it is not directly connected with religious worship, not essential to the tenets of religion, and only indirectly furthers religious worship as a revenue generating activity.
- Use of the property for fundraising barbecues held twice monthly and on holidays from May through September, publicized in the local newspaper to include take-out orders which can be called in, and free delivery to home or business.
- Lease of church property on a regular basis for purposes of generating rental income to non-religious organizations or individuals for non-religious purposes and activities.

If church property is used for bingo, such use is disqualifying under the church exemption, and the church must claim the welfare exemption, at least as to that portion of the property used for bingo. (For more information, see Part I, Chapter 4, under "Bingo".)

PARTIAL EXEMPTION

The foregoing rules are most easily applied to a single-building facility owned by a church. If formal religious worship is found to be the primary use and all other uses are determined to be incidental or non-interfering, then the church exemption is applicable. If, however, another organization uses all or part of the facility for charitable purposes on a fixed rental basis, the

welfare exemption must be claimed by both the church and the other organization for the extent of that use, in addition to the church exemption for the remaining portion; or the church could claim the welfare exemption for the entire property and the other organization could claim the welfare exemption for the extent of that use. If such use encompasses the entire facility, it would not be necessary for the church to claim the church exemption, but the church and the other organization both must claim the welfare exemption.

In the situation involving multiple buildings it is necessary to determine the primary use of each building on an individual basis, but qualification should be decided on the use of the entire facility as one unit. Individual buildings or rooms whose use qualifies only for the welfare exemption, or is not exempt, must be apportioned by value allocation.

Illustrations of single and multiple-building use follow.

SINGLE-BUILDING FACILITY

1. The church exemption only applies if formal religious worship is the principal use and all other uses are incidental or non-interfering.

2. The welfare exemption may apply to that part of the building used by another qualified organization for qualified welfare purposes and activities. The religious or welfare exemption may apply when the church operates a licensed nursery school or a full-time elementary or secondary day school.

SINGLE-BUILDING FACILITY WITH ROOMS SEPARATED BY HALLWAYS OR BREEZEWAYS

1. The church exemption applies to that part of the building where formal religious worship is the principal use and to portions of the same structure where all other uses are incidental.

2. The religious or welfare exemption may apply to that part of the building used by another qualified welfare organization or by the same organization if operating a licensed nursery school or a full-time elementary or secondary day school.

3. Rooms separated from the sanctuary by hallways or breezeways generally are included as areas eligible for the church exemption on the basis of incidental or noninterfering use.

4. The church exemption applies to the areas or rooms needed for church office space.

5. The church exemption applies to that part of the structure used for religious instruction or as a nursery while the parents are engaged in religious worship.

SINGLE BUILDING AS THE PLACE OF WORSHIP; ANCILLARY STRUCTURES LOCATED ON THE CHURCH PROPERTY

1. The church exemption applies to the place of worship.

2. The church exemption applies to the areas or rooms in separate structures used for incidental or non-interfering purposes.

3. The welfare or religious exemption or no exemption applies to other structures based on their individual use.

A church parsonage or rectory owned by a church society or religious body and occupied as a residence by the pastor or corresponding church dignitary does not qualify for the church exemption because it is not used for religious worship. However, it may be eligible for the welfare exemption under section 214. (See discussion of exemption of housing for religious personnel, owned by churches or qualifying religious organizations under the welfare exemption in Part I, *Welfare Exemption*, Chapter 5, *Housing.*)

PROPERTY QUALIFIED FOR EXEMPTION MAY BE LEASED OR OWNED

The constitutional provision does not require that the real property be owned by a church organization. An individual who owns the land and the building where religious services are conducted regularly may claim the exemption, even though full title to the property remains in his name and he retains the right to transfer or sell the property.

Any reduction in property taxes on leased property used exclusively for religious worship and granted the church exemption must inure to the benefit of the organization (church) entitled to the exemption. If the lease does not specifically provide that the amount of rent was reduced to reflect the property tax exemption, the church must receive a reduction in rent proportional to the tax reduction due to the church exemption.[309]

EXEMPTION DOES NOT EXTEND TO SPECIAL ASSESSMENTS

Churches are not exempt from special assessments, but only from taxes.[310] Taxes are imposed on both real and personal property; with very few exceptions, special assessments apply only to land or to land and improvements. Church property remains subject to all district levies on land only or land and improvements only.[311]

FILING REQUIREMENTS FOR THE CHURCH EXEMPTION

Section 260 provides that if a person fails to follow the required procedure, the exemption is waived by such person. The California Supreme Court, in the case of *Chesney* v. *Byram*,[312] upheld this requirement and stated that the filing of the proper affidavit within the prescribed time was a prerequisite to obtaining the exemption. This case involved a veteran's exemption, but the Court in rendering its opinion specifically reversed a contrary holding on this point in the

[309] Section 206.2.
[310] Atty. Gen. Op. N.S. l847, July 2l, l939; *Cedars*, *supra* at pages 747-748; *YMCA*, *supra* at page 776.
[311] *Cedars*, *supra* at page 747.
[312] (1940) l5 Cal.2d 460.

case of *St. John's Church* v. *Los Angeles County*.[313] Pursuant to statutory provisions, failure to file timely has the effect of reducing the amount of exemption the property is eligible to receive.

The required claim form is BOE-262-AH, *Church Exemption*. The person filing the claim should be given a receipt as a record of the date the claim was submitted to the assessor. In the alternative, a duplicate of the claim form may be provided to the assessor to be date-stamped and retained by the claimant for purposes of verifying that the claim was filed timely.

TIME FOR FILING

Section 255 specifies that the affidavit or claim for exemption shall be filed with the assessor between the lien date and 5 p.m. on February 15.[314]

(See also sections discussing supplemental assessments in Part I, *Welfare Exemption*, Chapter 6, *Welfare Exemption Claim Process*.)

FILING REQUIREMENTS FOR LEASED PROPERTY

In the case of leased premises, the church or religious organization may report the leased property on its claim for the church exemption, or the lessor (owner) of such property may claim the exemption by filing a *Lessor's Exemption Claim* (form BOE-263), with the county assessor. The deadline for filing of the lessors' exemption claim form is the same as for the church exemption, February 15.

The *Lessor's Exemption Claim* must include an affidavit prepared by an authorized person representing the church. Only the lessee (church) can attest that the leased property is in fact being exclusively used in an exempt manner. The governing body must declare under penalty of perjury that the property is exclusively used for religious worship purposes.

The affidavit is filed timely if submitted by February 15, with a *Lessor's Exemption Claim* form, or if filed with the lessor's property statement by the last day of filing of such statement without penalty under section 463. The lessor's claim for the church exemption has been regarded as an alternative to the church claim and is treated under the provisions for late filed church claims in section 270(a).

LATE FILING

Section 270(a) contains remedial provisions of late-filed church exemption claims. Where a timely claim is not filed:

1. 90 percent of any tax, penalty, or interest shall be canceled or refunded if the claim is filed on or before January l of the next calendar year.

[313] (1935) 5 Cal.App.2d 235.

[314] If the filing deadline falls on a weekend or legal holiday, the claim form may be filed by 5 p.m. of the next business day.

2. 85 percent of any tax, penalty, or interest shall be canceled or refunded if the claim is filed after January l of the next calendar year.

Section 270(b) provides that notwithstanding (l) and (2) above, the maximum total amount of tax, penalty, or interest on property entitled to relief shall be $250. The $250 should not be based on each parcel in a claim, or on each claim if there is more than one claim, but on the claimant's total property that is exempt in the county. Any excess shall be canceled under the provisions of section 4985 or refunded under the provisions of section 5097.

There is no statute of limitations for filing a claim late where it involves a cancellation of taxes. As a claim for refund must be filed within four years after making the payment sought to be refunded, the filing of the late claim must be made in sufficient time for review, and approval of the claim, and for the filing for the refund.[315]

PROPERTY ACQUIRED AFTER LIEN DATE

Property acquired by an existing organization after the January 1 lien date or property of an organization formed after the January 1 lien date may, if otherwise eligible, receive the exemption from the date of acquisition. However, the property must be immediately put to an exempt use and a claim form filed with the assessor prior to the January 1 following the acquisition or formation. Thereafter, only 85 percent exemption is available to qualified claimants. Refunds of taxes paid, if any, are paid only to the entity that paid the taxes. Property not immediately put to an exempt use is taxable and may not be considered for exemption until the following lien date. Two claim forms are required when property is acquired between January 1 and July 1, one for a prorated exemption through June 30 (the current fiscal year) and one for full exemption for the fiscal year commencing July 1. Taxes, penalties, and interest incurred by late filing are limited to $250 per claim.

LISTING ON ROLL

See Appendix B

CHURCH PARKING AREA EXEMPTION

Article XIII, section 4(d) of the California Constitution authorizes the Legislature to exempt from property taxation in whole or in part:

> Real property not used for commercial purposes that is reasonably and necessarily required for parking vehicles of persons worshipping on land exempt by Section 3(f).

This constitutional provision, in authorizing the Legislature to exempt property that is "reasonably and necessarily required" for parking, does not require church ownership of the

[315] Sections 5096 and 5096.5.

property, and does not preclude other uses of the property so long as those uses are not for commercial purposes.

In 1996, the Legislature repealed the former section 206.1 and enacted the new section 206.1, (effective September 30, 1996) to expand the church parking area exemption to include leased property as well as church-owned property, provided all of the following requirements are met:

- The real property is not at other times used for commercial purposes.
- The congregation of the church, religious denomination, or sect is no greater than 500 members.
- The church, denomination, or sect is engaged in a lease of real property to be used exclusively for qualifying parking purposes.
- Under the terms of the lease, the church, denomination, or sect is responsible for paying the property taxes levied.
- The real property is used exclusively for the parking of automobiles of persons attending religious services, or engaged in religious services or worship or any other religious activity.
- The fee owner agrees to pay property taxes that would have been levied on the property should the property be used for purposes other than church parking in either the second or third year; if so, the exemption is lost for all three years.

Section 206.1 also provides that the real property need not be contiguous to the land on which the services, worship, or other religious activity is located. Excess parking spaces and vacant unused land do not meet the requirements for exemption.

EXCLUSIVE USE REQUIREMENT

The exclusive use requirement which had been deleted from section 206.1 for church-owned parking property,[316] was reenacted in the 1996 amendment to apply to parking property not owned by the church.[317] It is well established that *used exclusively* does not preclude incidental uses[318] provided they are directly connected with and in furtherance of the religious purpose[319] and not in competition with commercial enterprise.[320]

Commercial Purposes Restriction

The restriction that the real property is not to be used at other times for commercial purposes is imposed on all property used for church parking for which the exemption is claimed, whether

[316] The legislature amended section 206.1 in 1975 (Ch. 128 of AB 817) to allow church-owned parking property to be used by the general public without loss of exemption, if a profit was not realized through such leasing activity.
[317] Sections 206.1(b)(4)(B) and (b)(4)(D).
[318] For discussion on exclusive use, see Chapter 3.
[319] *Cedars*, *supra* at page 736.
[320] Section 206.1(b)(3) of the Revenue and Taxation Code and article XIII, section 4(d) of the California Constitution.

leased or owned.[321] The term *commercial purposes* is not defined in the Constitution, and the Legislature has merely stated what it does not constitute. Section 206.1(b)(3) provides that *commercial purposes* does not include the use of the property for the parking of vehicles or bicycles, the revenue of which does not exceed the ordinary and necessary costs of maintaining the real property. The plain and ordinary meaning of *commercial purpose* is to engage in profit making or business activity.[322] The term is stated in section 206.1 in the plural which would indicate that the Legislature intended to bar the use of church parking area property for any and all commercial purposes, not solely commercial parking purposes in which the church uses the property for a profit-making parking business or in which the church leases the property to a parking firm for purposes of operating a commercial parking business. (See Part I, *Welfare Exemption*, Chapter 4, *Fundraising*, for additional information on using property for commercial purposes. For information on filing requirements for claiming exemption on leased property see section in this chapter "Filing Requirements for Leased Property.")

[321] Section 206.1(b)(3) and article XIII, section 4(d).
[322] *Black's Law Dictionary*, 6th Ed., page 270.

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CHAPTER 2: RELIGIOUS EXEMPTION

PROPERTY ELIGIBLE FOR RELIGIOUS EXEMPTION

The discussion on religious belief and worship under the *Church Exemption* in Chapter 1, also pertains to the religious worship aspect of the religious exemption provided in section 207, and is incorporated by reference.

The religious exemption in section 207 is available for a church that owns its own property and (1) conducts its own worship services on the property or (2) conducts worship services on the property and operates its own preschool, nursery school, kindergarten, school of less than collegiate grade, or schools of collegiate grade and less than collegiate grade. The religious exemption is also available if another church is permitted to use the property part-time for religious worship and/or to operate a school described above, provided the owner church conducts worship services on the property. Thus, the religious exemption in section 207 is for property owned and operated by a church and used exclusively for religious worship and for church schools for specified school purposes. However, property used for school purposes only, where the owner does not conduct worship services, does not qualify for the religious exemption but may qualify for the welfare exemption.

The legislative intent in enacting section 207 was to provide a simple, streamlined claims process for churches operating church schools to file for property tax exempt status.

> The creation of a religious exemption by this act will allow any church to file either for the church exemption or the religious exemption. A church which operates a church school, which formerly had to file a church exemption for the church property, and a welfare exemption for the school portion of the property, will henceforth be able to file a "religious exemption" for the entire property. After an initial claim, the exemption remains in effect until the property is no longer eligible for the exemption with minimal annual filing requirements thereafter.[323]

EXCLUSIVE USE REQUIREMENT

Consistent with well-settled judicial precedent interpreting the term *used exclusively* within the welfare exemption in section 214, the requirement that property be used exclusively for religious purposes, used for religious worship, and church school purposes in section 207 does not mean that the property must be used solely for religious worship to the exclusion of all other use. Section 207 is only for religious worship and for church schools. The California Supreme Court, following a rule of strict, but reasonable construction, has construed the term *used exclusively* to allow incidental uses, provided they are directly connected with and in furtherance of the exempt purpose.[324] This judicial precedent may be applied to the religious exemption to the effect that property used for religious worship and religious schools with other uses that are merely

[323] Stats.1981, Ch. 542, section 1, in effect January 1, 1982.
[324] *Cedars, supra* at page 736.

incidental to the accomplishment of the religious worship and religious schools remains eligible for exemption. Incidental uses generally are in furtherance of the religious worship and religious school and would include church activities, as well as occasional use by qualified religious or charitable organizations, on a not to interfere basis. (For further discussion of incidental uses of church property and the exclusive use requirement as it pertains to fundraising activities on church property exempt under section 207; see also Chapter 1, under "Exclusive Use Requirement," which is applicable here.)

PARTIAL EXEMPTION

If another qualifying organization uses all or part of the facility for religious or charitable purposes on a regular basis, then the property is not eligible for the religious exemption, and the welfare exemption must be claimed by both the church and the other organization for the extent of that use. Other exemptions include:

- Property owned by the church and leased to a public school for public school purposes, provided the church also annually files a lessor's exemption claim form.[325]
- Buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption.[326] "Course of construction" includes the demolition or razing of a building with the intent to replace it with facilities to be used exclusively for an eligible activity.[327]

(See discussion on partial exemption in Chapter 1, under "Partial Exemption," which is applicable here and incorporated by reference.)

PROPERTY USED FOR HOUSING RELIGIOUS EMPLOYEES

A church parsonage or rectory owned by a church society or religious body and occupied as a residence by the pastor or corresponding church dignitary does not qualify for the religious exemption because it is not used for religious worship or religious worship and religious schools. However, it may be eligible for the welfare exemption if it is incidental to and reasonably necessary for the primary religious purpose. (See section 214 and discussion of exemption of housing for religious personnel, owned by churches or qualifying religious organizations under the welfare exemption in Part I, *Welfare Exemption*, Chapter 5, *Housing.*)

EXEMPTION DOES NOT EXTEND TO SPECIAL ASSESSMENTS

Property used exclusively for religious worship or religious worship and religious purposes under section 207 is not exempt from special assessments, but only from taxes.[328] Taxes are imposed on both real and personal property; with very few exceptions, special assessments apply

[325] Section 214.6.
[326] Section 214.1.
[327] Section 214.2.
[328] Atty. Gen. Op. N.S. l847, July 2l, l939.

only to land or to land and improvements. Such property remains subject to all district levies on land only or land and improvements only.[329]

FILING REQUIREMENTS FOR RELIGIOUS EXEMPTION

The religious exemption requires a one-time filing by the claimant. Once granted, the exemption remains in effect until terminated or until the property is no longer eligible for the exemption. Form BOE-267-S, *Religious Exemption Change in Eligibility Or Termination Notice*, is available from the county assessor. (See Appendix F.)

TIME FOR FILING

Section 255 specifies that the affidavit or claim for exemption shall be filed with the assessor between the lien date and 5 p.m. on February 15.

(See also sections discussing supplemental assessments in Part I, *Welfare Exemption*, Chapter 6, *Welfare Exemption Claim Process*.)

LATE FILING

Section 270(a) contains remedial provisions of late-filed religious exemption claims. Where a timely claim is not filed on or before February 15:

1. 90 percent of any tax, penalty, or interest shall be canceled or refunded if the claim is filed on or before January l of the next calendar year.

2. 85 percent of any tax, penalty, or interest shall be canceled or refunded if the claim is filed after January l of the next calendar year.

Section 270(b) provides that notwithstanding (l) and (2) above, the maximum total amount of tax, penalty, or interest on property entitled to relief shall be $250. The $250 should not be based on each parcel in a claim, or on each claim if there is more than one claim, but on the claimant's total property that is exempt in the county. Any excess shall be canceled under the provisions of section 4985 or refunded under the provisions of section 5097.

There is no statute of limitations for filing a claim late where it involves a cancellation of taxes. A claim for refund of property taxes must be filed within four years after making the payment sought to be refunded,[330] with refunds limited to the four-year period.

ANNUAL CHANGE IN ELIGIBILITY OR TERMINATION NOTICE

Once the Religious Exemption has been established, the county assessor annually mails form BOE-267-S Notice, *Religious Exemption Change In Eligibility or Termination Notice*, to all recipients of the exemption in the prior year. This notice should be returned to the county

[329] *Cedars*, *supra* at page 747.
[330] Sections 5096 and 5096.5.

assessor by June 30 if the property has been sold or if all or a portion of the property which received the exemption in the prior year is, as of January 1 of the current year, used for an activity which does not qualify for the exemption. This will terminate the exemption. The failure to notify the assessor when property is no longer eligible for exemption may result in an escape assessment, interest, and a penalty of up to $250. Conversely, if a portion of the property was denied the exemption in the prior year but is now being used for religious worship or religious worship and religious schools, the county assessor should be notified so that the prior determination of ineligibility can be adjusted to reflect the change. If any of the above dates fall on a weekend or legal holiday, the claim form may be filed by 5 p.m. of the next business day.

LISTING ON ROLL

See Appendix B

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APPENDIX A: SUMMARY OF RELATED COURT CASES

Alcoser v. *County of San Diego* (1980) 111 Cal.App.3d 907. Property of a construction industry vocational training school operated under a trust, created by a labor union and construction industry employers pursuant to a collective bargaining agreement, does not qualify for the welfare exemption where the school was primarily intended to benefit (and did primarily benefit) the union and the employers rather than the community as a whole. (Section 214(a).)

California College of Mortuary Science v. *County of Los Angeles* (1972) 23 Cal.App.3d 702. An accredited junior college with a one-year course for morticians and funeral directors was not considered charitable because it did not benefit the community as a whole, but benefited only the funeral service industry by providing competently trained personnel.

As is true of most vocational schools, the property of an educational institution which trains personnel for the funeral-service industry does not qualify for the welfare exemption as property "used exclusively for charitable purposes" in that its activities do not benefit the community as a whole or an unascertainable and indefinite portion thereof. (Section 214(a).)

Cedars of Lebanon Hospital v. *County of Los Angeles* (1950) 35 Cal.2d 729. The welfare exemption extends to the property of a hospital devoted to the housing of essential hospital personnel, to the conduct of a nurses' training school operated in connection with the hospital, and to a tennis court maintained as a recreational facility for hospital employees. Property used exclusively for hospital purposes includes "any property which is used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment of hospital purposes; or, in other words, for any facility which is reasonable necessary for the fulfillment of a generally recognized function of a complete modern hospital."

A hospital thrift shop operated for the sale of donated clothing, the proceeds therefrom being devoted to the maintenance of free children's clinic, is not exempt. (Section 214(a).)

Chesney v. *Byram* (1940) 15 Cal.2d 460. Even though section 1 1/4 of article XIII (now section 3(o) of article XIII) of the California Constitution is self-executing in the sense that no legislative enactment was required to put it into effect, it is within the power of the Legislature to enact legislation that prescribes a reasonable procedure for claiming the exemption and provides that a failure to follow such procedure constitutes a waiver of the exemption. (Section 260, article XIII, section 3(o) of the California Constitution.)

Christ the Good Shepherd Lutheran Church v. *Mathiesen* (1978) 81 Cal.App.3d 355. The fact that rental income from the property may exceed operating expenses in a given year will not disqualify a qualifying lessor from receiving the welfare exemption on property leased to another qualifying organization where the property is used exclusively for exempt purposes and activities and such leasing arrangement is not intentionally profit-making or commercial in nature. (Section 214(a).)

Christward Ministry v. *County of San Diego* (1969) 271 Cal.App.2d 805. The actual use required by subparagraph (a)(3) of section 214 is not limited to "actual physical use." Exempt nonphysical uses of a religious retreat may include use of nearby areas surrounding trails in conjunction with meditation and use of more remote hilltops for a buffer. (Section 214.)

Church Divinity School of the Pacific v. *County of Alameda* (1957) 152 Cal.App.2d 496. Property "used exclusively for the purposes of education" includes any facilities which are reasonably necessary for the fulfillment of a generally recognized function of a complete modern college, including housing for faculty and students and a parking lot. (Article XIII, section 3(e) of the California Constitution.)

Church of Scientology of California v. *Commissioner* (1984) 83 T.C. 381, aff'd, 823 F.2d 1310 (9th Cir. 1987). A taxing authority processing a claim for exemption is obligated to make inquiries and gather information to determine whether the organization's purposes and activities are within the statutory requirements. The court held that such an investigation is not precluded by the First Amendment guarantee of freedom of religion.

Clubs of California for Fair Competition v. *Kroger* (1992) 7 Cal.App.4th 709. Y.M.C.A.'s health club facility served valid charitable purposes, benefiting the community as a whole, so as to qualify it for the welfare exemption. All its activities had some potentially valid charitable purpose, and it was unrealistic to analyze the degree of community benefit for each category of activity offered by the organization. The record instead favored analyzing the YMCA as an integral unit since all activities were conducted in the same building, directed by the same staff, and often shared the same sources of financial support and the same overhead costs. Further, it was immaterial that the facility competed with private health clubs, since a charitable enterprise does not lose its exemption merely because it engages in competition with businesses that are subject to taxation. (Section 214(a).)

Eisley v. *Mohan* (1948) 31 Cal.2d 637. Section 987 (repealed by Stats. 1949, p. 2573), which provided for the taxation of only the possessory interest of a purchaser of land from the Veterans Welfare Board under a contract whereby the board retained title only for security purposes, was invalid under section 1 of article XIII (now section 1(b) of article XIII), of the California Constitution. The statutory provision, in providing that only the possessory interest be taxed, required the assessment of property at less than its full cash value which conflicted with the constitutional provision. The purchaser is the owner for tax purposes, and the property must be taxed to him in proportion to its value. (Article XIII, section 1(b) of the California Constitution.)

English v. *County of Alameda* (1977) 70 Cal.App.3d 226. The term "owner of the property" includes one who holds a taxable possessory interest in publicly-owned real property, and this property interest may be exempted under section 214. However, a taxable possessory interest does not exist when individuals use property granted the welfare exemption (e.g., elderly persons in homes for the aging and patients of hospitals); and taxing such use would defeat the purpose of the welfare exemption.

Fellowship of Friends, Inc. v. *County of Yuba* (1957) 235 Cal.App.3d 673. "Museum," as used in section 3(d) of article XIII, the free museum exemption, means a building with the predominant purpose of which is to house and display objects of lasting value. This definition does not preclude other uses, but it requires use as a museum to be primary. The display function is of paramount importance for purposes of the exemption, which is intended to encourage of public display of art.. (Article XIII, section 3(d) of the California Constitution.)

Fellowship of Humanity v. *Alameda County* (1957) 153 Cal.App.2d 673. Belief in a Supreme Being is not a prerequisite to qualification for the church exemption provided for by section 1 1/2 of article XIII (now section 3(f) of Article XIII) of the California Constitution. "...[T]he proper interpretation of the terms "religion" or "religious" in tax exemption laws should not include any reference to whether the beliefs involved are theistic or nontheistic. Religion simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system or moral practice directly resulting from adherence to the belief; and (4) an organization within the cult designed to observe the tenets of the belief. The content of the belief is of no moment." (Article XIII, section 3(f) of the California Constitution.)

Fifield Manor v. *County of Los Angeles* (1961) 188 Cal.App.2d 1. A home for the aged which caters to wealthy persons and furnishes them the services and care needed by the old and infirm, rich or poor, does not cease to be a charitable institution so long as its charges do not yield more than actual cost of operation. (Section 214.)

First Baptist Church v. *County of Los Angeles* (1952) 113 Cal.App.2d 392. Section 1 1/2 of Article XIII (now section 3(f) of Article XIII) of the California Constitution, which exempted from taxation property used for religious worship, contemplated actual, not intended use. Prior to its amendment in 1952, section 1 1/2 of article XIII (now section 3(f) of article XIII) did not exempt from taxation a church in the course of construction. The fact that the legislature was proposing amendment of the constitutional provision to exempt a building in the course of construction which is intended to be used exclusively for religious worship supported the court's conclusion. (Article XIII, section 3(f) of the California Constitution.)

Fredericka Home for the Aged v. *County of San Diego* (1950) 35 Cal.2d 789. A nonprofit corporation operating a home for elderly persons on a "life care contract" basis is charitable within the meaning of section 214 even though it requires that each applicant for admission pay an entry charge and meet the approval of the board of directors after a three-month probationary period. Where the payments made by the elderly residents are within the reach of persons of limited means and are not commensurate with the benefits they receive, and there is no element of private gain, and where all the income of the institution, including that received from residents (65 percent), and a substantial portion received from gifts and other sources (35 percent), is devoted exclusively to affording a reasonable standard of care to the aged persons for the balance of their lives, the concept of charity in its ordinary sense, as well as under a strict but reasonable construction of the welfare exemption law, is met. The portion of the corporation's property used

to house personnel whose presence on its property is an institutional necessity is also entitled to the exemption. (Section 214.)

Greek Theatre Association v. *County of Los Angeles* (1978) 76 Cal.App.3d 768. Presentation of concerts by paid professional artists does not result in a more advantageous pursuit of their profession and preclude the welfare exemption to real property of an otherwise qualified nonprofit organization. The court held that the cultural edification of the public (through the professional presentation of operas, symphonies, concerts, ballets, musical productions, drama, and comedy) was a charitable-educational activity qualified for exemption. The fact that the professional entertainers who used the organization's facilities were compensated for their performances was of no consequence, since the organization was organized and operated for charitable purposes and since it was putting on the productions itself, not merely leasing its facilities to others. (Section 214.)

Honeywell Information Systems, Inc. v. *County of Sonoma* (1974) 44 Cal.App.3d 23. Under the rule of strict but reasonable construction, the phrase "exclusively used" may not be given a literal interpretation so as to mean that the property exempted must be used only, solely and purely for the purposes stated to the total exclusion of any other use. Rather, the expression "exclusively used" refers not only to primary but to certain incidental uses as well. However, such incidental uses must be directly connected with, essential to, and in furtherance of the primary use and not merely revenue-generating devices. (Article XIII, section 3(d) of the California Constitution.)

House of Rest of the Presbyterian Church in the USA v. *County of Los Angeles* (1957) 151 Cal.App.2d 523. The test for determining whether property is used exclusively for religious or charitable purposes is not whether such property is essential, indispensable and necessary for the accomplishment of such purposes, but whether the use is incidental to and reasonably necessary for the accomplishment of such purposes. Thus, the welfare exemption applies to temporary, low-cost housing facilities for missionaries on furlough and for other religious workers who work in establishing Christian purposes throughout the world. (Section 214.)

J. Paul Getty Museum v. *County of Los Angeles* (1983) 148 Cal.App.3d 600. The court concluded that the use of property for a free museum (displaying Greek and Roman antiquities, Renaissance paintings, and 17th and 18th century decorative arts) was a charitable activity for purposes of the welfare exemption. The court noted that the term charitable is to be broadly construed, with the primary test being whether the activity promotes a general community benefit whose ultimate recipients are either the community as a whole or an unascertainable and indefinite portion thereof. (Section 214.)

LaSociete Francaise v. *California Employment Commission* (1943) 56 Cal.App.2d 534. An action to recover sums paid under the California Unemployment Insurance Act, where the organization's members were given hospital care at a cost less than that charged nonmembers constituted private benefit. The court concluded that "while no profits or dividends are distributed, nevertheless the net earning of appellant arising from its hospital facilities, and

service to 'nonmembers' at rates in excess of those generally charged members inure to the benefit of the members in augmented service and privileges which would not be available to them but for the added 'outside' sources."

Lundberg v. *Alameda County* (1956) 46 Cal.2d 644. The term charitable as used in section 1(c) of article XIII, (now 4(b) of article XIII), of the California Constitution is to be broadly construed to include property used for nonprofit [religious] schools owned by nonprofit organizations and operated for the benefit of the public. (Section 214, article XIII, section 4(b) of the California Constitution.)

Martin Luther Homes v. *County of Los Angeles* (1970) 12 Cal.App.3d 205. The property used by a non-profit corporation to provide low-rent housing for senior citizens was not used for charitable purposes where no services or special care needed by the tenants were provided, nor reduced rents made possible by a federal subsidy. The tenants paid the full cost of the housing so that the corporation could pay its operational expenses and amortize the purchase price of the rental units. Section 214, article XIII, section 4(b) of the California Constitution.)

National Charity League v. *County of Los Angeles* (1958) 164 Cal.App.2d 241. A building was in the course of construction within the meaning of former article XIII section 1(c) when at noon on the first Monday in March (lien date) some trenches for the foundation of the building had been dug. (Section 214.)

Pacific Home v. *County of Los Angeles* (1953) 41 Cal.2d 844 and 41 Cal.2d 855. The court noted that the organization's articles of incorporation contained no express provision for irrevocable dedication but rather, limited the corporate purposes to the operation of a charitable home. The court held that when the organization accepted property under the law in effect at that time and such articles of incorporation, the property became impressed with a charitable trust and was, therefore, irrevocably dedicated to the trust purpose. The charitable requirement was satisfied where the property was impressed with a charitable trust for exempt purposes by virtue of the express declaration of such purposes in the articles of incorporation of the owner. (Section 214(a)(6), formerly 214(6).)

Pasadena Hospital Association v. *County of Los Angeles* (1950) 35 Cal.2d. 779. The requirement of irrevocable dedication to exempt purposes is not violated by the possibility of diversion, through sale or otherwise, of any particular piece or portion of the property to nonexempt uses, provided the proceeds thereof are irrevocably dedicated to exempt purposes. Property is not so irrevocably dedicated to exempt purposes if the articles of incorporation of the owner permit present use for and permanent diversion of the property to nonexempt purposes even though the owner's use of the property, both past and present, has been for exempt purposes. (Section 214.)

Peninsula Covenant Church v. *County of San Mateo* (1979) 94 Cal.App.3d 382. A swimming pool, tennis courts, locker rooms, and sauna owned by a church did not qualify as property used for religious purposes where the primary user of these facilities was a boosters organization, not the church. At the very least, the term "exclusive use" means that the property is used primarily for exempt purposes. (Section 214.)

Rideout Hospital Foundation, Inc. v. *Yuba County* (1992) 8 Cal.App.4th 214. A hospital with net operating revenue in excess of ten percent of operating expenses is not automatically disqualified from the welfare exemption. The legislative history of section 214(a)(1) indicates an intent not to deny the exemption to a non-profit hospital using such excess revenue for debt retirement, facility expansion, or operating cost contingencies but rather, to merely require that the hospital prove that it is, in fact, not organized or operated for profit and meets other statutory requirements for exemption. (Section 214.)

Saint Germain Foundation v. *County of Siskiyou* (1963) 212 Cal.App.2d 911. The welfare exemption applies to property principally used for religious instruction and the sale of religious books when the profit of which is dedicated toward religious purposes. A snack bar, gift shop, and beauty shop were operated by the owner not to make money but to primarily serve the convenience of persons assembled for religious purposes. These facilities were exempt as used for reasonable incidental activities in connection with the primary exempt purpose. Residential quarters of caretakers and maintenance workers whose presence on the property is an institutional necessity as contrasted with mere considerations of residential convenience is also exempt. (Section 214.)

San Francisco Boys' Club, Inc. v. *County of Mendocino* (1967) 254 Cal.App.2d 548. Property was used in the actual operation of a charitable boys' camp where it was not a part of the main campground but was used for roads, trails, and overnight campsites. The fact that the club had excess timber logged from a portion of the land was consistent with prudent management of the land and did not destroy the exemption. The court held that 2,000 acres of timberland comprising a boys' camp during the summer could be commercially logged without loss of the exemption. There was no question that the profit was used to further the charitable purposes of the boys' club and did not inure to private benefit. (Section 214.)

Santa Catalina Island Conservancy v. *County of Los Angeles* (1981) 126 Cal.App.3d 221. Santa Catalina Island's open-space property was used exclusively for charitable purposes even though fees were charged to the public in connection with certain activities conducted on the property, and even though the former owner of the property and an independent contractor derived profits from motor tours and a hunting program. The Conservancy's preservation of the partly wild island environment containing exceptional geological features and rare plant and animal species provided incalculable benefit to all members of society, in addition to recreational uses. (Sections 214 and 214.02, article XIII, sections 4(b) and 8 of the California Constitution.)

Sarah Dix Hamlin School v. *City and County of San Francisco* (1963) 221 Cal.App.2d 336. A nonprofit corporation whose sole purpose is to conduct a girls' school of less than collegiate grade is organized and operated for charitable purposes. A public benefit exists through the school's provision of education to its students, whereby a burden of education is relieved which might otherwise be imposed upon the public generally. Neither the Constitution nor the statute prohibits the earning of an operating surplus in the prudent management of exempt property where no part of such earnings may inure to the benefit of any private shareholder or individual, or where all the property, including the operating surplus, is devoted to the exempt purpose for which the property is used. (Section 214.)

Scripps Clinic & Research Foundation v. *San Diego County* (1997) 53 Cal.App.4th 402. A scientific organization's use of its property to conduct research for a private for-profit firm did not disqualify the property from exemption. A facility conducting research under an agreement granting exclusive license options to develop, market, and sell research products in exchange for research funding provided by the firm did not constitute property used for the more advantageous pursuit of that company's business (section 214(a)(4)). The firm did not receive excessive compensation, consideration, or other advantage in excess of that which would result from arms-length negotiations by the organization with other companies. (Section 214.)

Serra Retreat v. *County of Los Angeles* (1950) 35 Cal.2d 755. Portions of the retreat house of a qualified nonprofit religious institution, used for living quarters for priests and laybrothers whose presence on the retreat property essential in carrying out the religious and charitable activities of the retreat, is exempt as "an institutional necessity--a facility incidental to and reasonably necessary for the accomplishment of its religious and charitable purposes.…" (Section 214.)

Sherman v. *Quinn* (1948) 31 Cal.2d. 661. Real property in the possession of a purchaser under a conditional contract of sale is entitled to the veterans' exemption even though the seller still holds the legal title for security purposes. Both in a practical and a legal sense, the buyer is the beneficial owner. (Article XIII, section 1 1/4, now 3(o) of the California Constitution.)

Solheim Lutheran Home v. *County of Los Angeles* (1957) 152 Cal.App.2d 775. Requirement of irrevocable dedication is not affected by the diversion through sale of any particular piece or portion of the property to nonexempt uses, provided the proceeds of such sale are irrevocably dedicated to exempt purposes.

St. Francis Memorial Hospital v. *City and County of San Francisco* (1955) 137 Cal.App.2d 321. A part of the net earnings of a hospital does not inure to the benefit of private shareholders or individuals within the purview of section 214(2) (now subdivision (a)(2) of section 214) by reason of the payment of interest upon certain promissory notes issued by the hospital which are in the form of an obligation to pay only out of "net earnings" rather than the usual absolute, unqualified obligation. **(**Section 214.)

St. John's Church v. *Los Angeles County* (1935) 5 Cal.App.2d 235. Failure to file a timely affidavit for the religious worship exemption provided in section 1 1/2 of article XIII (now section 3(f) of article XIII) of the Constitution does not operate to waive the exemption and to

prevent the recover of taxes so assessed. The constitutional provision is self-executing. While the legislature may properly provide a procedure for the convenience of the assessor, it can give him no authority which is denied him by the Constitution and it cannot make such an exemption dependent upon conditions not imposed by that fundamental law. Regardless of what is done by the owner, the tax assessed on such property is illegal and void.

Stockton Civic Theatre v. *Board of Supervisors* (1967) 66 Cal.2d 13. A theatre presenting musical comedy and contemporary drama provided educational benefits with regard to dramatic art, for both the performers and the audience. The definition of charitable includes "a wide range of activities beneficial to the community." Charitable purposes may include educational purposes. The exemption is granted for charitable purposes, not merely for educational purposes. The primary test is whether the activity provides a general community benefit whose "ultimate recipients are either the community as a whole or an unascertainable and indefinite portion thereof." The Court found that (1) the theatre's activities; light opera, musicals, and plays provided educational benefits to both the participants and the audience, and (2) such activities for the furtherance of the dramatic arts came within the term charitable purposes as used in the Constitution and section 214. (Section 214, Article XIII section 4(b) of the California Constitution.)

Sutter Hospital v. *City of Sacramento* (1952) 39 Cal.2d 33. The court held that purposely charging fees in excess of expenditures in order to finance expansion constituted operation of the hospital's property for profit. Prior to the 1953 amendment, a nonprofit hospital purposely operating to produce a surplus of income over expenses, and making a surplus of slightly more than 8 percent of gross income to retire bonded indebtedness and expand facilities was not exempt. The Legislature revised the requirement in 1953 in response. (Section 214.)

Tri-Cities Children's Center, Inc. v. *Board of Supervisors* (1985) 166 Cal.App.3d 589. Property "owned," as used in section 214, includes possessory interests and a qualifying charitable organization's leasehold interest in public property was exempt under section 214 where the organization used the leasehold exclusively for charitable purposes. (Section 214.)

United States v. *Freedom Church* (1979) 613 F.2d 316 (1st Cir.). A taxing authority processing a claim for exemption is obligated to make inquiries and gather information to determine whether the organization's purposes and activities are within the statutory requirements. The court held that such an investigation is not precluded by the First Amendment guarantee of freedom of religion.

United States v. *Holmes* (1980) 614 F.2d 985 (5th Cirri.). A taxing authority processing a claim for exemption is obligated to make inquiries and gather information to determine whether the organization's purposes and activities are within the statutory requirements. The court held that such an investigation is not precluded by the First Amendment guarantee of freedom of religion.

Walz v. *Tax Commission* (1970) 397 U.S. 664. The property tax exemption for religious organizations does not constitute excessive entanglement by the state with religion, as proscribed by the First Amendment. In upholding the constitutionality of the exemption, the court stated that the state has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and found this exemption useful, desirable, and in the public interest.

YMCA v. *County of Los Angeles* (1950) 35 Cal.2d 760. Portions of YMCA buildings devoted to dormitory accommodations are within the welfare exemption even though a moderate charge is made for such accommodations, where there is no real profit motive. The dormitory portions operated at a loss and were incidental to and reasonably necessary for the accomplishment of the organization's religious and charitable purposes. Portions of YMCA buildings devoted to a restaurant, a barbershop, a valet shop, and a "gym store", all of which are commercial and open to the public as well as to YMCA members, a meeting room where meals are served to outside groups and office rooms rented to the Selective Service Board were not, however, entitled to the exemption. (Section 214, article XIII, section 4(b) of the California Constitution.)

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APPENDIX B: LISTING ON ROLL

After approval by the assessor will enroll the exemptions on the assessment rolls. The exemption amounts must be consistent with the assessed values. Assessed values entered on the secured roll can be located using the assessor's parcel number. If the assessment has been entered on the unsecured roll, the claimant's unsecured account number must be identified in order to locate the assessment. Generally, property receiving the welfare, church, or religious exemption is listed on the secured and unsecured assessment rolls in the same manner as other property. The assessed values of land, improvements, personal property, and applicable exemptions on the secured roll are listed in their respective columns. Also, the assessed values of the personal property and applicable exemptions on the unsecured roll are listed in the appropriate columns. The assessment rolls should have exemption codes to identify the types of exemption applied and any late filing penalties included in the assessment. In addition, the assessor should note that section 270 allows for a partial exemption for late filing and a maximum tax, penalty, and interest per claimant that may not exceed $250.

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APPENDIX C: GUIDELINES FOR DEDICATION AND DISSOLUTION CLAUSES

DEDICATION CLAUSE

Section 214 provides in subdivision (a)(6), in part, that 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 if the articles of incorporation or other originating document contains an acceptable statement of irrevocable dedication:

> The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes ....

As to when property is irrevocably dedicated to such a purpose or purposes, section 214.01 provides, in pertinent part, that 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. In the case of any other fund or foundation, or corporation chartered by an act of Congress, a statement of irrevocable dedication must be found in the bylaws, articles of association, constitution, or regulations of the organization.

The Legislature's purpose for enacting section 214.01 was to substitute a specific statement of irrevocable dedication requirement for the subjective test of "construing articles of incorporation as a whole to imply dedication" that the courts had used when applying section 214(a)(6). Since the enactment of section 214.01 in 1966, the Board and Board staff have construed "only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation" literally. Thus, only one or more of the four stated purposes (religious, charitable, scientific, or hospital) may be used in an acceptable statement of irrevocable dedication, except when an organization's educational purposes are also charitable purposes.[331] In recognition of the fact that some educational purposes are charitable purposes, the use of educational purposes together with charitable purposes in a statement of irrevocable dedication has been deemed to meet the requirements of sections 214(a)(6) and 214.01 if followed by qualifying language as follows:

> ... charitable and educational purposes meeting the requirements for exemption provided by section 214 of the Revenue and Taxation Code.

[331] The Legislature defined *charitable purposes* to include some educational purposes in section 214(j). Previously, the Supreme Court held that charitable purposes include some educational purposes.

DISSOLUTION CLAUSE

Section 214 continues on in subdivision (a)(6) to provide that "property used exclusively for religious, hospital, scientific, or charitable purpose owned and operated by community chests, funds, foundations, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation" if the articles of incorporation or other originating document contains an acceptable dissolution clause:

> ... and upon the liquidation, dissolution or abandonment of the owner, [the property] 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.[332]

Thus, if the dissolution clause states that upon dissolution, the organization's property is to be distributed to an organization organized and operated exclusively for religious and/or hospital and/or scientific and/or charitable purposes, the dissolution clause will meet the requirements of section 214(a)(6). If the property is to be distributed to an organization organized and operated in whole or in part for charitable and educational purposes, the qualifying language set forth above, charitable and educational purposes meeting the requirements for exemption provided by section 214 of the Revenue and Taxation Code, must be added thereto, so that the dissolution clause will be acceptable.

The following sample articles of incorporation would meet the requirement of section 214(a)(6) and 214.01:

> The property of this corporation is irrevocably dedicated to (insert (i) or (ii) or other specific purpose or purposes, as applicable) and no part of the net income or assets of this organization shall inure to the benefit of any private persons. Upon the dissolution or winding up of the corporation its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation, shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for (insert (i) or (ii) or other specific purpose or purposes, as applicable) and which has established its tax exempt status under section 501(3) of the Internal Revenue Code
>
> Inserts:
>
> *(i) religious purposes, or charitable purposes, or religious and charitable purposes*
>
> *or*
>
> *(ii) charitable and educational purposes meeting the requirements for exemption provided by section 214 of the Revenue and Taxation Code*

[332] Section 214(a)(6)

If you are filing for the current fiscal year only and, in the case of an incorporated organization, your articles are amended and a copy of the amendment certified by the Secretary of State is filed with the Board before the next succeeding lien date, that portion of property eligible for exemption will be 100 percent exempt. In the case of any noncorporate fund or foundation, if the bylaws, articles of association, constitution, or regulations are amended and a copy of the amendment (certification by the Secretary of State not required) is filed with the Board before the next succeeding lien date, that portion of property eligible for exemption will be 100 percent exempt.

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APPENDIX D: EXAMPLE OF DEED RESTRICTION IN COMPLIANCE WITH SECTION 214(G)(2)(A)

This agreement is entered into between _____, a California nonprofit corporation and _____, a California Limited Partnership with the intent of restricting the use of the property located at _____(address/assessor's parcel no.) for rental to qualified low-income households, as defined by section 50079.5 of the Health and Safety Code.

The parties hereto agree that the portion of this property currently used for rental to qualified low-income households will continue to be used solely for this purpose. It is our intent that the units designated for use by lower-income households will be continuously available to or occupied by lower-income households at [rents that do not exceed those prescribed by Section 50053 of the Health & Safety Code.]* This agreement shall be recorded with the _____County Recorder.

_____ _____

(Non-profit Corporation) (Limited Partnership)

Dated_____

*In the situation where the terms of the housing project's federal, state, or local financing or financial assistance conflicts with the rent levels prescribed by Section 50053, the following language would be substituted for the language above in brackets: "at rents that do not exceed those prescribed by the terms of the project's financing or financial assistance."

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APPENDIX E: LISTING OF FORMS

FORMS FILED WITH BOARD AND BOARD NOTIFICATION FORMS AND CERTIFICATES ISSUED

CLAIM FORMS FILED BY ORGANIZATIONS

The following is a listing of claim forms for use by organizations filing with the Board of Equalization:

- **BOE-277** ***Claim for Organizational Clearance Certificate – Welfare Exemption***
  Claim form filed by a nonprofit organization to request an *Organizational Clearance Certificate*, which is needed before the assessor can grant a welfare exemption.

- **BOE-279** ***Claim for Organizational Clearance Certificate – Veterans' Organization Exemption***
  Claim form filed by a veterans' organization to request an *Organizational Clearance Certificate*, which is needed before the assessor can grant a veterans' organization exemption.

- **BOE-277-L1** ***Claim for Supplemental Clearance Certificate for Managing General Partner***
  Supplemental claim form filed by a nonprofit organization (managing general partner) to request supplemental clearance certificate for low-income housing.

- **BOE-277-P** ***Periodic Filing for Organizational Clearance Certificate - Welfare or Veterans' Organization Exemption***
  Claim form filed by nonprofit organizations to provide updated information on a periodic basis. (Only organizations that have previously met the organizational requirements of section 214 and hold a valid Organizational Clearance Certificate must file such forms. Filings are done on a 3-year cycle based on the organization's name. See Chapter 6 for additional details.)

The above listed forms are available on the Board's Web site (www.boe.ca.gov) and can be accessed by selecting (1) Property Taxes, (2) Welfare and Veterans' Organizations Exemptions, and (3) Organizational Requirements and Organizational Clearance Certificate Claim Forms.

NOTIFICATION FORMS ISSUED BY THE BOARD

The following forms are used by the Board to notify organizations of findings concerning eligibility for exemption:

Forms applicable to all organizations

- **BOE-277-F** ***Welfare or Veterans' Organization Exemption Organizational Clearance Certificate Finding Sheet***
  Board form to notify organization of findings after review of claim for organizational clearance certificate and associated organizational information.

- **BOE-277-F1** ***Welfare or Veterans' Organization Exemption Organizational Clearance Certificate – Preliminary Notice***
  Board form to notify organization as to specific findings of ineligibility and what action the organization may do in response to such findings.

- **BOE-277-F2** ***Welfare or Veterans' Organization Exemption Organizational Clearance Certificate – Final Notice***
  Board form to notify organization of exemption eligibility after review of additional information submitted by organization in response to Preliminary Notice (BOE-277-F1), also provides information concerning appeal rights.

- **BOE-277-OC** ***Organizational Clearance Certificate for Welfare or Veterans' Organization Exemption***
  Certificate issued to organizations by Board if organizational requirements of section 214 are met.

Forms applicable to low-income housing property involving limited partnerships

- **BOE-277-SF** ***Welfare Exemption Low-Income Housing (Managing General Partner) Supplemental Clearance Certificate Finding Sheet***
  Board form to notify nonprofit organization (managing general partner) of findings after review of claim for supplemental clearance certificate and associated organizational information concerning specified lower-income housing property owned by a limited partnership.

- **BOE-277-SF-1** ***Welfare Exemption Low-Income Housing (Managing General Partner) Supplemental Clearance Certificate – Preliminary Notice***
  Board form to notify nonprofit organization (managing general partner) as to specific findings of ineligibility and what action the organization may do in response to findings concerning specified lower-income housing property.

- **BOE-277-SF-2** ***Welfare Exemption Low-Income Housing (Managing General Partner) Supplemental Clearance Certificate – Final Notice***
  Board form to notify organization after review of additional information submitted by organization in response to Preliminary Notice (BOE-277-SF1), also provides information in regard to appeal rights.

- **BOE-277-SCC** ***Supplemental Clearance Certificate for Managing General Partner***
  Board certificate issued to organizations when organizational requirements of section 214(g) are met. (Organization must have a valid Organizational Clearance Certificate (BOE-277-OC) in order to be issued a Supplemental Clearance Certificate.

FORMS FILED WITH ASSESSOR

CLAIM FORMS FILED BY ORGANIZATIONS

The following is a listing of claim forms for use by organizations filing with the assessor:

- **BOE-267** ***Claim for Welfare Exemption (First Filing)***
  Claim form for initial request for Welfare Exemption for a specific property when the claimant is a new filer in a county or when seeking exemption on a new location in the county.

- **BOE-267-A** ***Claim for Welfare Exemption (Annual Filing)***
  Claim form filed to request exemption on an annual basis after initial "been met" finding. May be filed on properties that were granted exemption in the prior year.

- **BOE-267-FIR** ***Welfare Exemption Assessor's Field Inspection Report***
  Form completed by assessor's staff to document the claimant's property use observed during the field inspection.

- **BOE-267-H** ***Welfare Exemption Supplemental Affidavit, Housing – Elderly or Handicapped Families***
  Supplemental affidavit filed annually to certify eligibility for welfare exemption for housing used for elderly or handicapped families under Revenue and Taxation Code section 214(f), document qualifying households within income limits and residential units eligible for exemption.

- **BOE-267-L** ***Welfare Exemption Supplemental Affidavit, Housing – Lower-Income Households***
  Supplemental affidavit filed annually to certify exemption eligibility for property used for low-income housing under Revenue and Taxation Code section 214(g), document qualifying households within income limits and residential units eligible for exemption.

- **BOE-267-L1** ***Welfare Exemption Supplemental Affidavit, Housing – Lower-Income Households (Limited Partnerships)***
  Supplemental affidavit filed annually by nonprofit organization (managing general partner) to certify that it has sufficient management authority/duties to meet the managing general partner requirement of section 214(g).

- **BOE-267-R** ***Welfare Exemption Supplemental Affidavit, Rehabilitation – Living Quarters***
  Supplemental affidavit filed annually to certify that the property is used for the claimant's rehabilitation program for employees and/or to provide associated living quarters.

- **BOE-269-AH** ***Claim for Veterans' Organization Exemption***
  Claim form to request Veterans' Organization exemption for a specific property.

- **BOE-269-FIR** ***Veterans' Organization Exemption Assessor's Field Inspection Report***
  Form completed by assessor's staff to document the claimant's (Veterans' Organization) property use observed during the field inspection.

A sample of each of the above listed forms is available on the Board's Web site (www.boe.ca.gov) and can be accessed by selecting (1) Property Taxes, (2) Welfare and Veterans' Organizations Exemptions, and (3) Use Requirements and Exemption Claim Forms. Please note that the sample forms are provided solely for informational purposes. Forms for filing purposes must be obtained from the assessor in the county in which the property is located.

NOTIFICATION FORM ISSUED BY ASSESSORS

The following is a form used by the assessor to notify the claimant of findings concerning eligibility for exemption:

- **BOE-267-F** ***Welfare or Veterans' Organization Exemption, Assessor's Finding on Qualification of Property Use***

  Assessors' form to notify claimant of findings after review of property use only if the property or portion of the property is ineligible for exemption.

APPENDIX F: CHURCH AND RELIGIOUS EXEMPTION CLAIM FORMS (AND INSTRUCTIONS)

The following is a listing of the sample forms included:

BOE-231-AH	*Welfare Exemption/Section 231 Change in Eligibility Or Termination Notice*
BOE-236	*Exemption Of Leased Property Used Exclusively For Low-income Housing*
BOE-236-A	*Supplemental Affidavit For BOE-236 -Housing- Lower-income Households* (including instructions)
BOE-262-AH	*Church Exemption*
BOE-263	*Lessor's Exemption Claim*
BOE-263-A	*Qualified Lessors' Exemption Claim*
BOE-267-S	*Religious Exemption Claim*
BOE-267-S NOTICE	*Religious Exemption Change in Eligibility Or Termination Notice* (and instructions)
BOE-268-A	*Exemption for Property Used by a Public School*
BOE-268-B	*Exemption for Property Used by a Free Library or Free Museum*

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APPENDIX G: OTHER LEGAL DOCUMENT

EXAMPLE

Resolution of the Board of Directors of (corporation)

Whereas, the (corporation) owns property (a housing project) located at (Street Address) (Assessor's Parcel No. ____) in the City of _____ in _____ County, in the State of California; and,

Whereas, (the corporation) is claiming an exemption from property taxation for the property (project) pursuant to subdivision (g) of section 214 of the California Revenue and Taxation Code and,

Whereas, to meet the requirements for exemption, there must be a legal document restricting the property's (project's) usage for lower-income households as set forth in subdivision (g)(2)(A)(i) of section 214; and,

Whereas, (the corporation) intends to adopt this resolution to meet the aforesaid requirements;

Now, therefore, be it resolved By the Board of Directors of (the corporation) the use of the property (project) (the entire complex or a minimum of 90% of the rental units) is restricted to rental to qualified low-income households at or below income limits set forth in section 50093 of the Health & Safety Code. The units restricted to use by lower-income households shall be continuously available to or occupied by low-income households at rents that do not exceed those prescribed by section 50053 of the Health and Safety Code.

* The restriction to use the units solely for qualified low-income tenants at the prescribed rents shall be in effect for the duration of (the corporation's) ownership of this property (project).

Adopted this _____day of _____ in the year _____

Attest:

Corporate Seal

_____

Corporate Secretary

**If the terms of government financing or financial assistance conflict with section 50053, the next-to-last sentence may be modified to read:* The units restricted to use by lower-income households shall be continuously available to or occupied by low-income households at rents that do not exceed those prescribed by the terms of the financing or financial assistance.

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APPENDIX H: STATEMENT BY CHIEF EXECUTIVE OFFICER

EXAMPLE

I, _____ do hereby certify and ensure that:

I am the chief executive officer of ___(corporation)__;

(The corporation) owns property (a housing project) located at (Street Address) (Assessor's Parcel No. ____) in the City of _____ in _____ County, in the State of California;

I have filed on behalf of (the corporation) a claim for exemption from property taxation for the property (project) pursuant to subdivision (g) of section 214 of the California Revenue and Taxation Code and,

To meet the requirements for exemption, there must be a legal document restricting the property's (project's) usage for lower-income households as set forth in subdivision (g)(2)(A)(i) of section 214;

I have been authorized in writing by the Board of Directors of (the corporation) to execute this document restricting the use of the property (project) (the entire complex or a minimum of 90% of the rental units) for rental to qualified low-income households at or below income limits set forth in section 50093 of the Health & Safety Code. The units restricted to use by lower-income households shall be continuously available to or occupied by low-income households at rents that do not exceed those prescribed by section 50053 of the Health and Safety Code.* The restriction to use the units solely for qualified low-income tenants at the prescribed rents shall be in effect for the duration of (the corporation's) ownership of this property (project).

Signed at _____, California this _____ day of _____, _____

_____.

**If the terms of government financing or financial assistance conflict with section 50053, the next-to-last sentence may be modified to read:* The units restricted to use by lower-income households shall be continuously available to or occupied by low-income households at rents that do not exceed those prescribed by the terms of the financing or financial assistance.

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