



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 445-4982 • FAX 916 323-8765
www.boe.ca.gov

BETTY T. YEE
Acting Member
First District, San Francisco

BILL LEONARD
Second District, Sacramento/Ontario

CLAUDE PARRISH
Third District, Long Beach

JOHN CHIANG
Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director
No.2005/019

March 3, 2005

TO COUNTY ASSESSORS:

WELFARE EXEMPTION
ORGANIZATIONAL CLEARANCE CERTIFICATE FORM REVISION
LIMITED LIABILITY COMPANIES AS QUALIFYING ORGANIZATIONS

Enclosed are revised claim forms BOE-277, *Claim for Organizational Clearance Certificate – Welfare Exemption*, and BOE-277-P, *Periodic Filing for Organizational Clearance Certificate – Welfare or Veterans' Organization Exemption*. Both of these claim forms were revised to reflect recent legislative and regulatory changes that allow nonprofit limited liability companies to be eligible for the welfare exemption.

Letter To Assessors No. 2004/85 distributed Property Tax Rule 136, *Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*, which specified the requirements that a limited liability company must meet to qualify for exemption. The LTA also provided notification that Board-sponsored legislation, AB 3073 (Chapter 354, Statutes of 2004), was enacted into law. AB 3073 amended section 214 to add a limited liability company (LLC) as a legal entity eligible for exemption. Both Rule 136 and AB 3073 became effective on January 1, 2005.

As a result, a nonprofit limited liability company may qualify for the welfare exemption under section 214 of the Revenue and Taxation Code and Rule 136, effective January 1, 2005. Rule 136 clarifies that only LLC's owned by members that are qualifying organizations that satisfy all the requirements for the welfare exemption under section 214 may qualify for the exemption. The requirements for the welfare exemption for nonprofit limited liability companies are as follows:

- Qualifying organizations that can be owners/members of the LLC include nonprofit tax-exempt entities qualified for exemption under section 214 and government entities exempt from taxation under section 3 of Article XIII of the California Constitution.
- An LLC must be wholly owned by one or more nonprofit tax-exempt organizations qualified for the welfare exemption or jointly owned by a government entity, as specified and a nonprofit tax-exempt organization qualified for the welfare exemption.
- Both the LLC and its property must satisfy the same welfare exemption eligibility requirements as other legal entities and their properties:

1. The LLC must be organized and operated for one or more exempt purposes (religious, hospital, charitable or scientific) specified in section 214.
2. The LLC must not be organized and operated for profit.
3. The LLC's nonprofit tax-exempt owners/members must each have a tax exemption letter issued by IRS under IRC section 501(c)(3) or a tax exemption letter issued by FTB under Rev. & Tax. Code section 23701d.
4. The LLC's earnings must not benefit any private shareholder or individual.
5. The LLC must be the owner of record on the property for which exemption is claimed.
6. The LLC must satisfy all the property use requirements: the property must be used exclusively for exempt purposes; the property must be used for the actual operation of the exempt activity; the property is not to exceed an amount reasonably necessary for the accomplishment of the exempt purpose; the property is not to benefit any person through the distribution of profits, compensation or the more advantageous pursuit of his or her business or profession; and, 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.
7. LLC's must meet all the exemption claim filing requirements specified in sections 254.5, 254.6 and Rule 136.
8. The LLC must file a claim (see enclosed claim form BOE-277) for an *Organizational Clearance Certificate* (OCC) and supporting documentation, including: Articles of Organization, and any corresponding certified amendments or restatements, list of members/owners, and OCC numbers for each member, financial statements, a federal or state letter of exemption from income tax.¹
9. The LLC must be issued an OCC before the assessor can grant exemption on its property.
10. The LLC must operate in accordance with its Articles of Organization.
11. Articles of Organization must meet the requirements in subsection (c) of Rule 136 and, therefore, must contain the following provisions.
 - the LLC's activities are limited to its exempt purposes;
 - the LLC is operated exclusively to further the exempt purposes of its members;
 - each member is required to be a qualifying organization;
 - there shall not be any direct or indirect transfer of any membership interest in the LLC to any nonqualified person or entity;
 - an acceptable statement of irrevocable dedication of the property to exempt purposes; and
 - an acceptable dissolution clause that specifies that upon dissolution of the LLC, all assets shall be distributed to a tax-exempt organization qualified for the welfare exemption.

¹ If the LLC itself does not have a tax-exempt letter from the Franchise Tax Board or Internal Revenue Service, the LLC may use the tax-exempt letters of its members to qualify.

Articles without all of these express statements will not meet the requirements of Rule 136.

12. The LLC must satisfy the requirement in subsection (d) of Rule 136 to represent that its articles of organization are consistent with state law governing limited liability companies and are enforceable at law and in equity. This requirement may be satisfied with a statement on the LLC's letterhead, as an attachment to claim form BOE-277.

If the Board staff determines that the LLC or other qualifying organization meets all the requirements for exemption after review of claim form BOE-277 and accompanying documentation, an *Organizational Clearance Certificate* (OCC) will be issued. Once issued, the OCC indicates that the organization is eligible for the welfare or veterans' organization exemption, and remains valid unless revoked. A copy of the OCC must be included with claim forms when filing an exemption claim for the first time in a county; but only the certificate number must be provided when seeking exemption on an added location in a county or when filing annual exemption claims on locations that were previously granted exemption.

A list of qualifying organizations is available on the Board's Web site and is updated on a quarterly basis. Board staff verifies that organizations holding OCC's continue to meet the requirements of section 214 by requiring periodic filing of claim form BOE-277-P. The Board staff mails claim form BOE-277-P to each organization that holds an OCC on a three-year cycle, according to alphabetical groupings based on the name of the organization.

Additional information on the welfare or veterans' organization exemption may be obtained on the Board's Web site at www.boe.ca.gov and can be accessed by selecting (1) Property Taxes, (2) Welfare and Veterans' Organization Exemptions. If you have questions concerning the qualification of nonprofit LLC's for the welfare exemption, or the enclosed claim forms, please contact Ladeena Ford at (916) 324-5839.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:lf
Enclosure