Assembly Bill No. 3073

CHAPTER 354

An act to amend Section 17002 of the Corporations Code, and to amend Sections 69.4, 214, 214.01, 214.02, 214.5, 214.8, 214.14, 17076, 19191, 19192, and 19194 of, and to add Section 17049 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3073, Committee on Revenue and Taxation. Property tax: qualified contaminated property: limited liability companies: income tax: claim of right.

(1) The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, ''full cash value'' is defined as the assessor's valuation of real property as shown on the 1975–76 tax bill under ''full cash value'' or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Provisions of the California Constitution enacted by initiative in 1998 permit taxpayers whose property was affected by contamination to transfer the base year value, as provided, of qualified contaminated property, as defined, to a newly constructed property or a replacement property of equal or lesser value, as specified, or to have repair or replacement construction excluded from reappraisal as ''new construction'' if certain conditions are met. Existing law implements the initiative and establishes a method for determining base year value for transfers under those provisions.

This bill would further clarify those provisions by requiring that a replacement property be comparable to the qualified contaminated property, expressly defining the phrase ''equal or lesser value'' of replacement property, specifying the type of information required to be provided by the taxpayer to the assessor's office, and imposing a 3-year time limit for requesting the tax property relief.

(2) The California Constitution authorizes the Legislature to exempt from taxation property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities. Existing property tax law, in accordance with those provisions of the California Constitution, provides an exemption, known as the

‘‘welfare exemption,’’ for property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations, community chests, funds, or foundations if certain conditions are met.

This bill would clarify that the exemption is also available for property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by limited liability companies, if all the existing requirements are satisfied.

(3) Under existing law, a limited liability company is authorized to engage in any lawful business activity, with specified exceptions.

This bill would specify that this may include both for-profit and not-for-profit activities.

(4) Existing federal income tax law provides that if a taxpayer includes an item of income in gross income because it appears that the taxpayer has an unrestricted right to that income, and the taxpayer is subsequently required to repay that item, the taxpayer may deduct the repayment in the year the repayment is made and the taxes are to be calculated in a specified manner.

This bill would, under the Personal Income Tax Law, provide specified conformity with those federal provisions.

(5) Existing income and corporation tax laws authorize the Franchise Tax Board to enter into voluntary disclosure agreements with specified entities.

This bill would authorize the board to also enter into those agreements with limited liability companies and their members if specified requirements are met.

(6) This bill would take effect immediately as a tax levy. However, specified sections of this bill shall apply to lien dates occurring on and after January 1, 2005.

The people of the State of California do enact as follows:

SECTION 1. Section 17002 of the Corporations Code is amended to read:

17002. Subject to any limitations contained in the articles of organization and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, whether or not for profit, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business.

SEC. 1.5. Section 69.4 of the Revenue and Taxation Code is amended to read:

69.4. (a) (1) Notwithstanding any other provision of law, pursuant to the authority of subdivision (i) of Section 2 of Article XIII A of the California Constitution, the base year value of qualified contaminated property may be transferred, subject to the conditions and limitations of that subdivision and this section, to a comparable replacement property of equal or lesser value that is located in the same county and is acquired or newly constructed as a replacement for the contaminated property, pursuant to subparagraph (A) of paragraph (1) of that subdivision.

(2) The limitation in paragraph (1) requiring that the qualified contaminated property and the replacement property be located in the same county does not apply in a county in which the county board of supervisors adopts a resolution making the provisions of this section applicable to replacement properties acquired to replace qualified contaminated properties located in another county within this state. The resolution shall specify the date on and after which its provisions are applicable. The specified date may be a date earlier than the date on which the county adopts the ordinance, but no earlier than November 3, 1998.

(b) The replacement property shall be acquired or newly constructed within five years after the original property is sold or otherwise transferred.

(c) (1) Upon the sale or transfer of the original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XII A of the California Constitution and Section 110.1.

(2) This section does not apply unless the sale or transfer of the original property is a change in ownership that does either of the following:

(A) Subjects the original property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803.

(B) Results in a base year value determined in accordance with this section, Section 69, Section 69.3, or Section 69.5 because the property qualifies under this section, Section 69, Section 69.3, or Section 69.5 as a replacement dwelling or property.

(d) Property tax relief under this section is not available for a replacement property if the owner or owners of the original property do either of the following:

(1) Receive property tax relief under Section 74.7.

(2) Sign a claim under Section 63.1 allowing the base year value to stay with the original property.

(e) For purposes of this section:

(1) The ‘‘original property’’ means the qualified contaminated property.

(2) ‘‘Equal or lesser value’’ means the amount of the full cash value of a replacement property that does not exceed one of the following:

(A) One hundred five percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the first year following the date of the sale of the original property.

(B) One hundred ten percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the second year following the date of the sale of the original property.

(C) One hundred fifteen percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the third year following the date of the sale of the original property.

(D) One hundred twenty percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the fourth year following the date of the sale of the original property.

(E) One hundred twenty-five percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the fifth year following the date of the sale of the original property.

For purposes of this paragraph, if the replacement property is, in part, purchased and, in part, newly constructed, the date the replacement property is ‘‘acquired or newly constructed’’ is the date of acquisition or the date of completion of construction, whichever is later.

(3) The base year value of the original property shall be the base year value of the original property as determined in accordance with Section 110.1, with the inflation factor adjustments permitted by subdivision (f) of Section 110.1. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 up to the date the replacement property is acquired or newly constructed, regardless of whether the claimant continued to own the original property during this entire period. The base year or years used to compute the base year value of the original property shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(4) ‘‘Fair market value of the replacement property’’ means the full cash value of the replacement property determined in accordance with Section 110.1 as of the date on which that property was acquired or new construction was completed. If the replacement property is, in part, acquired and, in part, newly constructed, ‘‘fair market value of the

replacement property'' means the fair market value of the land and the improvements as of the date of completion.

(5) ''Fair market value of the qualified contaminated property'' means the full cash value of the qualified contaminated property, as if that property was not contaminated, determined in accordance with Section 110.1, as of the date of its sale or transfer by the claimant.

(6) ''Claimant'' means any owner of qualified contaminated property claiming the property tax relief provided by this section.

(7) ''Comparable replacement property'' means a property that is similar in utility and function to the property that it replaces. Property is similar in function and utility if it is, or is intended to be, used in the same manner as the qualified contaminated property.

(f) (1) A claimant is not eligible for the property tax relief provided by this section unless a claim is filed within three years of the date the replacement property was purchased or the new construction of the replacement property was completed.

(2) The claimant shall provide to the assessor the following information:

(A) Proof that the claimant did not participate or acquiesce in any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is related to any individual or entity that committed that act or omission.

(B) Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(3) The State Board of Equalization shall design the form for claiming eligibility.

(g) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value as of the date the replacement property is acquired or the date the new construction of the replacement property is completed, whichever is later.

(2) Any taxes that were levied on the replacement property prior to the filing of the claim on the basis of the replacement property's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement properties acquired prior to the sale or transfer of the qualified contaminated property.

(h) This section applies only to replacement property that is acquired or newly constructed on or after January 1, 1995.

SEC. 2. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) ‘‘Occasional use’’ means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) that is incidental to the primary activities of the owner or the other organization.

(ii) ‘‘Fundraising activities’’ means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization’s primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive. The owner of the other organization also shall file with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(E) Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the ''welfare exemption.'' This exemption shall be in addition to any other exemption now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, limited liability companies, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

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 not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, 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. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, ‘‘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.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner or eligible limited liability company, is an eligible nonprofit corporation, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to 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 in any year in which either of the following criteria applies:

(A) 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.

(B) 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.

(C) In the case of a claim, other than a claim with respect to property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation, that is filed for the 2000–01 fiscal year or any fiscal year thereafter, 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. The total exemption amount allowed under this subdivision to a taxpayer, with respect to a single property or multiple properties for any fiscal year on the sole basis of the application of this subparagraph, may not exceed twenty thousand dollars ($20,000) of tax.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) (i) For any claim filed for the 2000–01 fiscal year or any fiscal year thereafter, certify and ensure, subject to the limitation in clause (ii), that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(ii) In the case of a limited partnership in which the managing general partner is an eligible nonprofit corporation, the restriction and provision specified in clause (i) shall be contained in an enforceable and verifiable agreement with a public agency, or in a recorded deed restriction to which the limited partnership certifies.

(B) Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(3) As used in this subdivision, ''lower income households'' has the same meaning as the term ''lower income households'' as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

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.

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

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, ‘‘educational purposes’’ means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and do not include those educational purposes and activities that are primarily for the benefit of an organization’s shareholders. 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.

(k) In the case of property used exclusively for the exempt purposes specified in this section, owned and operated by limited liability companies that are organized and operated for those purposes, the State Board of Equalization shall adopt regulations to specify the ownership, organizational, and operational requirements for those companies to qualify for the exemption provided by this section.

(*l*) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 3. Section 214.01 of the Revenue and Taxation Code is amended to read:

214.01. (a) 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, limited liability company, or corporation chartered by an act of Congress, in the bylaws, articles of association, articles of organization, constitution, or regulations thereof, as determined by the State Board of Equalization.

(b) If, when performing the duties specified by Section 254.6, the board finds that an applicant for the welfare exemption is ineligible for an organizational clearance certificate, because at the time of the filing of the claim required by Section 254.6, the applicant’s articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, articles of organization, constitution or regulations, did not comply with the provisions of this section, the board shall notify the applicant in writing. The applicant shall have until the next succeeding lien date to amend its articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, articles of organization, constitution or regulations, and to file a certified copy of these amendments that conform to the provisions of this section with the board, and the board shall make a finding that the applicant, if otherwise qualified, is eligible for an organizational clearance certificate and forward that finding to the assessor.

(c) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 4. Section 214.02 of the Revenue and Taxation Code is amended to read:

214.02. (a) Except as provided in subdivision (b) or (c), property that is used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty, is open to the general public subject to reasonable restrictions concerning the needs of the land, and is owned and operated by a scientific or charitable fund, foundation, limited liability company, or corporation, the primary interest of which is to preserve those natural areas, and that meets all the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the Constitution of the State of California and Section 214.

(b) The exemption provided by this section shall not apply to any property of an organization that owns in the aggregate 30,000 acres or more in one county that were exempt under this section prior to March 1, 1983, or that are proposed to be exempt, unless the nonprofit organization that holds the property is fully independent of the owner of any taxable real property that is adjacent to the property otherwise qualifying for tax exemption under this section. For purposes of this section, the nonprofit organization that holds the property shall be 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 officer, trustee, director, shareholder, member, employee, contributor or bondholder of the exempt organization or operator, or the owner of any adjacent property, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(c) The exemption provided by this section shall not apply to property that is reserved for future development.

(d) This section shall be operative from the lien date in 1983 to and including the lien date in 2012, after which date this section shall become inoperative, and as of January 1, 2013, this section is repealed.

(e) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 5. Section 214.5 of the Revenue and Taxation Code is amended to read:

214.5. (a) Property used exclusively for school purposes of less than collegiate grade, or exclusively for purposes of both schools of and less than collegiate grade, and owned and operated by religious, hospital or charitable funds, foundations or corporations, which property and funds, foundations, limited liability companies, or corporations meet all of the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and Section 214. This section shall not be construed to enlarge the college exemption.

(b) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 6. Section 214.8 of the Revenue and Taxation Code is amended to read:

214.8. (a) Except as provided in Sections 213.7 and 231, and as provided in subdivision (g) of Section 214 with respect to veterans' organizations, the ''welfare exemption'' shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701d of this code or Section 501(c)(3) of the Internal Revenue Code. This section shall not be construed to enlarge the ''welfare exemption'' to apply to organizations qualified under Section 501(c)(3) of the Internal Revenue Code of 1954 but not otherwise qualified for the ''welfare exemption'' under other provisions of this code.

The exemption for veterans' organizations shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701f or 23701w of this code or under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code. This section shall not be construed to enlarge the ''veterans' organization exemption'' to apply to organizations qualified under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code but not otherwise qualified for the ''veterans' organization exemption'' under other provisions of this code.

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

(c) (1) For purposes of subdivision (a), a limited liability company wholly owned by one or more qualifying organizations that are exempt under Section 23701d or under Section 501(c)(3) of the Internal Revenue Code shall qualify as an exempt organization.

(2) In the case of a limited liability company that does not have a valid unrevoked letter from the Franchise Tax Board or the Internal Revenue Service, the limited liability company may not be deemed to be qualified as an exempt organization unless each member of the limited liability company files with the board a copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or the Internal Revenue Service that states that the organization qualifies as an exempt organization under the appropriate provisions of the Revenue and Taxation Code or the Internal Revenue Code.

(d) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 7. Section 214.14 of the Revenue and Taxation Code is amended to read:

214.14. (a) Property used exclusively for the charitable purposes of museums and owned and operated by a religious, hospital, scientific, or charitable fund, foundation, limited liability company, or corporation which meets all the requirements of subdivision (a) of Section 214 shall be deemed to be within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution and Section 214.

(b) For purposes of this section:

(1) Property used exclusively for the charitable purposes of museums shall include property used for activities and facilities related to the primary charitable purposes of museums and reasonably necessary and incidental to those purposes.

(2) Property used exclusively for the charitable purposes of museums shall not be required to be indispensable to the primary charitable purposes of museums.

(3) Property used exclusively for the charitable purposes of museums shall not include property used for activities and facilities not related to the primary charitable purposes of museums and not reasonably necessary or incidental to those purposes.

(4) Property used exclusively for the charitable purposes of museums shall include 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 proceeds of which, after taking into account the expenses of the nonprofit association or organization, are used to provide support to those museums. For purposes of this subdivision, ‘‘storage of items donated for an annual rummage sale’’ shall not be considered a ‘‘fundraising activity,’’ as that term is used in paragraph (3) of subdivision (a) of Section 214.

(c) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 8. Section 17049 is added to the Revenue and Taxation Code, to read:

17049. (a) If an item of income was included in the California adjusted gross income of an individual for a preceding taxable year or years because it appeared that the individual had an unrestricted right to that item, and, based on the repayment of the item by the individual during the taxable year, that individual properly determines his or her federal income tax liability for the taxable year under Section 1341(a)(4) or (5) of the Internal Revenue Code, then the tax imposed by this chapter for the taxable year on that individual shall be an amount equal to (1) the tax for the taxable year computed without regard to this section, minus (2) the decrease in tax under this chapter for the preceding taxable year or years which would result solely from the exclusion of the item or portion thereof from the adjusted gross income required to be shown on the California return of that individual for the preceding taxable year or years. This section does not apply if the repayment is properly deductible in determining the individual's federal adjusted gross income for the taxable year, and that individual properly determines his or her federal income tax liability for the taxable year under Section 1341(a)(4) of the Internal Revenue Code by deducting that repayment.

(b) In determining the decrease in tax under this chapter for the preceding taxable year or years that would result solely from the exclusion of the item or portion thereof from the California adjusted gross income of that individual for the preceding taxable year or years, any item excluded from the California adjusted gross income of an individual for a preceding year or years in which the individual was a nonresident individual or part-year resident individual, shall, to the extent that the item is derived from or connected with sources within this state, be excluded from California adjusted gross income derived from or connected with sources within this state for that preceding year or years.

(c) If the decrease in tax under this chapter for the preceding taxable year or years, that would result solely from the exclusion of the item or portion thereof from the adjusted gross income required to be shown on the California return of that individual for the preceding taxable year or years, exceeds the tax for the taxable year computed without regard to this section, that excess shall be considered to be a payment of tax on the last day prescribed for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for the taxable year.

SEC. 9. Section 17076 of the Revenue and Taxation Code is amended to read:

17076. (a) Section 67 of the Internal Revenue Code, relating to the 2-percent floor on miscellaneous itemized deductions, shall apply, except as otherwise provided.

(b) A deduction allowable under this part that exceeds three thousand dollars ($3,000) and is described in Section 17049, relating to computation of tax where taxpayer restores a substantial amount held under claim of right, may not be treated as a miscellaneous itemized deduction under Section 67 of the Internal Revenue Code, as applicable for purposes of this part.

SEC. 10. Section 19191 of the Revenue and Taxation Code is amended to read:

19191. (a) The Franchise Tax Board may enter into a voluntary disclosure agreement with any qualified entity, qualified shareholder, qualified member, or qualified beneficiary as defined in Section 19192, that is binding on both the Franchise Tax Board and the qualified entity, qualified shareholder, qualified member, or qualified beneficiary.

(b) The Franchise Tax Board shall do all of the following:

(1) Provide guidelines and establish procedures for qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries to apply for voluntary disclosure agreements.

(2) Accept applications on an anonymous basis from qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries for voluntary disclosure agreements.

(3) Implement procedures for accepting applications for voluntary disclosure agreements through the National Nexus Program administered by the Multistate Tax Commission.

(4) For purposes of considering offers from qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries to enter into voluntary disclosure agreements, take into account the following criteria:

(A) The nature and magnitude of the qualified entity's previous presence and activity in this state and the facts and circumstances by which the nexus of the qualified entity or qualified shareholder, qualified member, or qualified beneficiary's was established.

(B) The extent to which the weight of the factual circumstances demonstrates that a prudent business person exercising reasonable care would conclude that the previous activities and presence in this state were or were not immune from taxation by this state by reason of Public Law 86-272 or otherwise.

(C) Reasonable reliance on the advice of a person in a fiduciary position or other competent advice that the qualified entity or qualified shareholder, qualified member, or qualified beneficiary activities were immune from taxation by this state.

(D) Lack of evidence of willful disregard or neglect of the tax laws of this state on the part of the qualified entity or qualified shareholder, qualified member, or qualified beneficiary.

(E) Demonstrations of good faith on the part of the qualified entity.

(F) Benefits that will accrue to the state by entering into a voluntary disclosure agreement.

(5) Act on any application of a voluntary disclosure agreement within 120 days of receipt.

(6) Enter into voluntary disclosure agreements with qualified entities, qualified shareholders, qualified members, or qualified beneficiaries, as authorized in subdivision (a) and based on the criteria set forth in paragraph (4).

(c) Before any voluntary disclosure agreement becomes binding, the Franchise Tax Board, itself, shall approve the agreement in the following manner:

(1) The Executive Officer and Chief Counsel of the Franchise Tax Board shall recommend and submit the voluntary disclosure agreement to the Franchise Tax Board for approval.

(2) Each voluntary disclosure agreement recommendation shall be submitted in a manner as to maintain the anonymity of the taxpayer applying for the voluntary disclosure agreement.

(3) Any recommendation for approval of a voluntary disclosure agreement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board.

(4) Any recommendation of a voluntary disclosure agreement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved.

(5) Disapproval of a recommendation of a voluntary disclosure agreement shall be made only by a majority vote of the Franchise Tax Board.

(6) The members of the Franchise Tax Board shall not participate in any voluntary disclosure agreement except as provided in this subdivision.

(d) The voluntary disclosure agreement entered into by the Franchise Tax Board and the qualified entity, qualified shareholder, qualified member, or qualified beneficiary as provided for in subdivision (a) shall to the extent applicable specify that:

(1) The Franchise Tax Board shall with respect to a qualified entity, qualified shareholder, qualified member, or qualified beneficiary, except as provided in paragraph (4), (6), or (9) of subdivision (a) of Section 19192:

(A) Waive its authority under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) to assess or propose to assess taxes, additions to tax, fees, or penalties with respect to each taxable year ending prior to six years from the signing date of the voluntary disclosure agreement.

(B) With respect to each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, based on its discretion, agree to waive any or all of the following:

(i) Any penalty related to a failure to make and file a return, as provided in Section 19131.

(ii) Any penalty related to a failure to pay any amount due by the date prescribed for payment, as provided in Section 19132.

(iii) Any addition to tax related to an underpayment of estimated tax, as provided in Section 19136.

(iv) Any penalty related to Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, as provided in Section 19141.

(v) Any penalty related to a failure to furnish information or maintain records, as provided in Section 19141.5.

(vi) Any addition to tax related to an underpayment of tax imposed under Part 11 (commencing with Section 23001), as provided in Section 19142.

(vii) Any penalty related to a partnership required to file a return under Section 18633, as provided in Section 19172.

(viii) Any penalty related to a failure to file information returns, as provided in Section 19183.

(ix) Any penalty related to relief from contract voidability, as provided in Section 23305.1.

(2) The qualified entity, qualified shareholder, qualified member, or qualified beneficiary shall:

(A) With respect to each of the six taxable years ending immediately preceding the signing date of the written agreement:

(i) Voluntarily and fully disclose on the qualified entity's application all material facts pertinent to the qualified entity's, shareholder's, member's, or beneficiary's liability for any taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(ii) Except as provided in paragraph (3), within 30 days from the signing date of the voluntary disclosure agreement:

(I) File all returns required under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(II) Pay in full any tax, interest, fee, and penalties (other than those penalties specifically waived by the Franchise Tax Board under the terms of the voluntary disclosure agreement) imposed under this part,

Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) in a manner as may be prescribed by the Franchise Tax Board. Paragraph (1) of subdivision (f) of Section 25153 shall not apply to qualified entities admitted into the voluntary disclosure program.

(B) Agree to comply with all franchise and income tax laws of this state in subsequent taxable years by filing all returns required and paying all amounts due under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(3) The Franchise Tax Board may extend the time for filing returns and paying amounts due to 120 days from the signing date of the voluntary disclosure agreement.

(e) The amendments to this section made by Chapter 954 of the Statutes of 1996 shall apply to taxable years beginning on or after January 1, 1997.

(f) The amendments to this section made by Chapter 543 of the Statutes of 2001 shall apply to voluntary disclosure agreements entered into on or after January 1, 2002.

(G) The amendments to this section made by the act adding this subdivision shall apply to voluntary disclosure agreements entered into on or after January 1, 2005.

SEC. 11. Section 19192 of the Revenue and Taxation Code is amended to read:

19192. For purposes of this article, the following terms have the following meanings:

(a) (1) ‘‘Qualified entity’’ means an entity that is all of the following:

(A) A corporation, as defined in Section 23038, a limited liability company, as defined in subdivision (d) of Section 17941, or a qualified trust, as defined in paragraph (7).

(B) An entity, including any predecessors to the entity, that previously has never filed a return with the Franchise Tax Board pursuant to this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23011).

(C) An entity, including any predecessors to the entity, that previously has not been the subject of an inquiry by the Franchise Tax Board with respect to liability for any of the taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(D) An entity that voluntarily comes forward prior to any unilateral contact from the Franchise Tax Board, makes application for a voluntary disclosure agreement in a form and manner prescribed by the Franchise Tax Board, and makes a full and accurate statement of its activities in this state for the six immediately preceding taxable years.

(2) (A) Notwithstanding paragraph (1), a qualified entity does not include any of the following:

(i) An entity that is organized and existing under the laws of this state.

(ii) An entity that is qualified or registered with the office of the Secretary of State.

(iii) An entity that maintains and staffs a permanent facility in this state.

(B) For purposes of this paragraph, the storing of materials, goods, or products in a public warehouse pursuant to a public warehouse contract does not constitute maintaining a permanent facility in this state.

(3) ‘‘Qualified shareholder’’ means an individual that is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement.

(B) A shareholder of an ‘‘S’’ corporation (defined in Section 23800) that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the shareholder’s liability would be disclosed on that‘‘S’’ corporation’s voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(4) Notwithstanding paragraph (3), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified shareholder was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income other than the California source income from the ‘‘S’’ corporation that filed an application under this article.

(5) ‘‘Qualified member’’ means an individual, corporation, or limited liability company that is all of the following:

(A) (i) In the case of an individual, is a nonresident on the signing date of the voluntary disclosure agreement.

(ii) In the case of a corporation or limited liability company, is not either of the following:

(I) Organized under the laws of this state.

(II) Qualified or registered with the office of the Secretary of State.

(B) A member of a limited liability company that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the member’s liability would be disclosed on that limited liability company’s voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(6) Notwithstanding paragraph (5), in the case of a qualified member who is an individual, subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified member was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income other than the California source income from the limited liability company that filed an application under this article.

(7) ‘‘Qualified trust’’ means a trust that meets both of the following:

(A) (i) The administration of the trust has never been performed in California.

(ii) For purposes of this subparagraph, administrative activities performed in California would be deemed to be performed outside of California if those activities were inconsequential to the overall administration of the trust.

(B) For six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, the trust has had no resident beneficiaries (other than a beneficiary whose interest in that trust is contingent: a beneficiary’s trust interest is not contingent if the trust has made any distribution to the resident beneficiary at any time during the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement).

(8) ‘‘Qualified beneficiary’’ means an individual who is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement and a nonresident during each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement.

(B) A beneficiary of a qualified trust that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the beneficiary’s liability would be disclosed on that trust’s voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(9) Notwithstanding paragraph (8), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any penalties or additions to tax attributable to income other than income from the trust that filed an application under this article.

(b) ‘‘Signing date’’ of the voluntary disclosure agreement means the date on which a person duly authorized by the Franchise Tax Board signs the agreement.

(c) The amendments to this section made by Chapter 954 of the Statutes of 1996 shall apply to taxable years beginning on or after January 1, 1997.

(d) The amendments to this section made by Chapter 543 of the Statutes of 2001 shall apply to voluntary disclosure agreements entered into on or after January 1, 2002.

(e) The amendments to this section made by the act adding this subdivision shall apply to voluntary disclosure agreements entered into on or after January 1, 2005.

SEC. 12. Section 19194 of the Revenue and Taxation Code is amended to read:

19194. (a) Notwithstanding any other provision of this article, a voluntary disclosure agreement shall be null and void in the event that the Franchise Tax Board finds that with respect to the agreement any of the following circumstances exist:

(1) The qualified entity has misrepresented any material fact in applying for the voluntary disclosure agreement or in entering into the agreement.

(2) The qualified entity fails to file any returns for any taxable year covered by the voluntary disclosure period agreed upon on or before the due date prescribed under the terms of the agreement in accordance with paragraph (2) of subdivision (d) of Section 19191.

(3) (A) The qualified entity fails to pay in full any tax, fee, penalty, or interest due within the time prescribed under the terms of the voluntary disclosure agreement in accordance with paragraph (2) of subdivision (d) of Section 19191 or to pay any installments thereof due within the time prescribed under the terms of an installment payment arrangement in accordance with subparagraph (B).

(B) The Franchise Tax Board may enter into an installment payment arrangement, which shall include provisions for interest, in lieu of the full payment required under paragraph (2) of subdivision (d) of Section 19191. Failure by the qualified entity to comply with the terms of the installment payment arrangement shall also render the voluntary disclosure arrangement null and void.

(4) The tax shown by the qualified entity on its tax return filed for any taxable year covered by the voluntary disclosure agreement, including any amount shown on a qualified amended return, as defined in Section 1.6664-2(c)(3) of Title 26 of the Code of Federal Regulations, understates by 10 percent or more the tax imposed under either Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and the qualified entity cannot demonstrate to the satisfaction of the Franchise Tax Board that a good-faith effort was made to accurately compute the tax.

(5) The qualified entity fails to begin to prospectively comply with all franchise and income tax laws of this state as agreed upon under the

terms of the voluntary disclosure agreement in accordance with paragraph (2) of subdivision (d) of Section 19191.

(b) In the event that the Franchise Tax Board finds that the qualified entity has failed to comply under any of the circumstances which render the voluntary disclosure agreement null and void as set forth in subdivision (a), the limitation on assessment for any taxable years and the waiver of any penalties as provided for in paragraph (1) of subdivision (d) of Section 19191 shall not be binding on the Franchise Tax Board.

SEC. 13. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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