

Henderson & Caverly Purn LLP

NONPROFIT ORGANIZATIONS NEWSLETTER

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FRANCHISE TAX BOARD PROPOSED DISSOLUTION NOTICES SENT TO THOUSANDS OF NONPROFIT ORGANIZATIONS



California nonprofit public benefit, mutual benefit, religious, and registered foreign nonprofit corporations are subject to the Franchise Tax Board's ("FTB") administrative dissolution (California nonprofit corporations) or administrative surrender (registered foreign nonprofit corporations) process if the entity's corporate powers have been suspended or forfeited by the FTB for at least 48 continuous months.

In September, more than 4,000 proposed dissolution notices were sent to entities meeting this criteria. The notices were mailed to the entity's last known mailing address.

Once the FTB initiates the process, the nonprofit corporation has 60 calendar days to act before the corporation is administratively dissolved/surrendered permanently. If no action is taken by the nonprofit, the corporation will be dissolved/surrendered administratively, effective 60 calendar days from the date of the notice.

To avoid administrative dissolution/surrender, a nonprofit organization may choose from the following options within 60 calendar days of the date of the notice:

- Option 1 - Pay and return to Active Status. The corporation must pay or satisfy all accrued taxes, penalties, and interest with the FTB, and must have a current Statement of Information on file with the California Secretary of State.
- Option 2 - Submit an objection and get a 90-Day Extension. The objection should be mailed to: Exempt Organizations Unit MS F120, Franchise Tax Board, PO Box 1286, Rancho Cordova, CA 95741-1286.
- Option 3 - Voluntarily dissolve/surrender with an FTB Abatement.

The Secretary of State's website has additional information available. Additionally, the list of suspended entities is available on the Secretary of State's website.

If your corporation received a notice letter from the FTB regarding a proposed dissolution and you require assistance, please contact our office.

The California Legislature has the authority to exempt property (1) used exclusively for religious, hospital, scientific, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption is known as the Welfare Exemption. The State Board of Equalization (“BOE”) oversees the administration of California’s property tax system.



Who can qualify for the Welfare Exemption?

In general, the Welfare Exemption from local property taxes is available for property of organizations:

- Formed and operated exclusively for qualifying purposes (religious, scientific, hospital, or charitable),
- That use their property exclusively for those qualifying purposes, and
- That have a current tax exempt letter from the Internal Revenue Service or the Franchise Tax Board.

California law further requires the organization’s formation documents to contain a statement that the organization’s property is irrevocably dedicated to one or more qualifying purposes (*i.e.*, charitable, hospital, religious, scientific), and that in the event the organization stops operating, that the assets will be transferred to another fund, foundation, or corporation organized and operated for similar purposes. BOE [Publication 149](#) (Exhibit C) provides examples of irrevocable dedication and dissolution clauses.

The above requirements, along with others, must be met for the exemption to be granted. The nonprofit organization must be a community chest, fund, foundation, corporation, or eligible limited liability company.

Who administers the Welfare Exemption?

The Welfare Exemption is unique in that it is co-administered by the county assessors and the BOE. The BOE determines whether the organization itself is eligible for the exemption (that is, is the organization organized and operated exclusively for one or more of the qualifying purposes—religious, scientific, hospital, or charitable?). The county assessor determines whether an organization’s specific property qualifies for the exemption based on the property’s use (that is, is the property used exclusively for religious, scientific, hospital, or charitable purposes?). In accordance with California Revenue and Taxation Code section [254.5\(b\)\(2\)](#), the assessor may institute an audit or verification of the property’s use to determine whether both the owner and user of the property meet the requirements of Revenue and Taxation Code section [214](#).

General Filing Requirements

Claims for the Welfare Exemption must be filed annually with the county assessor in the county in which the organization’s property is located or being used. The claim form and any required supplemental affidavits may be obtained from the county assessor’s office. The county assessor determines whether the property qualifies for the Welfare Exemption based on “how the property is used.” However, the county assessor may not grant the exemption unless the organization already has a valid [Organizational Clearance Certificate](#) issued by the BOE.

Therefore, an organization seeking exemption for the first time must:

- File a [claim](#) for an Organizational Clearance Certificate and, where applicable, a Supplemental Clearance Certificate for Limited Partnership, Low-Income Housing Property—Welfare Exemption, with the BOE; and
- File a claim for the Welfare Exemption with the county assessor in the county where the property is located or used. The local assessor’s office will provide the forms to file for the Welfare Exemption. If an organization has property in different counties, a separate form

must be filed with each county assessor.

If your organization needs assistance in seeking the Welfare Exemption, please contact our office.

IRS' TAX REFORM WEBPAGE

The Tax Cuts and Jobs Act affects individuals, businesses, tax exempt, and government entities.

The IRS Tax Reform information page and other resources are available to help taxpayers better understand the impacts from this major legislation. This page contains news, guidance, forms and instructions, and resources.

For example, the Tax Exempt & Government Entities page contains information regarding the following topics:

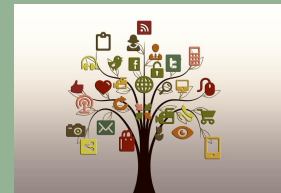
- Retirement plans: Rollovers of Retirement Plan Loan Offsets, and Roth Recharacterizations
- Tax Exempt Organizations: Unrelated Business Taxable Income – more than one trade or business, and Excise Tax on Investment Income of Private Colleges and Universities
- Tax-Advantaged Bonds: Issue of New Tax-credit and Direct-pay Bonds Repealed, and Notice 2018-15, New Clean Renewable Energy Bond

Resources: [IR-2017-210](#), [IR-2018-32](#), [IR-2018-122](#), [IR-2018-127](#).

The information provided by the IRS is concise and includes references where appropriate. Similar information is provided on a wide variety of topics for businesses and other entities, including the new 20% deduction for pass-through businesses. You may also wish to visit the IRS' Tax Reform News webpage for News Releases, Fact Sheets, and IRS Statements.



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