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April 20, 2009

**Re: *Qualification of Single-Purpose LLC for an Organizational Clearance Certificate Assignment No. 08-212***

Dear Ms. \_\_\_\_\_ :

This is in response to your October 3, 2008, letter and your subsequent e-mail dated February 9, 2009, in which you posed the following question:

Can a limited liability company that is wholly owned by a qualifying organization (as defined in Property Tax Rule 136) and formed solely to hold title to real property for its member, collecting income from such real property, and turning over such income, less expenses, to its member meet the organizational and operational requirements necessary to qualify for an Organizational Clearance Certificate under sections 214 and 254.6?

In our opinion a limited liability company (LLC) is not disqualified from receiving an organizational clearance certificate (OCC) merely because its sole activity is to hold title to real property that is used by its single, qualifying-organization member for exempt purposes.<sup>1</sup>

### Discussion

As you know, the Legislature amended section 214, subdivision (a) of the Revenue and Taxation Code,<sup>2</sup> the principal statute implementing the welfare exemption, effective January 1, 2005,<sup>3</sup> to allow LLCs to qualify for the welfare exemption. Section 214, subdivision (a) now reads in relevant part:

<sup>1</sup> Please note that we offer no opinion as to the qualifications of your client's proposed LLC for an OCC. Your client must submit an application for an OCC to the County-Assessed Properties Division of the Board in order to determine whether it meets *all* of the requirements of section 214 et seq. and section 254.6.

<sup>2</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

<sup>3</sup> See Rev. & Tax. Code, § 214, subd. (l).

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 . . . . (Emphasis added.)

Section 214.8, subdivision (a) requires that organizations hold an Internal Revenue Code (IRC) 501(c)(3) letter from the Internal Revenue Service in order to qualify for the welfare exemption. However, section 214.8, subdivision (c)(1), which was added contemporaneously with the above-stated changes to section 214, subdivision (a), provides that an LLC lacking an IRC 501(c)(3) letter may satisfy the requirements of section 214.8, subdivision (a) if it is wholly-owned by exempt entities that possess their own IRC 501(c)(3) letters. Section 214.8, subdivision (c)(2) provides the following additional restriction:

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 nonprofit tax-exempt 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.

Property Tax Rule 136, subdivision (a) provides that an LLC may qualify for the welfare exemption ". . . if it is wholly owned by a qualifying organization or organizations and if it meets specific organizational and operating requirements." Property Tax Rule 136, subdivision (b)(1) states, in relevant part:

A limited liability company is a qualifying organization if all its owner organization(s) (referred to as members) are exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code. Each member shall have a valid, unrevoked letter from the Internal Revenue Service or the Franchise Tax Board, stating that it qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code.

Property Tax Rule 136, subdivisions (c) and (e) place organizational and operational requirements on LLCs that are wholly-owned by qualifying organizations. First, the articles of the LLC must state the exempt activities for which it is organized and operated:

A specific statement shall be included which limits the activities of the limited liability company to one or more exempt purposes, as specified in section 214. This requirement may be satisfied by a clause stating that the limited liability company is organized and operated exclusively for one or more exempt purpose(s) as specified in section 214 (religious, hospital, scientific or charitable).<sup>4</sup>

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<sup>4</sup> Property Tax Rule 136, subd. (c)(1).

Additionally, the articles or comparable legal document must ". . . specify that the limited liability company is operated exclusively to further the exempt purpose(s) as specified in section 214, of its member(s)."<sup>5</sup> Moreover, the County-Assessed Properties Division of the Board may examine the *member's* formative document, financials and all other pertinent documents to ensure that the member remains in compliance with the requirements of sections 214 et seq. and 254.6. If the LLC's articles comply with the requirements of Property Tax Rule 136, subdivision (c), then the LLC will satisfy that portion of the organizational requirements of section 214.

Finally, the LLC must meet the operational requirements set forth in Property Tax Rule 136, subdivision (e). This is accomplished when an LLC is ". . . operating in accordance with its articles of organization" or a similar formative document.<sup>6</sup> In the case of a single-purpose LLC intended solely to serve as the owner of property occupied by its sole member that is also a qualifying organization within the meaning of sections 214 and 214.8, the primary concern is whether the LLC is organized and operated for exempt purposes pursuant to section 214, subdivision (a), such that section 214.8 and Property Tax Rule 136 are satisfied.

In this regard, we note that when the Legislature added LLCs to the types of organizations that could qualify for the welfare exemption in 2004 as part of AB 3073<sup>7</sup>, it simultaneously added section 214.8, subdivision (c), which permits LLCs to use its members' IRC 501(c)(3) letters to satisfy the requirements of section 214.8. This suggests that the Legislature recognized that many LLCs lack their own IRC 501(c)(3) letters and would depend on their members to satisfy this welfare exemption requirement. Moreover, the Legal Department recognizes that exempt organizations often employ single-purpose LLCs for the sole purpose of limiting their own liability. It is, therefore, our opinion that an LLC's holding of property for its qualifying organization member may qualify as a charitable purpose, provided that the LLC is organized to limit the liability of the member nonprofit with regard to the ownership and operation of the property, and the member actually performs exempt activities on the property in conformity with the LLC's formative document.

Pursuant to Property Tax Rule 136, subdivisions (c)(1) and (2), the LLC's articles must contain a statement of purpose that resembles the member's purpose(s) in whole or in part. Moreover, the member organization must actually perform the activities that are specified in the LLC's articles. If the property is not used by the member for such purposes, the LLC will be ineligible for an OCC because it will not be acting in accordance with its articles as required by Property Tax Rule 136, subdivision (e). For example, if the LLC leased its property to another for-profit or nonprofit entity that does not further the purposes of the LLC and its single member qualifying organization, then the LLC may not qualify for an OCC. In addition, an LLC must meet all other requirements of sections 214 et seq. and 254.6 in order to qualify for the welfare exemption.

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<sup>5</sup> Property Tax Rule 136, subd. (c)(2).

<sup>6</sup> Property Tax Rule 136, subd. (e).

<sup>7</sup> Assem. Bill No. 3073 (2003-2004 Reg. Sess.).

The opinions expressed in this letter are only advisory and represent the analysis of the legal staff of the Board based on current law and the facts set forth herein. These opinions are not binding on any person, office, or entity.

Sincerely,

*/s/ Andrew Jacobson*

Andrew Jacobson  
Tax Counsel

AJ:cme

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