

FREE PUBLIC LIBRARY OR FREE MUSEUM EXEMPTION

The Free Public Library or Free Museum Exemption is available to property used for libraries and museums that are free and open to the general public pursuant to section 3(d) of article XIII of the California Constitution and section 202 of the Revenue and Taxation Code. The property may be owned or leased, but it must be *used* for libraries or museums as of the January 1 lien date. Thus, the exemption is not available on supplemental assessments resulting from new construction or a new acquisition after the lien date by an existing or a newly formed organization. If the property is no longer used for a free library or free museum after the lien date, the exemption is not terminated at once, but as of the next lien date following the expiration of the lease or rental agreement.

DEFINITION

For purposes of this exemption, *museum* is defined as a building with the predominant purpose of housing and displaying objects of lasting value.¹ A *library* is a facility in which literary and artistic materials, such as books, periodicals, newspapers, pamphlets, prints, records, and tapes, are kept for reading, reference, or lending.

Every description of property by its function (museum and library) assumes that the described function is a primary use of the property. For example, in the case of a museum, it must be a place where works of art or other items of lasting value are both housed and displayed to the public. A museum is more than a room with paintings on the walls. If that was so, many office building lobbies would qualify as museums. Furthermore, the exemption is not granted to warehouses where art is stored, even if such buildings are "open to the public" and no admission is charged and notwithstanding the public benefit accruing from the preservation of the building's contents. A museum must function both as a repository of art and as a place where such items are displayed.²

Additionally, words used in the statute or constitutional provisions should be given the meaning they bear in ordinary use.³ The exemption may not be expanded or enlarged by construing the definition of museum or library beyond the plain meaning of the terms as used in section 3(d) of article XIII of the California Constitution, section 202, and as interpreted by relevant court cases.

QUALIFICATIONS

The Free Public Library or Free Museum Exemption applies only if *all* of the following conditions are satisfied:

¹ *Fellowship of Friends, Inc. v. County of Yuba* (1990) 235 Cal.App.3d 1190, 1996.

² *Fellowship of Friends, supra* at page 1198.

³ *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.

1. Admittance to the public library or museum is free; however, if donations are requested, the exemption is still allowed so long as no one is denied admission for failing to make a donation;
2. The library or museum must be used primarily for library or museum purposes, although other uses for meetings, receptions, or a gift shop on the premises that sells library- or museum-related items and snacks for the convenience of patrons does not disqualify a library or museum from receiving the exemption;
3. The property must be regularly open to the general public with regularly scheduled hours; and
4. The property must be identifiable as a library or museum with the public being made aware of the use and hours via signage and perhaps advertising placed in newspapers, promotional materials, the telephone yellow pages, and/or the Internet.

PRINCIPAL USE

A qualifying library or museum must be used principally as a library or museum; however, section 202(a)(2) does not require *exclusive* use. Use of a property for ancillary purposes does not preclude award of the exemption if these ancillary purposes do not interfere with a property's primary use as a library or a museum. The free museum or library may have a portion of the property restricted to the public and continue to have the entire property eligible for the exemption when the main purpose of the property is for museum or library use. Such restricted areas may include a rare documents' room or a rare jewels' room that may require "appointment only" viewing, or an exhibit storage area that is distinguishable from the main facility. Additionally, the Free Public Library or Free Museum Exemption is available to a library/museum combination that has a library open to the public by "appointment only" if the library's function supports the museum uses and activities by researching, preparing, cataloging, and performing similar activities related to museum exhibits as they are added and rotated.

If a library is not a public library, or if a museum or a library charges admission, the Free Public Library or Free Museum Exemption is not available.

REGULAR HOURS

Regularly open to the general public with regularly scheduled hours means the facility must be open to the general public on a regular basis, and the public must be made aware that such is the case. The Free Public Library or Free Museum Exemption does not mandate a specific number of hours or days that the library or museum must be open to the general public. However, the property must be accessible to the general public on a regular publicized basis. For example, there should be a sign or other indicia on the property indicating that the property is a library or museum open to the general public on a regular, scheduled, ongoing basis, such as six to eight hours on Monday, Wednesday, and Friday of each week.

Admittance strictly by "appointment only" does not constitute being open to the general public. Libraries and museums whose security, administrative, or other special circumstances necessitate

appointment only viewing during regular open hours will not qualify for the Free Public Library or Free Museum Exemption even if of the library or museum attempts to attract visitors by advertising. There are no exceptions.

PARKING

Property used for free public libraries and free museums includes properties that predominantly support the free public library or free museum. For example, the portion of a property used for library and museum parking may be eligible for exemption. For this portion of the property to be eligible for exemption, the building itself must meet the requirements for the Free Public Library or Free Museum Exemption. In addition, this portion must be primarily used for library or museum parking. If a museum operates a parking facility primarily for use by its patrons in a manner incidental to its mission of displaying its collection to the public, and the museum is eligible for the Free Museum Exemption, the parking is also eligible for the exemption. However, if the parking is used for commercial purposes, it is not eligible for the exemption.

PROPERTY IN THE COURSE OF NEW CONSTRUCTION OR RENOVATION

Libraries and museums under construction or renovation and not yet open to the public are not eligible for the Free Public Library or Free Museum Exemption if they are not being *used* as such on lien date. The exemption is also not allowed on land required for their convenient use and the equipment in them. However, they may qualify for the Welfare Exemption during this time.⁴ Section 214.1 applies to free public library and free museum facilities in the course of construction on the lien date for which the Welfare Exemption is claimed, even though the Free Public Library or Free Museum Exemption is not available to buildings under construction. Thus, property owned by museums and public libraries is not precluded from receiving the Welfare Exemption if the organization qualifies, and they may continue claiming the Welfare Exemption once construction is completed, even though the Free Public Library or Free Museum Exemption is available. The exemptions may overlap under proper circumstances since (1) the property intended to be used as a free public library or free museum is also intended to be used exclusively for charitable purposes; and (2) the Welfare Exemption may be claimed in addition to any other exemption allowed by law.⁵ The nonprofit entity may qualify for the Free Public Library or Free Museum Exemption or the Welfare Exemption, or both.

LEASED PROPERTY

The Free Public Library or Free Museum Exemption is available whether a property is owned or leased. Either the lessee or the lessor may claim the exemption. However, any reduction in property taxes on leased property used for exempt purposes and granted an exemption must benefit the lessee. The status of the lessor (owner) of the property is irrelevant, as long as the property is used as a free public library or free museum.

⁴ *J. Paul Getty Museum v. County of Los Angeles* (1983), 148 Cal.App.3d 600, 605.

⁵ Section 214(a)(7).

If the lessor claims the Free Public Library or Free Museum Exemption, the lease or rental agreement should specifically provide that the exemption has taken into account in fixing the terms of the agreement. If the lease does not contain such provisions, the lessee should receive a reduction in rental payments or a refund, if already paid, in an amount equal to the reduction in taxes.⁶

If the lessor does not claim the exemption, or is denied the exemption because the lease does not specifically provide for a reduction in rents or refund of taxes paid, the lessee may file a claim for refund under section 5096 (permissible refunds) with respect to taxes paid by the lessor on the property. The full amount of taxes paid would be refunded, notwithstanding the late filing penalty pursuant to section 270.

If the lessee has paid the tax, a claim for a refund shall be made directly to the lessee pursuant to sections 5096 and 5097.

\$1 ACQUISITION AFTER LEASE TERMINATION

Section 251 provides for the one-time filing by a lessor in those instances where the exempt entity has the option at the termination of the lease to acquire the property described in the lease for one dollar or any other nominal sum.

The lessor should complete the *Qualified Lessors' Exemption Claim* form.⁷ The claim must be filed with the assessor within 120 days of the commencement date of the lease.⁸ Once these requirements have been met, the lessor is not required to file an additional claim with respect to that lease unless the option terms of the lease change.⁹ Additionally, the lessor no longer needs to report the property on the *Business Property Statement*. The assessor should enroll the property as belonging to the exempt entity.¹⁰

FILING REQUIREMENTS

CLAIM FORMS

The *Free Public Library or Free Museum Claim* form¹¹ must be used when claiming the Free Public Library or Free Museum Exemption. The claim form must indicate the following information:

- The extent to which the property is open to the public;
- If admittance to the library or museum is free;
- Whether or not there is a user charge for the use of library books, periodicals, or facilities, or if there is a charge for viewing museum contents; and

⁶ Section 202.2.

⁷ Form BOE-263-A.

⁸ Section 251(b)(1).

⁹ Section 251(b)(3).

¹⁰ Section 442(c).

¹¹ Form BOE-268-B

- The extent, if any, to which sales or business activities are conducted on the premises.¹²

If the property is being leased, the claimant should use the *Lessors' Exemption Claim* form.¹³ The lessee may also file an affidavit attesting the use of the property; however, it is not required for the exemption. If the property is being leased from a qualified lessor where the lessee may purchase the property for a nominal sum at the end of the lease, the lessor must file the *Qualified Lessors' Exemption Claim* form.¹⁴

FILING PERIOD

The *Free Public Library or Free Museum Claim* and the *Lessors' Exemption Claim* forms must be filed annually with the assessor between the lien date and 5:00 p.m. on February 15 to receive the full exemption for that year.¹⁵

LATE FILING

If a claim for the Free Public Library or Free Museum Exemption is filed after February 15 but on or before the next succeeding lien date, 90 percent of the exemption may be allowed, subject to a maximum of \$250 for tax, penalty, and interest. If the claim is filed after the next succeeding lien date, 85 percent of the exemption may be allowed, but also subject to the same \$250 maximum.¹⁶

100 Percent <i>Section 255(a)</i>	90 Percent¹⁷ <i>Section 270(a)(1)</i>	85 Percent¹⁷ <i>Section 270 (a)(2)</i>
Claim filed on or before 5:00 p.m. February 15 of the year exemption is being claimed	Claim filed after February 15 but before December 31 of the year exemption is being claimed	Claim filed any time after December 31 of the year exemption is being claimed

¹² Sections 259.8 and 259.9

¹³ Form BOE-263.

¹⁴ Form BOE-263-A.

¹⁵ Section 255(a).

¹⁶ Section 270.

¹⁷ No tax, penalty, or interest can exceed \$250 for a qualified property. The \$250 maximum tax, penalty, and interest for late-filed claims for the exemption applies per claimant per county, regardless of the number of parcels, locations, or assessments within the county. For supplemental assessments, the \$250 maximum is per event.