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November 20, 2009

TO COUNTY ASSESSORS:

RAMON J. HIRSIG
 Executive Director
 No. 2009/055

WELFARE EXEMPTION – FILING REQUIREMENTS
PROPERTY LEASED TO A GOVERNMENT OR PUBLIC EDUCATION ENTITY

In general, Revenue and Taxation Code¹ section 214.6 provides that property eligible for the welfare exemption includes property:

1. Owned by an eligible nonprofit organization and leased to an exempt government agency for the purpose of conducting an activity which, if conducted by the owner, would qualify the property for exemption; or
2. Owned by an eligible nonprofit organization or by a church (eligible for the religious exemption) and leased to a community college, state college, or state university for educational purposes.

Effective January 1, 2010, Senate Bill 824 (Stats. 2009, Ch. 67) amends section 214.6 to clarify that the eligible lessees include public schools and the University of California. Additionally, the amendment clarifies the filing procedures for obtaining a property tax exemption on property owned by an eligible nonprofit organization or by a church and leased to a public school, community college, state college, or state university, including the University of California, when the property is used jointly by the nonprofit organization or church and public educational entity. (A copy of the amended statute is enclosed.)

***Property Owned by a Nonprofit Organization Filing Under the Welfare Exemption Claim
 (Jointly used by a Nonprofit Organization and a Public Educational Entity)***

Although existing law allows the welfare exemption on property owned by a nonprofit organization that is leased to a public school, community college, state college, or state university, including the University of California, when the property is used for educational purposes, it has been unclear how an organization may claim the exemption when the property is used jointly by a public educational entity and a nonprofit organization. The intent of this legislation is to provide filing clarification when joint use occurs. Thus, effective January 1, 2010, section 214.6 specifies that the nonprofit organization claimant need only attach a copy of the lease agreement to each annual filing of the welfare exemption claim.

Section 214.6 will continue to require that the following requirements must also be met by the nonprofit organization when the welfare exemption is granted under this section:

1. The total income received by the exempt organization in the form of rents, fees, or charges, from such lease does not exceed the ordinary and usual expense in maintaining and operating the leased property.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise noted.

2. When the entities are political subdivisions of the state, the property must be located within the boundaries of the exempt governmental entity.

***Property Owned by a Church Filing Under the Religious Exemption
(Jointly used by a Church and a Public Educational Entity)***

In order for property to be exempt under the religious exemption, it must be owned and operated by a church and used for religious worship, or for religious worship and the operation of its own preschool, nursery school, school of less than collegiate grade, or school of collegiate grade and less than collegiate grade. Section 214.6 provides that a church may continue to file under the religious exemption but be eligible for the welfare exemption if the property is leased to a public school, community college, state college, or state university, including the University of California, for educational purposes if certain filing requirements are met.

Under the current provision, a church is required to file a lessor's exemption claim in order to qualify for the welfare exemption; however, the lessor's exemption is available only when the property is used exclusively for the public school purposes. The filing requirements are unclear when the property is used jointly by a church and for public school purposes. The claim forms do not appear to specifically apply to the property and the property's use as addressed in section 214.6.

Effective January 1, 2010, when property is used jointly by a church and a public school, community college, state college, or state university, including the University of California, the church need only annually file claim form *BOE-263-C, Church Lessor's Exemption Claim*, with the county assessor where the property is located. The claim form was adopted by the State Board of Equalization on November 19, 2009, and was developed specifically for use under these circumstances. As with any property owned by a nonprofit organization, the following must be met when the welfare exemption is granted to a church under this section:

1. The total income received by the exempt organization in the form of rents, fees, or charges from such lease does not exceed the ordinary and usual expense in maintaining and operating the leased property.
2. When the entities are political subdivisions of the state, the property must be located within the boundaries of the exempt governmental entity.

A copy of form *BOE-263-C* is enclosed. If you have additional questions regarding this legislation, please contact our Assessment Services Unit at 916-445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:mfn
Enclosures

Section 214.6 of the Revenue and Taxation Code is amended to read (effective January 1, 2010):

214.6 (a) (1) Property ~~which that~~ is owned by an organization meeting the requirements of subdivision (b) of Section 4 of Article XIII of the California Constitution and complying with the requirements of paragraphs (1) to (7), inclusive, of subdivision (a) of Section 214 and ~~which that~~ is leased to an exempt governmental entity for the purpose of conducting an activity ~~which that~~ if conducted by the owner would qualify the property for an exemption, or leased to a public school, community college, state college, or state university, including the University of California, for educational purposes, shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 of Article XIII of the California Constitution if:

~~(1)~~

(A) The total income received by the exempt organization in the form of rents, fees, or charges from such lease does not exceed the ordinary and usual expenses in maintaining and operating the leased property; and

~~(2)~~

(B) With respect to entities ~~which that~~ are political subdivisions of the state, the property is located within the boundaries of the exempt governmental entity leasing the same.

(2) To claim the exemption provided by this section for property leased by a qualifying organization to a public school, community college, state college, or state university, including the University of California, when both entities use the property in a joint manner, the organization need only attach a copy of the lease agreements with the annual filing of the welfare exemption claim.

(b) To claim the welfare exemption provided by this section for property leased by a church to a ~~school district, the church need only file a~~ public school, community college, state college, or state university, including the University of California, when both entities use the property in a joint manner, and where the church has claimed a religious exemption, the church need only annually file a church lessor's exemption claim and affirm each of the following:

(1) The total income received by the ~~organization~~ church in the form of rents, fees, or charges from the lease does not exceed the ordinary and usual expenses in maintaining and operating the leased property.

(2) With respect to entities ~~which that~~ are political subdivisions of the state, the property is located within the boundaries of the exempt governmental entity leasing the same.

INSTRUCTIONS FOR FILING CHURCH LESSORS' EXEMPTION CLAIM

IMPORTANT NOTICE

This claim may be filed to claim the welfare exemption on property leased by a church to a public school, community college, state college, state university, including the University of California when the church and public school or college both use the property in a joint manner. (See Revenue and Taxation Code section 214.6.)

Although the church has previously been granted the religious exemption, which only requires a one-time filing, annual filing of this claim form is required for a property used in conjunction with a public school to be granted the welfare exemption.

Failure to submit the public school or college lessee's affidavit will result in denial of the exemption for the lessor. Submission of the lessee's affidavit after the date the lessors' claim form is due will result in a portion of the exemption being denied. A sample affidavit is included as page 3 of this form.

IDENTIFICATION OF APPLICANT

Enter your church, corporate or organization information.

IDENTIFICATION OF PROPERTY

Enter the address of the property for which you are seeking exemption.

USES OF PROPERTY

Check each of the types of property being claimed, and state the primary and incidental uses of the property. Primary use may include both church and school use; incidental uses would include others who use the property for meetings, receptions, etc.

Enter the name and address of the public school or college lessee. If additional space is required, or if more than one lessee is being listed, attach an itemized list.

Check the appropriate box to affirm that the total income received by the church in the form of rents, fees, or charges from the lease does not exceed the ordinary and usual expenses in maintaining and operating the leased property. The exemption is not available if the income exceeds the ordinary and usual expenses in maintaining and operating the leased property.

Attach an affidavit in which the public school or college lessee declares it uses the property for exempt purposes.

If the property, or a portion thereof, for which exemption is claimed is a student bookstore that generates unrelated business taxable income as defined in section 512 of the Internal Revenue Code, property taxes are determined by establishing a ratio of the unrelated business taxable income to the bookstore's gross income.

RETURN THIS
AFFIDAVIT TO
LESSOR

AFFIDAVIT FOR EXECUTION BY QUALIFYING PUBLIC SCHOOL LESSEES

NAME OF QUALIFYING PUBLIC SCHOOL LESSEE

MAILING ADDRESS

CITY, STATE, ZIP CODE

Check the type of qualifying use of the property

PUBLIC SCHOOL

STATE UNIVERSITY

COMMUNITY COLLEGE

UNIVERSITY OF CALIFORNIA

STATE COLLEGE

NAME OF CHURCH

MAILING ADDRESS

CITY, STATE, ZIP CODE

DATE LEASE SIGNED

COMMENCEMENT DATE OF LEASE

THE ASSESSOR MAY REQUEST A COPY OF THE LEASE AGREEMENT

The following property is leased as of January 1 of this year. If personal property is being leased, indicate the type, make, model, serial number, etc. Attach a separate listing if necessary.

PROPERTY TYPE (REAL OR PERSONAL)	PROPERTY DESCRIPTION

Yes No With respect to lessees that are political subdivisions of the state, the property is located within the boundaries of the exempt government entity leasing the same.

Yes No The property, or a portion thereof, is a student bookstore that generates unrelated business taxable income as defined in section 512 of the Internal Revenue Code.
If **Yes**, a copy of the institution's most recent tax return filed with the Internal Revenue Service must accompany this affidavit. Property taxes are determined by establishing a ratio of the unrelated business taxable income to the bookstore's gross income.

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and belief.

SIGNATURE OF PERSON MAKING CLAIM

DATE

NAME OF PERSON MAKING CLAIM

TITLE

E-MAIL ADDRESS

DAYTIME TELEPHONE

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