



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 274-3350 • FAX 916 285-0134
www.boe.ca.gov

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Executive Director

No. 2013/010

TO COUNTY ASSESSORS:

POSSESSORY INTERESTS:
NONPROFIT ORGANIZATIONS AND PUBLIC PARKS

Effective January 1, 2013, Assembly Bill 1589,¹ in part, adds section 201.7 to the Revenue and Taxation Code² which ensures that a qualified nonprofit organization entering into an operating agreement with the Department of Parks and Recreation (DPR) with respect to a state park is acting as an agent of the state. As such, a taxable possessory interest is not created and the qualified nonprofit organization will not incur any property tax liability.

The property tax provisions of this bill ensure that qualified nonprofit organizations that enter into agreements to operate state parks that were otherwise at risk of closure will not incur any property tax liability because the qualified nonprofit organization is acting in the capacity of an *agent* of the state. Property Tax Rule 20³ provides that possessory interests exist as a result of possession of real property that is independent, durable, and exclusive of rights held by others in the property, and that it provides a private benefit to the possessor. *Independent* means a possession, a right to possession, or a claim to a right to possession if it is "sufficiently autonomous to constitute more than a mere agency." In this instance, if the possessor acts as an agent of the public owner, the public owner's immunity or exemption from taxation extends to the possessor's activities, and there is no taxable possessory interest.

Public Resources Code (PRC) section 5080.42 authorizes the DPR to enter into operating agreements with qualified nonprofit organizations for the development, improvement, restoration, care, maintenance, administration, or operation of a unit(s), or portion of a unit, of the state park system. PRC section 5080.42(g) defines a *qualified nonprofit organization* as an organization that is all of the following:

- Exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code;
- Its principal purpose and activity is to provide visitor services in state parks, facilitate public access to park resources, improve park facilities, provide interpretive and educational services, or provide direct protection of stewardship of natural, cultural, or historical lands, or resources; and

¹ Stats. 2012, ch. 533).

² All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

³ Title 18, Public Revenues, California Code of Regulations.

- Is in compliance with the Supervision of the Trustees and Fundraisers for Charitable Purposes Act.⁴

Currently, the qualified nonprofit organization enters into a standard agreement with California State Parks which governs the relationship with the state. The agreement states that in the event a possessory interest is created, the organization may be subject to the payment of property taxes levied on such possessory interest.⁵

This bill adds section 201.7 to provide that a qualified nonprofit organization that enters into an agreement with the DPR pursuant to section 5080.42(a) of the PRC for the development, improvement, restoration, care, maintenance, administration, or operation of a unit(s), or portion of a unit, of the state park system will remain exempt from property tax as state-owned property.

For property tax purposes, the assessor should obtain a copy of the tax exempt letter showing the qualified nonprofit organization is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code. The assessor should then confirm the tax exemption is current by visiting the Internal Revenue Service website and utilizing the Exempt Organizations Select Check feature at the following link:

<http://apps.irs.gov/app/eos/mainSearch.do?mainSearchChoice=pub78&dispatchMethod=selectSearch>

A copy of the added section 201.7 is enclosed. If you have any questions regarding these changes, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:acb
Enclosure

⁴ Article 7 (commencing with section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.

⁵ See the California Department of Parks and Recreation website to view the Cooperating Association Standard Agreement http://www.parks.ca.gov/?page_id=22337.

Effective January 1, 2013, Section 201.7 is added to the Revenue and Taxation Code:

201.7. A qualified nonprofit corporation that has entered into an agreement with the Department of Parks and Recreation pursuant to subdivision (a) of Section 5080.42 of the Public Resources Code for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system shall be deemed to be an agent of the state for purposes of this division and for no other purpose, and any state-owned property, including possessory interests in that property, used or possessed by the qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system shall be exempt from taxation under subdivision (a) of Section 3 of Article XIII of the California Constitution.