

BILL ANALYSIS

Analyst: Victoria Favorito
Work Phone: 845-3825

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Houston	AB 897

SUBJECT

Exempt Organizations/Exempt From State Taxes Upon Submission Of Notification Issued By IRS Approving Tax Exempt Status

SUMMARY

This bill would eliminate the requirements for certain federally tax-exempt entities to apply for California income tax exemption.

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to remove the duplicative qualification process for obtaining California tax-exempt status by allowing certain entities that are tax-exempt under federal law to be tax-exempt for state purposes automatically.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2008, and operative for requests for California tax-exempt status filed on or after January 1, 2008. In addition, this bill would specify the effective date of an organization's California tax-exempt status to be no later than the effective date of that organization's tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC)

FEDERAL/STATE LAW

Federal Law

Under the IRC, certain entities are treated as tax-exempt organizations. A tax-exempt organization can be a trust, unincorporated association, or nonprofit corporation.

The terms "nonprofit" and "tax-exempt" have different meanings. Nonprofit status is a matter of State law, which governs the organization and creation of the entity. All tax-exempt organizations are nonprofit, but not all nonprofits are tax-exempt.

Tax-exempt status is conferred for purposes of exemption from tax. Section 501(c)(3) organizations make up the largest category of tax-exempt entities. They are organized and operated for one or more of the following purposes:

1. Charitable
2. Educational
3. Religious
4. Scientific
5. Literary

Brian Putler, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 9/06/07
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6. Testing for public safety
7. Fostering national or international amateur sports competition
8. Preventing cruelty to children or animals

To qualify for exempt status with the IRS, a 501(c)(3) organization must be organized under state law as a corporation, community chest, fund, or foundation. Churches, conventions, or associations of churches, and any organization (other than a private foundation) normally having annual gross receipts of less than \$5,000 annually, are exempt automatically if they meet the requirements of IRC section 501(c)(3). Organizations that are not automatically exempt by federal law must apply for tax-exempt status for federal purposes by submitting an application to the IRS with accompanying statements showing that all of the following are true:

- The organization is organized exclusively for, and will be operated exclusively for, one or more of the purposes (e.g., charitable, religious) specified above.
- No part of the organization's net earnings will inure to the benefit of private shareholders or individuals.
- The organization will not, as a substantial part of its activities, attempt to influence legislation (unless it elects to come under the provisions allowing certain lobbying expenditures) or participate to any extent in a political campaign for or against any candidate for public office.

The IRS requires all applications for tax-exempt status to be accompanied by a copy of the organization's Articles of Incorporation or other document creating the organization.

The Articles of Incorporation must limit the organization's purposes to one or more of the exempt purposes listed in IRC section 501(c)(3) and declares the assets of an organization permanently dedicated to an exempt purpose.

The IRS also requires that copies of financial statements be submitted with the application.

Federal law requires the payment of a user fee when making a request for determination of exempt status. For organizations with annual gross receipts in excess of \$10,000 over 4 years, the fee is \$750; for those with annual gross receipts of less than \$10,000, the fee is \$300. A ruling or determination letter will be issued to the organization if its application and supporting documents establish that it meets the particular requirements of the IRC section under which it is claiming exemption.

State Law

Although most California laws dealing with tax exemptions are patterned after the IRC, obtaining state tax exemption is a separate process from obtaining federal exemption. In order to obtain state exemption from tax, an organization must: (1) submit a completed exemption application form to the Franchise Tax Board (FTB), (2) pay a filing fee of \$25, and (3) receive a letter issued by FTB indicating the organization is exempt from tax. The exemption application is required to include the Articles of Incorporation, the by-laws of the organization, and financial statements showing assets, liabilities, receipts, and disbursements.

To be exempt from taxation, the organization must be organized and operated for one or more exempt purposes listed in the California Corporation Tax Law (CTL). The exempt purposes for California exemption are the same as those listed in the federal law section of this analysis except that churches and small charities are not automatically exempt under state law; they must apply for state tax exemption.

THIS BILL

This bill would allow 501(c)(3) organizations that are granted tax-exempt status under federal law to submit a copy of the IRS tax-exempt notice to FTB to establish their state income tax exemption.

As a result, 501(c)(3) organizations would no longer be required to file an exemption application with FTB or submit a \$25 filing fee. Instead, the organization may receive state tax-exemption automatically by informing FTB of the IRS tax-exemption and submitting a copy of the IRS tax-exempt determination letter.

These organizations would continue to receive a letter issued by FTB verifying the organization's exemption from state tax. Those organizations that are not issued a federal determination letter would still file an application for California income tax exemption.

This bill would specify that FTB would not be prevented from revoking tax-exempt status if the entity fails to meet certain California provisions governing exempt organizations.

This bill would require the taxpayer to inform FTB of an IRS tax-exemption suspension or revocation and, upon receipt of the IRS notice of suspension or revocation, allow FTB to suspend or revoke the organization's state tax-exempt status.

PROGRAM BACKGROUND

The department receives approximately 7,000 requests for tax-exempt status determinations annually. Of these requests, 10% are rejected either for failing to include all required documentation or for failing to meet exemption requirements.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

The income tax regulations for *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* provide a presumption that a corporation exempt from tax under federal law will also be exempt from their state income tax.

FISCAL IMPACT

To the extent that this bill would reduce the volume of tax-exempt applications processed by department staff, the cost savings would be minimal, approximately .65 of a PY, or \$48,000. Consistent with the department’s prior analyses of this bill, the cost savings would be redirected from review of applications to conducting compliance audits to assure that regulations and guidelines for tax-exempt organizations are met.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses.

Estimated Revenue Impact of AB 897 Operative for Tax Years BOA 1/1/2008 Assumed Enactment Date after 6/30/2007		
2007/08	2008/09	2009/10
<-\$150,000	<-\$150,000	<-\$150,000

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact from this bill would be due to the decrease in application fees collected by FTB plus the decrease in franchise/income/minimum taxes paid by 501(c)(3) organizations denied exempt status for failing to meet California’s income tax-exemption requirements, as explained under the “State Law” discussion of this analysis.

VOTES

Assembly Floor – Ayes: 73, Noes: 0

Senate Floor – Ayes: 39, Noes: 0

Concurrence – Ayes: 77, Noes: 0

LEGISLATIVE STAFF CONTACT

Victoria Favorito
Franchise Tax Board
(916) 8453825
victoria.favorito@ftb.ca.gov

Brian Putler
Franchise Tax Board
(916) 845-6333
brian.putler@ftb.ca.gov