



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
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October 10, 2001

Information Letter
201167

Re: *****

Dear *****:

This is in response to your inquiry on *****. You asked if an entity organized as a limited liability company may apply and qualify for exemption from California franchise tax in accordance with California Revenue and Taxation Code section 23701w. This section allows an exemption from franchise tax for a veteran's organization, as defined by section 501(c)(19) of the Internal Revenue Code.

This question has not previously been addressed. I have checked with the Exempt Organizations Section, Franchise Tax Board, and that section has not received an application from a limited liability company for exemption from franchise tax in accordance with California Revenue and Taxation Code section 23701w. I have also informally checked with the Internal Revenue Service and it has no record of an application from a limited liability company for exemption from income tax in accordance with section 501(c)(19) of the Internal Revenue Code.

The Franchise Tax Board typically receives applications for exemption from franchise tax in accordance with California Revenue and Taxation Code section 23701w from entities organized as Nonprofit Mutual Benefit Corporations, California Corporations Code, section 7110 et seq. A Nonprofit Mutual Benefit Corporation may be organized for the following purposes:

Subject to any other provision of law of this state applying to the particular class of corporation or line of activity, a corporation may be formed under this part for any lawful purpose; . . . (Section 7111.)

A limited liability company may be organized for the following purposes:

Subject to any limitations contained in the articles of organization and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, except the banking business, the

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business of issuing policies of insurance and assuming insurance risks, or the trust company business. (Corporations Code section 17002.)

There does not appear to be any restriction in the permitted purpose of the Nonprofit Mutual Benefit Corporation that would preclude a limited liability company from qualifying for exemption from franchise tax as a veteran's organization, if all other requirements are met.

It is noted that an unincorporated association may qualify for exemption from franchise tax as a veteran's organization in accordance with California Revenue and Taxation Code section 23701w.

It is recommended that the articles of organization for a limited liability company, applying for exemption from franchise tax as a veteran's organization, include at minimum, the following provisions:

1. The name of the limited liability company.
2. The specific and primary purpose of the limited liability company. The following is suggested:

The specific and primary purpose of the organization is to operate as a veterans' organization within the meaning of Internal Revenue Code section 501(c)(19).

3. A statement indicating that the organization is organized for nonprofit purposes and that the individual members will not derive profit from the organization. The following is suggested:

The organization does not contemplate pecuniary gain or profit to the members thereof and is organized for nonprofit purposes.

4. A limitation clause. The following is suggested:

Notwithstanding any of the above statements of purposes and powers, this organization shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this organization.

It is necessary to add a note of qualification to this response. California Revenue and Taxation Code section 23701w allows exemption for a veteran's organization, as defined by section 501(c)(19) of the Internal Revenue Code, and specifically references the Internal Revenue Code. Consequently, federal precedent and interpretation regarding Internal Revenue Code 501(c)(19) is and will be persuasive of the proper interpretation of section 23701w. (See *Meanley v. McColgan* (1942) 49 Cal.App.2d 203.)

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Further, FTB Notice 89-277, May 10, 1989, provides, "Where the provisions of the Personal Income Tax Law and the Bank and Corporation Tax law are in substantial conformity with the Internal Revenue Code, the Franchise Tax Board will generally follow federal regulations, procedures and rulings." Any favorable determination from the staff of the Franchise Tax Board, regarding an application for exemption from franchise tax from a limited liability company as a veteran's organization, will likely be conditional and dependent on a favorable determination from the Internal Revenue service within a certain period, probably nine months, from the date of the determination from the staff of the Franchise Tax Board. If, for some reason, the Internal Revenue Service determines that a limited liability company may not be granted exemption from income tax in accordance with section 501(c)(19) of the Internal Revenue Code, it is likely that the staff of the Franchise Tax Board will revoke the exemption from franchise tax for that limited liability company. In that event, the organization will become subject to the tax laws attributable to limited liability companies.

Whatever form of entity is chosen, if the entity wishes to be exempt from California franchise tax in accordance with California Revenue and Taxation Code section 23701w, the entity must submit an application using California Form 3500, Exemption Application. The application will be subject to review on all items of information required as part of the application.

You should be aware that this is being provided to you for informational purposes only and may not be considered "written advice from the Board" within the meaning of Revenue and Taxation Code section 21012. You should also be aware that our response is subject to change, in the event of a change in relevant statutory authority, judicial or administrative case law, or a change in federal interpretation of federal law, where our opinion is based on such interpretation.

Sincerely,

Edward J. Kline
Tax Counsel