

NOTE: This paper is intended only for purposes of facilitating discussion at the Interested Parties Meeting (IPM) scheduled for June 18, 2024.

DISCUSSION TOPIC PAPER

The purpose of the IPM is to elicit public input regarding possible additions and/or amendments to the regulations at California Code of Regulations (CCR), Title 18, Sections 23701, 23772, 23775, 23776, 23777, and 23778, relating to exempt organizations.

CCR, Title 18, Division 3, Chapter 3.5, Subchapter 4, Articles 1-3, Sections 23701 to 23778, set forth regulations implementing California Revenue and Taxation Code, Division 2, Part 11, Chapter 4, Articles 1-3, (R&TC) Sections 23701 to 23778, relating to exempt organizations. These regulations were last amended in 2009 or earlier.

Since 2009, the legislature enacted amendments to several of these statutes as detailed below. (See Senate Bill (SB) 401 (2010); Assembly Bill (AB) 36 (2011); SB 1341 (2012); AB 1677 (2012); AB 1173 (2013); AB 154 (2015); AB 94 (2017); SB 934 (2020).

(1) R&TC Section 23701.

In 2013, AB 1173 amended R&TC Sections 23701 and 23701d.

AB 1173 added former subdivision (d)(1) (currently subdivision (b)(1)), to former R&TC Section 23701, allowing streamlined exemption in California by submitting a copy of the determination letter or ruling issued by the Internal Revenue Service (IRS) recognizing the organization's exemption from federal income tax.

AB 1173 also expanded the types of organizations eligible for streamlined exemption to include organizations organized and operated for nonprofit purposes in accordance with R&TC Sections 23701a, 23701d, 23701e, 23701f, or 23701g.

AB 1173 also removed subdivision (c) from former R&TC Section 23701d, which had provided streamlined exemption with respect to only organizations organized and operated for nonprofit purposes in accordance with R&TC Section 23701d.

In 2017, AB 94 amended R&TC Section 23701, subdivision (d)(1) (currently subdivision (b)(1)), to allow streamlined exemption for organizations organized and operated for nonprofit purposes in accordance with R&TC Section 23701w.

In 2020, SB 934 revised the subdivision designations in R&TC Section 23701 which, among other things, changed subdivision (d)(1) to subdivision (b)(1). It also deleted former subdivision (b) to eliminate the \$25 exemption application fee.

(2) R&TC Section 23772.

R&TC Section 23772, subdivision (b), states in part that every organization described in R&TC Section 23701d is required to furnish annually certain categories of information. In 2009, subdivision (b) specified ten categories of information.

In 2010, SB 401 amended R&TC Section 23772, subdivision (b), by adding two additional categories of information. (See R&TC § 23772, subd. (b)(10) and (12)). SB 401 also added an electronic form requirement for certain organizations otherwise exempt from furnishing the information required by subdivision (b). (See R&TC § 23772, subd. (b)(13)). In addition, a paragraph was added stating that an organization's exempt status would be revoked if it failed to file an annual return for three consecutive years. (See R&TC § 23772, subd. (b)(14)).

In 2012, AB 1677 amended R&TC Section 23772, subdivision (a)(2), which sets forth exceptions from the annual return requirement. An exception for organizations whose gross receipts are normally not more than \$25,000 was expanded to organizations whose gross receipts are normally not more than \$50,000. (See R&TC § 23772, subd. (a)(2)(A)(ii)).

In 2020, SB 934 amended R&TC Section 23772, subdivision (a), by deleting paragraphs (a)(3) and (a)(4), which imposed a filing fee of \$10.00 and contained exceptions to the filing fee.

(3) R&TC Section 23778.

Former R&TC Section 23778, set forth requirements for reestablishing exemption after an organization had its exemption revoked under R&TC Section 23777.

In 2012, Senate Bill 1341 (SB 1341) repealed and reenacted R&TC Section 23703 with amendments which provided that the Franchise Tax Board (FTB) would revoke the exemption of a charitable corporation if it failed to register or file periodic reports with the Attorney General.

SB 1341 also amended R&TC Section 23778 to provide that the requirements for reestablishing exemption under that section also applied to organizations that had their exemption revoked under R&TC Section 23703. In addition, SB 1341 added clarifying language to subdivisions (a) and (b) of R&TC Section 23778.

In 2020, SB 934 repealed and reenacted R&TC Section 23778 in identical form except that it omitted the exemption application fee requirements from subdivision (a)(1) consistent with the bill's elimination of the fee for exemption applications under R&TC Section 23701.

(4) Conclusion.

Because of the above-referenced statutory amendments, the regulations relating to exempt organizations may no longer reflect the current version of the statutes.

The Franchise Tax Board is considering additions and/or amendments to the regulations to reflect the changes made to the statutes since 2009. The FTB requests the public's input regarding possible amendments to the regulations at CCR, Title 18, Sections 23701, 23772, 23775, 23776, 23777, and 23778.

In order to encourage public participation and input in this project, staff is not proposing draft language at this time. Instead, the IPM will include discussion of the above-listed items as well as any other items that the public wishes to bring forward regarding suggested amendments to these regulations.