



california enforces new isolationist view on property tax exemptions for nonprofits

MSK Client Alert

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California's Board of Equalization has decided to deny property tax exemptions to charities that do not "primarily benefit persons within the geographical boundaries of the State of California,"¹ notwithstanding the lack of any apparent legal requirement or even mention of it in its own "Assessor's Handbook."

The California Board of Equalization (the "State Board") has unilaterally decreed that, "since the property tax is limited to the state's boundaries, the charitable benefits and services should likewise be limited to those same boundaries."² Should the Trust for Public Land leave its San Francisco headquarters because it helps agencies and communities across the country conserve land for public use and benefit? Does the Scripps Research Institute need to take its stellar jobs out of state because breakthroughs in malaria and AIDS research are coming out of its La Jolla campus? The State Board's narrow view of the so-called "community benefit test" would seem to say so, but we beg to differ.

In any case, unless your nonprofit primarily benefits persons within California, you may wish to consider carefully the implications of the State Board's position on your organization's ability to qualify for or maintain its charitable exemption from property tax.

Known as the "welfare exemption," property used exclusively for religious, hospital, scientific, or charitable purposes, and owned and operated by nonprofits organized and operated for such purposes, generally is exempt from California property tax. The State Board relies on the seminal 1967 California Supreme Court case, *Stockton Civic Theater*, which provides that "charitable activity must benefit the community as a whole or an unascertainable and indefinite portion thereof." That statement was made as a contrast to the many nonprofit corporations and organizations that exist primarily for the benefit of their members. Neither the statement nor the case as a whole supports the State Board's position. Indeed, the geographical restriction is not provided for in,

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and indeed appears contrary to, the relevant provisions of the Constitution of the State of California, the Revenue and Taxation Code, court rulings (including *Stockton Civic Theater*), and the Assessor's Handbook.

While the geographical restriction now being enforced by the State Board seems to appear nowhere prior to the 2008 Board Letter, the letter claims that the community benefit test has "historically" been interpreted to include the geographical limitation. The letter references several seemingly inapplicable cases that discuss the term "community" while, in fairness, admits that the term was defined in those cases "for other purposes in other contexts."

The 2008 Board Letter also indicates that "staff believes that a relatively strict construction of the term 'community' is consistent with [the ballot measure that added the property exemption to the Constitution]." There are two main problems with this.

First, the ballot measure included an "argument in favor of Proposition 4" section that claimed, among numerous other benefits, that additional health and welfare services resulting from the exemption would save taxpayers the entire exemption cost. It is quite a stretch to consequently conclude that the intent of the law itself, which says nothing of the sort, is to "provide benefits in the form of additional charitable benefits in exchange for a property tax exemption," as the 2008 Board Letter claims.

Second, the State Board staff's "relatively strict construction" seems to run contrary to another aspect of the *Stockton Civic Theater* case on which they rely. The Supreme Court there rejected an attempt to narrowly construe the property tax exemption and indicated that previous attempts to do so had likewise been rejected.

Nonetheless, the State Board has decided to deny property tax exemptions to charities that do not "primarily benefit persons within the geographical boundaries of the State of California." As suggested above, you may wish to consider carefully the implications on your organization's ability to qualify for and maintain a charitable exemption from property tax, and to contact your tax advisors accordingly.

If you have any questions about this Alert, please contact the author or any member of the MSK Charitable Sector Practice Group.

¹ Letter in the author's possession, dated November 17, 2010, from the California Board of Equalization to an organization, with international charitable aspirations, denying a property tax exemption application. At least one other organization is facing a similar denial.

² California State Board of Equalization Letter to Assessors (5/2/2008), No. 2008/034, herein the "2008 Board Letter."