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Taxation: Nonprofit Organizations.

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**Taxation: Nonprofit Organizations.
Legislative Constitutional Amendment.**

Official Title and Summary Prepared by the Attorney General

**TAXATION: NONPROFIT ORGANIZATIONS.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

- Provides that nonprofit organizations exempted from taxation under certain state or federal statutes are also exempted from locally-imposed business license taxes or fees measured by income or gross receipts.

**Summary of Legislative Analyst's
Estimate of Net State and Local Government Fiscal Impact:**

- Little, if any, effect on local government revenues in the near-term.

Final Votes Cast by the Legislature on SCA 15 (Proposition 176)

Assembly: Ayes 67	Senate: Ayes 31
Noes 0	Noes 2

Analysis by the Legislative Analyst

Background

Under current law, cities and counties may impose various taxes and fees on individuals and businesses in order to support local government operations. Some of the taxes include: sales taxes, "hotel taxes", utility user taxes, and business license taxes and fees.

Business license taxes and fees are levied on businesses operating within a city or county. These charges cover the local government's costs of licensing and regulating the business' operation, and may also generate revenue for other services. Many local governments impose these taxes, using a variety of methods. For example, business license taxes may be levied as a percentage of payroll or gross receipts, or based on the number of employees or business square footage.

Under current law, cities and counties generally have broad authority to levy business license fees and taxes. Presumably, local governments can levy these taxes on *nonprofit organizations* (such as charitable groups and

churches). We are not aware, however, of any city or county which currently applies its business license tax to nonprofit organizations.

Proposal

Under this constitutional amendment, local governments could not require nonprofit organizations to pay any local business license tax or fee which is based on *income* or *gross receipts*. The amendment does not affect local governments' ability to levy these taxes on nonprofit organizations based on other methods.

Fiscal Effect

As noted above, we are not aware of any cities or counties which have imposed business license taxes on nonprofit organizations. As a result, this measure would have little, if any, effect on local government revenues, at least in the near term.

The measure would, however, prevent local governments from applying these taxes on such organizations in the future.

For the text of Proposition 176 see page 28

Argument in Favor of Proposition 176

During the many recent disasters in California, we all recognized the valuable contributions of nonprofit and charitable organizations to communities and individuals. We need to protect their continued ability to be there when we need them by prohibiting local governments from imposing income-based taxes or fees on those organizations.

Nonprofit organizations operate very differently and for different purposes than for-profit business and professional entities. They use revenue from member dues, donations and other sources to provide a range of services, including important charitable activities.

Although nonprofits have long enjoyed basic tax protections under national and state laws, a recent attempt to tax nonprofits by the City of Berkeley indicated that a significant loophole in state law exists. Specifically that no city government is expressly prohibited from instituting such a tax.

This bill would apply the municipal income tax exemption to those agencies and groups which are currently exempt under federal and state law. Since no city is currently using such a tax, passage of this measure will NOT result in cuts in local services.

It will protect community service groups from having their contributions taxed which were originally intended to aid many of the community health and human services such as those for the children, the disabled, the poor or those displaced by natural disasters.

This clarification is supported by both parties in the Legislature and by a very wide spectrum of civic, church, labor and community groups.

DAVID ROBERTI
State Senator

ANTHONY FOLCARELLI
President, United Way of California

WENDELL PHILLIPS
President, California Council of Police and Sheriffs

Rebuttal to Argument in Favor of Proposition 176

Not all "non-profit" organizations are as charitable as proponents contend.

The problem is in the definition of a "non-profit."

The persons who work for "non-profit" organizations may draw huge salaries and other benefits. The mere fact that no "profit" is left over for any shareholders or

other owners does not make an organization charitable or worthy of outright exemption from local business license fees.

GARY B. WESLEY
Attorney at Law

Argument Against Proposition 176

Local governments provide a wide range of services to local residents and businesses. In recent years, the State Legislature has cut back on the amount of money made available to many local governments. As a result, local governments are scrambling to maintain services in the face of tight fiscal constraints.

This measure is a proposal by the Legislature to amend the California Constitution to prohibit local governments from levying *“any business license fee or fee*

measured by income or gross receipts” upon any qualified *“nonprofit organization.”*

Why should every *“nonprofit organization”* be exempt?

Local governments provide services to businesses regardless of whether they call themselves *“for profit”* or *“nonprofit.”*

GARY B. WESLEY
Attorney at Law

Rebuttal to Argument Against Proposition 176

Nonprofit organizations *should be exempt from any business license tax or fee measured by income or gross receipts* because they would need to reduce services, raise fees, or divert staff and volunteer time to raising more funds to pay these taxes.

Charitable nonprofits generally provide community services that government does not. Local governments often start programs, only to cut them when dollars get tight or when a new *“crisis”* arises. Charities are then asked to continue the services, with little or no government support. With their lower overhead costs, *these nonprofits usually do more with fewer dollars and do it more efficiently than government.* The community continues to receive needed services, paying for them with voluntary contributions, not higher taxes.

During recent disasters nonprofits proved their worth. *Charitable relief agencies were the first to set up emergency shelters, distribute food and care for the injured.*

Taxing your contributions will not improve government’s response time or quality of service. But paying fees and taxes based on your contribution or purchases of goods from them could seriously limit the ability of charitable organizations to deliver community services.

Surely there are other ways for cities to meet their budgets without taxing or assessing fees on the nonprofit organizations which have done so much for so many Californians.

ROBERT S. BALLOU
*President, California’s Capitol Chapter
National Association of Fund Raising Executives*

BEN ABATE, Ph.D.
*President and CEO
American Lung Association of California*

DAVID ROBERTI
State Senator

Proposition 175: Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 9 (Statutes of 1993, Resolution Chapter 42) expressly amends the Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIII

SEC. 26.5. (a) For purposes of income taxation, qualified renters shall be allowed a credit against their net tax in an amount not less than \$120 for married

couples filing joint returns, heads of household, and surviving spouses, and in an amount not less than \$60 for other individuals.

(b) *The Legislature may amend those statutes that implement an income tax credit for qualified renters as of January 1, 1993, and may amend or enact other statutes, as necessary to timely or properly administer the credit established by subdivision (a).*

(c) *This section applies to taxable years beginning on or after January 1, 1995.*

Proposition 176: Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 15 (Statutes of 1993, Resolution Chapter 67) expressly amends the Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIII, SECTION 26

SEC. 26. (a) Taxes on or measured by income may be imposed on persons, corporations, or other entities as prescribed by law.

(b) Interest on bonds issued by the State or a local government in the State is exempt from taxes on income.

(c) Income of a nonprofit educational institution of collegiate grade within the

State of California is exempt from taxes on or measured by income if *both of the following conditions are met:*

(1) ~~it~~ *The income is not unrelated business income as defined by the Legislature; and*

(2) ~~it~~ *The income is used exclusively for educational purposes.*

(d) *A nonprofit organization that is exempted from taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, is exempt from any business license tax or fee measured by income or gross receipts that is levied by a county or city, whether charter or general law, a city and county, a school district, a special district, or any other local agency.*

Proposition 177: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 8 (Statutes of 1993, Resolution Chapter 92) expressly amends the Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO SUBDIVISION (c) OF SECTION 2 OF ARTICLE XIII A

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, which is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date

of this paragraph of any portion or structural component of a single or multiple family dwelling which is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, which are constructed or installed in existing buildings after the effective date of this paragraph. The Legislature shall define eligible improvements. This exclusion does not apply to seismic safety reconstruction or improvements which qualify for exclusion pursuant to the last sentence of the first paragraph of subdivision (a).

(5) *The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.*

Proposition 178: Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 4 (Statutes of 1993, Resolution Chapter 93) expressly amends the Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO SUBDIVISION (a) OF SECTION 2 OF ARTICLE XIII A

(a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.

For purposes of this section, "newly constructed" does not include ~~real~~ *any of the following:*

(1) *Real property which that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" shall not include the*

(2) *That portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.*

(3) *That portion of any improvement to real property that consists of the installation of water conservation equipment, as defined by the Legislature, for agricultural use.*

~~However, the~~ *The Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of*

Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.