

# REVENUE AND TAXATION CODE

## SECTION 23701-23712

23701. Organizations which are organized and operated for nonprofit purposes within the provisions of a specific section of this article, or are defined in Section 23701h (relating to certain title-holding companies) or Section 23701x (relating to certain title-holding companies), are exempt from taxes imposed under this part, except as provided in this article or in Article 2 (commencing with Section 23731) of this chapter, if:

(a) An application for exemption is submitted in the form prescribed by the Franchise Tax Board; and

(b) A filing fee of twenty-five dollars (\$25) is paid with each application for exemption filed with the Franchise Tax Board after December 31, 1969; and

(c) The Franchise Tax Board issues a determination exempting the organization from tax.

This section shall not prevent a determination from having retroactive effect and does not prevent the issuance of a determination with respect to a domestic organization which was in existence prior to January 1, 1970, and exempt under prior law without the submission of a formal application or payment of a filing fee. For the purpose of this section, the term "domestic" means created or organized under the laws of this state.

The Franchise Tax Board may issue rulings and regulations as are necessary and reasonable to carry out the provisions of this article.

23701a. (a) Labor, agricultural, or horticultural organizations other than cooperative organizations described in Section 24404 or 24405 (unless the cooperative organization is determined by the Internal Revenue Service to be an organization described in Section 501(c)(5) of the Internal Revenue Code of 1954, as amended).

For purposes of this section, the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(b) The amendments to this section by the act adding this subdivision shall be applied in the computation of taxes for taxable years beginning on or after January 1, 1983.

23701b. A fraternal order described in Section 501(c)(8) of the Internal Revenue Code.

23701c. A cemetery company described in Section 501(c)(13) of the Internal Revenue Code.

23701d. (a) A corporation, community chest or trust, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, (except as otherwise provided in Section 23704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section or Section 501(c)(3) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board; that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. The irrevocable dedication requirement shall not be a sole basis for revocation of an exempt determination made by the Franchise Tax Board prior to the effective date of this amendment.

(b) (1) In the case of a qualified amateur sports organization--

(A) The requirement of subdivision (a) that no part of its activities involves the provision of athletic facilities or equipment shall not apply.

(B) That organization shall not fail to meet the requirements of subdivision (a) merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if that organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section 23701, an organization organized and operated for nonprofit purposes in accordance with this section shall be exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 23731), upon its submission to the Franchise Tax Board of one of the following:

(A) A copy of the determination letter or ruling issued by the Internal Revenue Service recognizing the organization's exemption from federal income tax under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(B) A copy of the group exemption letter issued by the Internal Revenue Service that states that both the central organization and all of its subordinates are tax-exempt under Section 501(c)(3) of the Internal Revenue Code and substantiation that the organization is included in the federal group exemption letter as a subordinate organization.

(2) Upon receipt of the documents required in subparagraph (A) or (B) of paragraph (1), the Franchise Tax Board shall issue an acknowledgment that the organization is exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 23731). The acknowledgment may refer to the organization's recognition by the Internal Revenue Service of exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code and, if applicable, the organization's subordinate organization status under a federal group exemption letter. The effective date of an organization's exemption from state income tax pursuant to this subdivision shall be no later than the effective date of the organization's recognition of exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code, or its status as a subordinate organization under a federal group exemption letter, as applicable.

(3) If, for federal income tax purposes, an organization's exemption from tax as an organization described in Section 501(c)(3) of the Internal Revenue Code is suspended or revoked, the organization shall notify the Franchise Tax Board of the suspension or revocation, in the form and manner prescribed by the Franchise Tax Board. Upon notification, the board shall suspend or revoke, whichever is applicable, for state income tax purposes, the organization's exemption under paragraph (1) of this subdivision.

(4) This subdivision shall not be construed to prevent the Franchise Tax Board from revoking the exemption of an organization that is not organized or operated in accordance with this chapter or Section 501(c)(3) of the Internal Revenue Code.

(5) If the Franchise Tax Board suspends or revokes the exemption of an organization pursuant to paragraph (3) or (4), the exemption shall be reinstated only upon compliance with Section 23701, regardless of whether the organization can establish exemption under paragraph (1).

(d) The Franchise Tax Board may prescribe rules and regulations to implement this section.

23701e. A business league, chamber of commerce, real estate board, or a board of trade described in Section 501(c)(6) of the Internal Revenue Code, except that the phrase "or professional football leagues (whether or not administering a pension fund for football players)" shall not apply.

23701f. (a) A civic league, social welfare organization, or local organization of employees described in Section 501(c)(4) of the Internal Revenue Code, except as otherwise provided.

(b) An organization is not organized exclusively for exempt purposes under Section 501(c)(4) of the Internal Revenue Code unless

its assets are irrevocably dedicated to one or more purposes listed in Section 501(c)(4) of the Internal Revenue Code.

23701g. A social organization described in Section 501(c)(7) of the Internal Revenue Code.

23701h. (a) A corporation described in Section 501(c)(2) of the Internal Revenue Code, relating to certain title-holding companies.

(b) (1) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b) of Section 23038, for purposes of applying Section 501(c)(2) of the Internal Revenue Code under this section, the term "corporation" includes a limited liability company that is classified as a partnership or as a disregarded entity.

(2) A limited liability company that, under the authority of this section, is exempt from the tax imposed by this part is also exempt from the tax and fees imposed under Chapter 10.6 (commencing with Section 17941) of Part 10.

23701i. A voluntary employees' beneficiary association described in Section 501(c)(9) of the Internal Revenue Code.

23701j. A teacher's retirement fund association described in Section 501(c)(11) of the Internal Revenue Code.

23701k. Religious or apostolic corporations, if such corporations have a common treasury or community treasury even if such corporations engaged in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the net income of the corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

23701l. (a) A domestic fraternal society described in Section 501(c)(10) of the Internal Revenue Code, except as otherwise provided.

(b) For purposes of this section, the term "domestic" means created or organized in the United States or under the law of the United States or of any state or territory therein.

23701n. (a) A supplemental unemployment compensation trust described in Section 501(c)(17) of the Internal Revenue Code, except as otherwise provided.

(b) The following references in Section 501(c)(17)(E) of the

Internal Revenue Code shall be modified as follows:

(1) The phrase "under Section 23701" shall be substituted for the phrase "under subsection (a)."

(2) The phrase "Section 23701i" shall be substituted for the phrase "paragraph (9) of this subsection."

23701p. A trust or plan which meets the requirements of Public Law 87-792, 76 U.S. Stats. 809, approved October 10, 1962 (the Self-Employed Individuals Tax Retirement Bill of 1962), but only if such trust or plan is not exempt from taxation under Section 17631.

23701r. (a) A political organization. However, a political organization shall be subject to tax under this part with respect to its "political organization taxable income" and such income shall be subject to tax as provided by Chapter 3 (commencing with Section 23501).

(b) For purposes of this section, the political organization taxable income of any organization for any taxable year is an amount equal to the excess over one hundred dollars (\$100) (if any) of--

(1) The gross income for the taxable year (excluding any exempt function income), over

(2) The deductions allowed by this part which are directly connected with the production of the gross income (excluding exempt function income).

(c) For purposes of this section, the term "exempt function income" means any amount received as--

(1) A contribution of money or other property,

(2) Membership dues, a membership fee or assessment from a member of the political organization, or

(3) Proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business,

to the extent such amount is segregated for use only for the exempt function of the political organization.

(d) For purposes of this part, if any political organization--

(1) Contributes any amount to or for the use of any political organization which is treated as exempt from tax under subdivision (a) of this section,

(2) Contributes any amount to or for the use of any organization described in paragraph (1) or (2) of Section 509(a) of the Internal Revenue Code of 1954, which is exempt from tax under Section 23701, or

(3) Deposits any amount in the General Fund or the Treasury of

the United States or in the General Fund of any state or local government,

such amount shall be treated as an amount not diverted for the personal use of the candidate or any other person. No deduction shall be allowed under this part for the contribution or deposit of any amount described in the preceding sentence.

(e) For purposes of this section--

(1) The term "political organization" means a party, committee, association, fund, (including the trust of an individual candidate) or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. The term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under Section 162 (a) of the Internal Revenue Code.

(3) The term "contributions" has the meaning given to such term by paragraph (2) of subdivision (b) of Section 24434.

(4) The term "expenditures" has the meaning given to such term by paragraph (3) of subdivision (b) of Section 24434.

(f) For purposes of paragraph (1) of subdivision (e), a separate segregated fund (within the meaning of Section 610 of Title 18 of the United States Code or of any similar state statute, or within the meaning of any state statute which permits the segregation of dues money for exempt functions, within the meaning of paragraph (2) of subdivision (e)) which is maintained by an organization described in Sections 23701a through 23701p or Section 23701s which is exempt from tax under Section 23701 shall be treated as a separate organization.

(g) (1) For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of paragraph (3)) for nomination or election to, any federal, state, or local elective public office for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) In the case of any fund described in paragraph (1) the exempt function shall be only the preparation and circulation of the newsletter.

(3) For purposes of paragraph (1), "candidate" means with respect to any federal, state, or local elective public office, an individual who does both of the following:

(A) Publicly announces that he or she is a candidate for nomination or election to that office.

(B) Meets the qualifications prescribed by law to hold that office.

(h) The requirements set forth in subdivisions (a), (b) and (c) of Section 23701 shall not apply to a political organization or

newsletter fund described in this section. However, in the case of a corporation incorporated or organized in this state or qualified to do business in this state, such corporation shall either pay the minimum tax provided in Section 23153 or obtain a certificate of exemption from the Franchise Tax Board before the corporation files with the Secretary of State its articles of incorporation or a duly certified copy thereof.

(i) The requirements set forth in Section 23772 or Section 23774 shall not apply to a political organization or newsletter fund. Further, the requirements set forth in Sections 18505, 18506, and 18601 shall not apply to a political organization or newsletter fund described in this section, except that if it has political organization taxable income for any taxable year, the political organization shall be required to file income tax returns or statements as determined by the Franchise Tax Board under Chapter 3 (commencing with Section 23501).

23701s. (a) An employee-funded pension trust described in Section 501(c)(18) of the Internal Revenue Code, except as otherwise provided.

(b) The last sentence in Section 501(c)(18) of the Internal Revenue Code, relating to excess contributions under Section 4979, shall not apply.

23701t. (a) A homeowners' association organized and operated to provide for the acquisition, construction, management, maintenance, and care of residential association property if all of the following apply:

(1) Sixty percent or more of the gross income of the organization for the taxable year consists solely of amounts received as membership dues, fees, and assessments from either of the following:

(A) Tenant-stockholders or owners of residential units, residences, or lots.

(B) Owners of time-share rights to use, or time-share ownership interests in, association property in the case of a time-share association.

(2) Ninety percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a time-share association, for activities provided to or on behalf of members of the association.

(3) No part of the net earnings inures (other than by providing management, maintenance, and care of association property or by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual.

(4) Amounts received as membership dues, fees, and assessments not expended for association purposes during the taxable year are transferred to and held in trust to provide for the management, maintenance, and care of association property and common areas.

(b) The term "association property" means:

(1) Property held by the organization.

(2) Property held in common by the members of the organization.

(3) Property within the organization privately held by the members of the organization.

In the case of a time-share association, "association property" includes property in which the time-share association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the time-share project.

(c) A homeowners' association shall be subject to tax under this part with respect to its "homeowners' association taxable income," and that income shall be subject to tax as provided by Chapter 3 (commencing with Section 23501).

(1) For purposes of this section, the term "homeowners' association taxable income" of any organization for any taxable year means an amount equal to the excess over one hundred dollars (\$100) (if any) of--

(A) The gross income for the taxable year (excluding any exempt function income), over

(B) The deductions allowed by this part which are directly connected with the production of the gross income (excluding exempt function income).

(2) For purposes of this section, the term "exempt function income" means any amount received as membership fees, dues, and assessments from tenant-shareholders or owners of residential units, residences, or lots, or owners of time-share rights to use, or time-share ownership interests in, association property in the case of a time-share association.

(d) The term "homeowners' association" includes a condominium management association, a residential real estate management association, a time-share association, and a cooperative housing corporation.

(e) "Cooperative housing corporation" includes, but is not limited to, a limited-equity housing cooperative, as defined in Section 33007.5 of the Health and Safety Code, organized either as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, or a nonprofit mutual benefit corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code.

(f) The term "time-share association" means any organization (other than a condominium management association) organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property if any member thereof holds a time-share right to use, or a time-share ownership interest in, real property constituting association property.

(g) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998.

23701u. An organization is operated exclusively for exempt purposes listed in Section 23701f and its net earnings are devoted exclusively to charitable purposes if that organization is a nonprofit public benefit corporation organized under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and if the specific and primary purpose for which the corporation is formed is to render financial assistance to government by financing, refinancing, acquiring, constructing, improving, leasing, selling, or otherwise conveying property of any kind to government. This financing ability shall be limited to the

issuance of certificates of participation, or similar security arrangements.

For purposes of this section, "government" means the State of California, a city, city and county, county, school district, board of education, public corporation, hospital district, and any other special district.

An organization is not organized exclusively for the exempt purposes referred to in the first paragraph unless its assets are irrevocably dedicated to one or more purposes listed in Section 23701f.

Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes, including default of lease payments, the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section, Section 23701d, or Section 23701f, or under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board, that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. Any organization that has had its exemption revoked by the Franchise Tax Board for failure to comply with Section 23701f may request a further review of its status under this section.

23701v. (a) An organization of owners of manufactured homes or mobilehomes, who are tenants in a mobilehome park, formed for the purpose of purchasing the mobilehome park to convert it to condominium, stock cooperative, or other resident ownership interests.

(b) An organization shall not fail to meet the requirements of subdivision (a) merely because it manages, maintains, or cares for the mobilehome park it has purchased.

23701w. A veteran's organization, as defined by Section 501(c)(19) of the Internal Revenue Code.

23701x. (a) A corporation or trust described in Section 501(c)(25) of the Internal Revenue Code, relating to certain title-holding companies.

(b) (1) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b) of Section 23038, for purposes of applying Section 501(c)(25) of the Internal Revenue Code under this section, the term "corporation" includes a limited liability company that is classified as a partnership or as a disregarded entity.

(2) A limited liability company that, under the authority of this section, is exempt from the tax imposed by this part is also exempt from the tax and fees imposed under Chapter 10.6 (commencing with

Section 17941) of Part 10.

23701y. A credit union as defined in Section 14002 of the Financial Code. In addition, those credit unions are exempt from all other taxes and licenses, state, county, and municipal, imposed upon those credit unions, except taxes upon their real property, local utility user taxes, sales and use taxes, state energy resources surcharges, state emergency telephone users surcharges, unrelated business income taxes pursuant to Section 23731, motor vehicle and other vehicle registration license fees, and any other tax or license fee imposed by the state upon vehicles, motor vehicles, or the operation thereof.

23701z. An organization established pursuant to Section 5005.1 of the Corporations Code by three or more corporations as an arrangement for the pooling of self-insured claims or losses of those corporations.

23702. Section 502 of the Internal Revenue Code, relating to feeder organizations, shall apply, except as otherwise provided.

(a) Exemption shall not be allowed to any organization on the basis that all of its profits are payable to another organization exempt from taxation under either Section 501 of the Internal Revenue Code or this article, if that business activity is being conducted by a separate organization.

(b) The reference to Section 501 of the Internal Revenue Code, relating to exemption, shall be modified to refer to Section 23701.

(c) The reference to Sections 512 and 512(b)(3) of the Internal Revenue Code, relating to the exclusion of the deriving of rents from the definition of "trade or business," shall be modified to refer to Section 23732.

23703. (a) No exemption shall be allowed under this article to any charitable corporation as defined in Sections 12582.1 and 12583 of the Government Code for any year or years for which it fails to file with the Attorney General, on or before the due date, any registration or periodic report required by Article 7 (commencing with Section 12580) of Chapter 6, Part 2, Division 3, Title 2, of the Government Code.

(b) The exemption shall be disallowed under this section only after the Attorney General has notified the Franchise Tax Board in writing that a charitable corporation subject to the provisions of subdivision (a) has failed to file any such registration or periodic report on or before the due date thereof.

(c) If an exemption is disallowed under this section, such exemption may be reinstated when the registration or periodic reports are filed; however, any such charitable corporation shall pay the minimum tax provided for by Section 23153 for any year or years for which its exemption was disallowed under this section.

(d) No exemption shall be disallowed under this section for taxable years commencing before January 1, 1962.

(e) The Franchise Tax Board may make any regulations which it

deems necessary to effectuate the purposes of this section.

23703.5. Section 501(p) of the Internal Revenue Code, relating to suspension of tax-exempt status of terrorist organizations, shall apply, except as otherwise provided:

(a) References to Section 501(a) of the Internal Revenue Code shall be modified to refer to Section 23701.

(b) Section 501(p)(4) of the Internal Revenue Code is modified by substituting the phrase "under Part 10 (commencing with Section 17001) and this part" for the phrase "under any provision of this title, including Sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), and 2522" contained therein.

(c) This section shall apply only during the period described in Section 501(p)(3) of the Internal Revenue Code that the federal tax exemption of the organization described in Section 501(p)(2) of the Internal Revenue Code is suspended for federal income tax purposes under Section 501(p)(1) of the Internal Revenue Code.

(d) Section 501(p)(5) of the Internal Revenue Code shall not apply and in lieu thereof, notwithstanding any other provision of law, no organization or other person may challenge a suspension under this section, a designation or identification described in Section 501(p)(2) of the Internal Revenue Code, the period of suspension described in Section 501(p)(3) of the Internal Revenue Code, or a denial of a deduction under Section 501(p)(4) of the Internal Revenue Code as modified in subdivision (b) in any administrative or judicial proceeding relating to the California tax liability of the organization or other person.

(e) (1) Credit or refund (with interest) with respect to an overpayment shall be made if all of the following apply with respect to that overpayment:

(A) The tax exemption of any organization described in Section 501(p)(2) of the Internal Revenue Code is suspended under this section.

(B) Each designation and identification described in Section 501(p)(2) of the Internal Revenue Code which has been made with respect to that organization is determined to be erroneous under Section 501(p)(6) of the Internal Revenue Code for federal income tax purposes.

(C) The erroneous designations and identifications result in an overpayment of income tax for any taxable year by that organization.

(2) If the credit or refund of any overpayment of tax described in subparagraph (C) of paragraph (1) is prevented at any time by the operation of any law or rule of law (including res judicata), the credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the one-year period beginning on the date of the last determination described in subparagraph (B) of paragraph (1).

(f) This section shall apply to designations made before, on, or after November 11, 2003.

23704. Section 501(e) of the Internal Revenue Code, relating to cooperative hospital service organizations, shall apply, except as otherwise provided.

(a) References to Section 501(c)(3) of the Internal Revenue Code,

relating to charitable organizations, shall be modified to refer to Section 23701d.

(b) References to Section 501(a) of the Internal Revenue Code, relating to exemptions, shall be modified to refer to Section 23701.

(c) The services which may be provided under Section 501(e)(1) of the Internal Revenue Code shall include laundry services.

(d) Section 501(e)(1)(B)(iii) of the Internal Revenue Code is modified by substituting the phrase "owned and operated by the United States, the State, or a county or political subdivision thereof, or an agency or instrumentality of any of the foregoing" for the phrase "owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing."

(e) References to Section 170(b)(1)(A)(iii) of the Internal Revenue Code, relating to the deductibility of contributions to hospitals, shall be modified to refer to subdivision (e) of Section 23736.

23704.3. Section 501(o) of the Internal Revenue Code, relating to treatment of hospitals participating in provider-sponsored organizations, shall apply, except that the reference to Section 501(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 23701d.

23704.4. Section 501(k) of the Internal Revenue Code, relating to the treatment of certain organizations providing care of children, shall apply, except as otherwise provided.

(a) The reference to Section 501(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 23701d.

(b) The reference to Section 2522(a)(2) of the Internal Revenue Code, relating to the computation of taxable gifts or Internal Revenue Code Section 2055, relating to transfers for public, charitable, and religious uses, shall not apply.

23704.5. Section 501(h) of the Internal Revenue Code, relating to expenditures by public charities engaged in activities to influence legislation, shall apply, except as otherwise provided.

(a) The reference to Section 501(a) of the Internal Revenue Code, relating to exemption from taxation, shall be modified to refer to Section 23701.

(b) The reference to Section 501(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 23701d.

23704.6. Section 504 of the Internal Revenue Code, relating to status after organization ceases to qualify for exemption under Section 501(c)(3) because of substantial lobbying or because of political activities, shall apply, except as otherwise provided.

(a) The reference to Section 501(a) of the Internal Revenue Code,

relating to exemption from taxation, shall be modified to refer to Section 23701.

(b) The reference to Section 501a(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 23701d.

(c) The reference to Section 501(c)(4) of the Internal Revenue Code, relating to civic leagues, social welfare organizations, and local associations of employees, shall be modified to refer to Section 23701f.

23705. (a) (1) An organization described in Section 23701i (voluntary employee's beneficiary associations) or 23701q (qualified group legal service plans) which is part of a plan of an employer shall not be exempt from tax under Section 23701, unless that plan meets the requirements of Section 505(b) of the Internal Revenue Code.

(2) Paragraph (1) shall not apply to any organization described in Section 505(a)(2) of the Internal Revenue Code.

(b) A copy of any notice filed with the Secretary of the Treasury, pursuant to Section 505(c) of the Internal Revenue Code, relating to application for tax-exempt status, shall be filed at the same time and in the same manner with the Franchise Tax Board.

23706. Any exemption from the bank and corporation franchise tax under Chapter 2 (commencing with Section 23101) or the corporation income tax under Chapter 3 (commencing with Section 23501), granted by any California statute on or after January 1, 1985, for an organization which is an instrumentality of this state, shall be provided for in this part of the code.

23707. (a) Except as provided in subdivision (b), the status of any organization as a private foundation shall be terminated only if--

(1) Such organization notifies the Franchise Tax Board (at such time and in such manner as the Franchise Tax Board may by regulations prescribe) of its intent to accomplish such termination, or

(2) Such organization has been terminated by the Attorney General of this state or by action taken pursuant to Section 507 of the Internal Revenue Code.

(b) (1) The status as a private foundation of any organization shall be terminated if--

(A) Such organization distributes all of its net assets to one or more organizations described below (other than clauses (vii), (viii), (ix) or (x)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution and exempt from tax under Section 23701d of the Revenue and Taxation Code or Section 501(c)(3) of the Internal Revenue Code during the last 60 months, or--

(i) A church or a convention or association of churches,

(ii) An educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) An organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made.

(iv) An organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 23701d) from the United States or any state or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a state or political subdivision thereof, or which is owned or operated by a state or political subdivision thereof or by an agency or instrumentality of one or more states or political subdivisions,

(v) A governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code,

(vi) An organization referred to in Section 170(c)(2) of the Internal Revenue Code which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 23701d) from a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code or from direct or indirect contributions from the general public,

(vii) A private operating foundation (as defined in Section 4942 (j) (3) of the Internal Revenue Code),

(viii) Any other private foundation (as defined in Section 509(a) of the Internal Revenue Code) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in Section 4942(g) of the Internal Revenue Code, as amended by P.L. 94-455, without regard to paragraph (3) thereof), which are treated, after the application of Section 4942(g)(3) of the Internal Revenue Code as distributions out of corpus (in accordance with Section 4942(h) of the Internal Revenue Code) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer maintains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions,

(ix) A private foundation all of the contributions to which are pooled in a common fund and which would be described in paragraph (3) of Section 509(a) of the Internal Revenue Code but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of Section 509(a) of the Internal Revenue Code, of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the

corpus in the common fund shall apply only if all the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus, and

(x) An organization described in paragraph (2) or (3) of Section 509(a) of the Internal Revenue Code.

(B) Such organization meets the requirements of Section 507(b)(1) (B) or paragraph (1), (2), or (3) of Section 509(a) of the Internal Revenue Code, whichever applies, and furnishes copies of its federal notice of termination of its private foundation status to the Franchise Tax Board.

(2) For purposes of this part, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

23708. (a) For the purposes of this part, unless otherwise indicated in context, the term "an organization exempt from tax" shall mean an organization which has satisfied the provisions of Section 23701.

(b) Except as provided in subdivision (c), any organization (including an organization in existence on December 31, 1970) which is described in Section 23701d and which does not notify the Franchise Tax Board at such time and such manner as the Franchise Tax Board may prescribe, that it is not a private foundation shall be presumed to be a private foundation. The time prescribed for giving notice under this subdivision shall not expire before the 90th day after the day on which the regulations first prescribed under this subdivision become final.

(c) Subdivision (b) shall not apply to--

(1) Churches, their integrated auxiliaries, and conventions or associations of churches, or

(2) Any organization which is not a private foundation (as defined in Section 23709).

(3) The Franchise Tax Board may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subdivision (b)--

(A) Educational organizations which normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where their educational activities are regularly carried on; and

(B) Any other class of organizations with respect to which the Franchise Tax Board determines that full compliance with the provisions of subdivision (b) is not necessary to the efficient administration of the provisions of this title relating to private foundations.

(d) (1) No gift or bequest made to an organization upon which the tax provided by Section 507(c) of the Internal Revenue Code has been

imposed shall be allowed as a deduction under Section 24357, if such gift or bequest is made--

(A) By any person after notification of termination is made under Section 507(a) of the Internal Revenue Code, or

(B) By a substantial contributor (as defined in Section 507(d)(2) of the Internal Revenue Code) in his taxable year which includes the first day on which action is taken by such organization which culminates in the imposition of tax under Section 507(c) of the Internal Revenue Code and any subsequent taxable year.

(2) No gift or bequest made to an organization shall be allowed as a deduction under Section 24357, if such gift or bequest is made--

(A) To a private foundation or trust described in Section 4947 of the Internal Revenue Code in a taxable year for which it fails to meet the requirements of subdivision (e) of this section (determined without regard to subparagraphs (B) and (C) of paragraph (2) of subdivision (e) of this section), or

(B) To any organization that has not established its exemption under Section 23701d or Section 501(c)(3) of the Internal Revenue Code for the period concerned.

(3) Paragraph (1) shall not apply if the entire amount of the unpaid portion of the tax imposed under Section 507(c) of the Internal Revenue Code is abated.

(e) (1) A private foundation shall not be exempt from taxation under Section 23701d unless its governing instrument includes provisions the effects of which are--

(A) To require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under Section 4942 of the Internal Revenue Code, as amended by P.L. 94-455, and

(B) To prohibit the foundation from engaging in any act of self-dealing (as defined in Section 4941 of the Internal Revenue Code) from retaining any excess business holdings (as defined in Section 4943 of the Internal Revenue Code), from making any investments in such manner as to subject the foundation to tax under Section 4944 of the Internal Revenue Code.

(2) In the case of any organization organized before January 1, 1970, paragraph (1) shall not apply--

(A) To any taxable year beginning before January 1, 1972,

(B) To any period after December 31, 1971, during the pendency of any judicial proceeding begun before January 1, 1972, by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument in order to meet the requirements of paragraph (1), and

(C) To any period after the termination of any judicial proceeding described in subparagraph (B) during which its governing instrument or any other instrument does not permit it to meet the requirements of paragraph (1).

(3) This subdivision shall not apply to require the inclusion in governing instruments of any provisions inconsistent with this subdivision.

(f) Notwithstanding any of the requirements of this section, if they are determined to be met under federal law they are also met for state purposes.

23709. (a) For the purposes of this part the term "private

foundation" means a domestic or foreign organization defined in the Internal Revenue Code as a private foundation.

(b) For the purposes of this part, if an organization is a private foundation (within the meaning of subdivision (a)) on December 31, 1970, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after December 31, 1970, or after such subsequent date, unless its status as such is terminated.

(c) For purposes of this part, an organization the status of which as a private foundation is terminated shall be treated as an organization created on the day after the date of such termination, except in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee shall not be treated as a newly created organization.

(d) For purposes of this part, the term "support" includes (but is not limited to)--

(1) Gifts, grants, contributions, or membership fees,

(2) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of Section 23734),

(3) Net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business,

(4) Gross investment income (as defined in subdivision (e)),

(5) Tax revenues levied for the benefit of an organization and either paid to or expended on behalf of such organization, and

(6) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code to an organization without charge.

Such term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of exemption from any federal, state, or local tax or any similar benefit.

(e) For purposes of this section, the term "gross investment income" means the gross amount of income from interest, dividends, rents, and royalties, but not including any such income to the extent included in computing the tax imposed by Section 23731.

23710. Any organization exempted from taxes imposed under this part pursuant to the provisions of this article shall not be disqualified for such exemption on the basis that it conducts bingo games pursuant to Section 326.5 of the Penal Code, provided that the proceeds from those games are used exclusively for charitable

purposes.

23711. Section 529 of the Internal Revenue Code, relating to qualified state tuition programs, shall apply, except as otherwise provided.

(a) Section 529(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "under Part 10 (commencing with Section 17001) and this part" in lieu of the phrase "under this subtitle."

(2) By substituting "Article 2 (commencing with Section 23731)" in lieu of "section 511."

(b) A copy of the report required to be filed with the Secretary of the Treasury under Section 529(d) of the Internal Revenue Code shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

23711.5. The Golden State Scholarshare Trust, established pursuant to Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code, is an instrumentality of this state and the income of the Scholarshare trust shall be exempt from taxes imposed under this part. The Scholarshare trust is established and shall be maintained as a qualified state tuition program as defined in Section 529 of the Internal Revenue Code.

23712. Section 530 of the Internal Revenue Code, relating to Coverdell education savings accounts, shall apply, except as otherwise provided.

(a) Section 530(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "under Part 10 (commencing with Section 17001) and this part" in lieu of the phrase "under this subtitle."

(2) By substituting "Article 2 (commencing with Section 23731)" in lieu of "section 511."

(b) For taxable years beginning before January 1, 2002, Section 530(b)(1) of the Internal Revenue Code, relating to the definition of education savings account, is modified to additionally require that upon the date that the designated beneficiary becomes 30 years of age, any balance to the credit of the beneficiary shall be distributed within 30 days after the date the beneficiary becomes 30 years of age to that beneficiary.

(c) Section 530(d) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "under Part 10 (commencing with Section 17001) in the manner as provided in Section 72(b) of the Internal Revenue Code, as modified by Part 10" in lieu of the phrase "in the manner as provided in Section 72(b)" in Section 530(d)(1) of the Internal Revenue Code.

(2) (A) By substituting the phrase "tax imposed by Part 10 (commencing with Section 17001)" in lieu of the phrase "tax imposed

by this chapter" in Section 530(d)(4)(A) of the Internal Revenue Code.

(B) By substituting the phrase "increased by 2 1/2 percent" in lieu of the phrase "increased by 10 percent" in Section 530(d)(4)(A) of the Internal Revenue Code.

(C) By substituting the phrase "shall be included in the contributor's gross income under Part 10 (commencing with Section 17001) or this part" in lieu of the phrase "shall be included in gross income" in Section 530(d)(4)(C) of the Internal Revenue Code.

(D) For taxable years beginning before January 1, 2005:

(i) By additionally providing that Section 530(d)(4)(A) of the Internal Revenue Code, relating to additional tax for distributions not used for educational purposes, shall not apply if the payment or distribution is made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by Section 2005 (e)(3) of Title 10 of the United States Code, as in effect on November 11, 2003) attributable to that attendance.

(ii) The amendments made to this section by Section 12 of Chapter 552 of the Statutes of 2004 shall apply to taxable years beginning after December 31, 2002.

(d) For purposes of Part 10 (commencing with Section 17001) and this part, in the case of a custodial account treated as a trust by reason of Section 530(g) of the Internal Revenue Code, the custodian of that account shall be treated as the trustee thereof.

(e) A copy of the report, which is required to be filed with the Secretary of the Treasury under Section 530(h) of the Internal Revenue Code, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

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