

[Senate Bill 2](#) (Anderson and Vidak)

Date: Introduced

Program: Property Tax

Sponsor: American Legion

RTC Section 215.1

Effective January 1, 2016

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Summary: Allows the veterans' organization exemption to apply to real property owned by veterans' organizations that is used for fraternal, lodge, or social club purposes, excluding the bar area.

Purpose: To ensure that veterans' organizations receive a meaningful property tax exemption on their facilities beyond the limited portion currently available.

Fiscal Impact Summary: Annual revenue loss of \$575,000.

Existing Law: The constitution allows the Legislature to exempt, in whole or in part, property used exclusively for charitable purposes and owned by an entity (1) that is organized and operated for the charitable purpose, (2) that is a nonprofit entity, and (3) that does not have net earnings inure to any private individual.¹

Existing law appears to provide a property tax exemption on real property owned by veterans' organizations.² However, in practice, only small portions of veteran organization-owned property receive the property tax exemption. The majority of the property is ineligible for exemption because another provision of law disqualifies it if used for fraternal, lodge, or social purposes.³

Proposed Law: This bill provides that property otherwise eligible for the veterans' organization exemption may not be denied the exemption on the basis that the property is used for fraternal, lodge, or social club purposes. However, the exemption would not apply to any portion of a property that consists of a bar where alcoholic beverages are served. The ineligible bar portion is the area used primarily to prepare and serve alcoholic beverages.

Codified legislative findings and declarations note the qualitative difference between veterans' organizations and the activities of other nonprofit entities that use their property for fraternal, lodge, or social club purposes; the club purpose is central to the veterans' organizations' exempt purpose and activities. This purpose is to (1) conduct programs to perpetuate the memory of deceased veterans and members of the Armed Forces and comfort their survivors, (2) conduct programs for religious, charitable, scientific, literary, or educational purposes, (3) sponsor or participate in activities of a patriotic nature, and (4) provide social and recreational activities for their members.

The findings state that, in light of this difference, the use of real property by a veterans' organization for fraternal, lodge or social club purposes constitutes the exclusive use of the property for a charitable purpose within the meaning of the constitution.

The bill also requires that the veterans' organization be exempt from federal income tax as an organization described in [Section 501\(c\)\(19\)](#) of the Internal Revenue Code to qualify for the exemption.

In General: RTC Section 215.1 provides a "veterans' organization exemption." This section purports to provide an exemption to:

¹ California Constitution Article XIII, [Section 4\(b\)](#)

² Revenue and Taxation Code (RTC) [Section 215.1](#)

³ RTC [Section 214\(a\)\(5\)](#) and [Section 215.1\(b\)](#)

All buildings, and so much of the real property on which the buildings are situated as may be required for the convenient use and occupation of said buildings, used exclusively for charitable purposes, owned by a veterans' organization which has been chartered by the Congress of the United States, organized and operated for charitable purposes, when the same are used solely and exclusively for the purpose of such organization, if not conducted for profit and no part of the net earnings of which inures to the benefit of any private individual or member thereof, shall be exempt from taxation.

However, Section 215.1 also states that the exemption only applies to “the property of all organizations meeting the requirements of this section and subdivision (b) of Section 4 of Article XIII of the California Constitution and paragraphs (1) to (7), inclusive, of subdivision (a) of Section 214.”

Pertinent to this bill, Section 214(a)(5) provides that an exemption is available if, among other requirements:

The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

Extensive uncodified legislative findings were included with the enactment of Section 215.1 and will be addressed later in the analysis.

Background: Section 215.1 was added by Assembly Bill 184 (Powers, Ch. 151, Stats. 1972). Apparently this bill would have restored language previously included in Section 215 that also appeared to provide an exemption for real property owned by veterans' organizations. This provision was deleted from Section 215 in 1970 because its provisions had been held invalid by the Attorney General in 1946 (8 Ops.Cal.Atty.Gen. 72 (1946)) and was therefore considered “deadwood.”

To address the Attorney General's 1946 finding that the provision was invalid, AB 184 included extensive uncodified legislative findings, which in pertinent part read:

It has been stated that former Section 1c of Article XIII of the Constitution is not broad enough to serve to exempt buildings used for meetings and social gatherings of veterans' organizations. However, the Legislature finds that some of these organizations, such as the American Legion, are incorporated for purposes such as the following:

“...To uphold and defend the Constitution of the United States of America; to promote peace and good will among the peoples of the United States and all the nations of the earth; to preserve the memories and incidents of the two world wars and the other great hostilities fought to uphold democracy; to cement the ties and comradeship born of service; and to consecrate the efforts of its members to mutual helpfulness and service to their country.”

It is established that “charity,” as used in Section 1c of Article XIII is not limited to the giving of alms to the poor. It has been defined in a number of cases as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.

Moreover, it is recognized that a charitable exemption may be granted to property of organizations providing such diverse services as civic theater performances and recreational opportunities for members of a boys' club for 10 weeks each year.

In acting under Section 1c of Article XIII, the Legislature must necessarily construe the terms of the provision in order to determine the extent of its authority to act thereunder, and the Legislature finds it reasonable to exempt the property of organizations devoted to spreading

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patriotism and unity and to promoting respect for those who serve their country in the armed services in times of peril, and which bring the hearts of the youth of this state under the influence of education through their various programs (such as Boys State, Boy Scout sponsorship and oratorical contests dealing with the Constitution of the United States), and which lessen the burdens of government through their additional programs (such as veterans employment, Veterans Administration volunteer services in hospitals, and junior baseball). The members of such an organization must necessarily have some accommodations in which to meet and correlate their activities, and the Legislature finds that such activities are incidental to, and reasonably necessary for, the accomplishment of the exempt activities of such organizations.

The BOE opposed AB 184 and recommended to Governor Ronald Reagan, in a letter dated June 9, 1972, that the bill not be approved. That letter stated, in part:

While AB 184 implies that the activities of veterans' organizations are charitable, it does not directly so state. * * * This curious construction invites litigation. If a tax benefit is to be granted, it should be clear as to what that benefit is.

From an overall view, AB 184 is susceptible of three interpretations. First, it may be viewed as the creation of a new exemption which would be invalid without the support of a constitutional amendment. Second, it may be viewed as merely permitting veterans' organizations to receive the welfare exemption if they meet the traditional concepts of charity and otherwise satisfy other welfare exemption requirements. Under this view, AB 184 is an exercise in futility since it is highly doubtful that any organization could qualify and those organizations which do qualify are entitled to the existing welfare exemption. Third, the bill may be viewed as a vague attempt to expand the concept of charity so as to permit veterans' organizations to receive the benefit of the welfare exemption. Such a broadening is of doubtful constitutional validity and, as noted earlier, an initiation to further erosion of the tax base through the extension of the exemption to many other equally worthy organizations.

The Governor signed AB 184 and it became law. Thereafter, in 1972-73 many veterans' organizations applied for the new exemption under new Section 215.1 believing that the newly enacted law would now exempt their property from property tax. However, it appears the BOE denied all the exemption claims.

Given the exemption denials, Assembly Member Powers, AB 184's author, requested an Attorney General opinion on the constitutionality of Section 215.1. On June 12, 1973, the Attorney General opined that Section 215.1 was constitutional because to qualify the property for exemption one must also meet all the provisions of 214(a)(1) - (7). (56 Ops.Cal.Atty.Gen. 255 (1973, pp. 259, 261)) Of particular interest is Section 214(a)(5) which provides that to qualify for the welfare exemption, the property cannot be used by the owner or members thereof for fraternal or lodge purposes except where the use is clearly incidental to a primary religious, hospital, or charitable purposes. While the creation of the exemption was deemed "constitutional" on its face, in practice, most veterans' organizations would be ineligible for exemption (at least on the majority of the property) under Section 215.1 because many of the properties are used for fraternal, lodge or social purposes, thereby disqualifying the properties under Section 214(a)(5). The opinion states, in part:

It should be clearly understood, however, that in reaching this conclusion we are not saying that each and every application for exemption must be granted. Every applicant will have to meet the requirement that it be organized for charitable purposes * * * and comply with the applicable legislative enactments.

[¶. . . ¶] The forgoing serves to indicate some of the problems that veterans' organizations will meet, notwithstanding a legislative finding such as Section 9 of Statutes of 1972, chapter 151. Rather than our deciding whether such finding is supported by objective factors, we believe it is more appropriate to withhold judgment until specific cases arise.

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Veterans' organizations representatives subsequently protested the exemption denials before the BOE on January 4, 1974. Ultimately, the new Section 215.1 exemption was extended to a limited portion of the entire veterans' organization property, such as the counseling rooms used for readjustment services, post-traumatic stress disorders, alcohol or drug assistance programs, and the office and filing areas.

In 2002, [Senate Bill 1469](#) (Johannessen) proposed finding exemption eligibility if the only reason for not disqualification is that a property is rented occasionally for private rentals to the community. While the sitting Members of the BOE voted to support SB 1469, the bill was never heard in a committee.

Last year, [Senate Bill 1152](#) (Anderson) contained identical provisions to this bill but was held in the Assembly Revenue and Taxation Committee.

Commentary:

1. **Historically the "veterans' organization exemption" has had little practical effect.** Relatively few veterans' organization properties currently receive the exemption and those that do are only receiving a partial exemption on a small part of their property. About 50 veterans' organizations currently apply for the exemption and a number of these receive a partial exemption, generally on the office and counseling rooms. Consequently, the property tax savings is typically very small.
2. **Veterans' organization posts and halls.** Often the majority of property consists of a club room, auditorium, restaurant, and bar which falls under the prohibition of Section 214(a)(5) that the property is not used for fraternal or lodge purposes except where that use is clearly incidental to a primary charitable purpose. Again, the exemption is available to a limited portion of the entire veterans' organization property such as the counseling rooms used for readjustment services, post-traumatic stress issues, and alcohol or drug assistance programs
3. **The constitutionality of this exemption has been previously questioned.** Extensive historical background, including 1942 and 1973 attorney general opinions, relate to the constitutional issue and the thwarted attempts of veterans' organizations to receive a property tax exemption. To attempt to address the charitable purpose issue, this bill finds that, in the distinctive case of veterans and their service to the country, the social gatherings and meetings serve a "charitable purpose." Thus, lodge and social club activities support the central charitable purpose of veterans' organizations.
4. **Statutory prohibition.** The Constitution does not expressly prohibit social club use. The prohibition on fraternal, lodge, or social club use is in Section 214(a)(5).
5. **The property of other lodges and clubs owned by other types of nonprofit organizations are similarly not property tax exempt.** For example, lodges and clubs owned by the Elks, Moose, Oddfellows, and Rotary, etc. are not exempt from taxation. This bill finds that US Congress-chartered veterans' organizations' activities qualitatively differ from those of other nonprofits in this regard. Nonetheless, if legislation ultimately succeeds in exempting property used for fraternal, lodge, or social purposes, similarly situated nonprofit organizations might seek similar tax treatment.

Administrative Costs: The BOE would incur moderate costs on a limited term basis to issue organizational clearance certificates to veterans' organizations newly applying for the exemption under this bill. While these costs are pending, costs are estimated to be between \$100,000 and \$150,000 annually for up to three years.

Revenue Impact:

Background, Methodology, and Assumptions. Existing law provides a property tax exemption on real property owned by veterans' organizations. However, only a small portion of the property receives the

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exemption. The majority of veterans' organizations property is ineligible for exemption because another provision of law disqualifies property if used for fraternal, lodge, or social purposes.

This bill provides that property otherwise eligible for the veterans' organization exemption, may not be denied the exemption (excluding the bar area) if the property is used for fraternal, lodge, or social purposes as specified. Staff estimates veterans' organizations, as defined, own nearly 240 qualified properties in the state with an assessed value of approximately \$57.5 million (excluding the bar area). Annual revenue loss at the basic one percent property tax rate is then computed as follows:

$$\$57.5 \text{ million} \times 1\% = \$575,000$$

Summary. Extending the veterans' organization exemption would result in annual revenue loss of \$575,000.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.