

# Exempt Organizations

*“Nonprofit doesn’t mean tax exempt”*

## EXAMPLES OF EXEMPT ORGANIZATIONS

- Business Leagues
- Cemeteries
- Chambers of Commerce
- Charitable Organizations
- Churches
- Civic Leagues
- Credit Unions
- Educational Organizations
- Employee Associations
- Fraternal Societies
- Homeowners’ Associations
- Labor Unions
- Literary Organizations
- Recreational Organizations
- Religious Organizations
- Schools
- Scientific Organizations
- Social Clubs
- Veterans’ Organizations
- Voluntary Employee Beneficiary Associations



## **Question:**

What does tax exempt mean according to the Franchise Tax Board?

# Overview of Exempt Organizations

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## Introduction

People commonly refer to tax-exempt organizations as “nonprofit organizations.” While tax-exempt entities are usually nonprofit, some of them are, in fact, for-profit entities.

This publication briefly explains the laws applicable to tax-exempt organizations, including:

- Differences between federal and state laws.
- What we may disclose about a specific organization.
- Filing requirements.
- Unique provisions.

## Exempt vs. Nonprofit

A “tax-exempt” entity is a corporation, unincorporated association, or trust that has applied for and received a determination letter from us stating it is exempt from California franchise and income tax. (California Revenue and Taxation Code Section 23701)

A “nonprofit” entity doesn’t have shareholders or owners. We characterize it according to how it was created.

- Nonprofit corporations incorporate through the California Secretary of State under one of the following parts of the California Nonprofit Corporation Law:
  - ➔ Nonprofit Public Benefit Corporations
  - ➔ Nonprofit Mutual Benefit Corporations
  - ➔ Nonprofit Religious Corporations
  - ➔ Corporations Sole
- An unincorporated association is nonprofit if its creating document contains nonprofit language. A creating document may be one of the following types of documents:
  - ➔ Articles of association
  - ➔ Bylaws
  - ➔ Constitution
  - ➔ Other document that sets forth how the association will operate

## Confidentiality

We may not disclose to the general public the business and financial matters of an exempt organization. However, once we grant tax-exempt status to an organization, we may disclose the information included with, or in support of, the application for exemption. If we deny exemption, that information remains confidential.

**Note:** Federal law regarding disclosure of information about tax-exempt organizations is different from California law, in that it actually requires the Internal Revenue Service to disclose certain business details and financial information.

## Federal and State Exemption

Although most California laws dealing with tax exemption are patterned after the Internal Revenue Code, obtaining state exemption is a separate process from obtaining federal exemption. Even if you have obtained federal exemption for your organization, you must submit an *Exemption Application* form (FTB 3500) to us to obtain state tax exemption. You may apply for state tax exemption prior to obtaining federal tax-exempt status.

**Note:** If you do not obtain state tax exemption for your organization, it remains subject to the California Revenue and Taxation Code as a taxable entity.

California law differs from federal law in various ways with regard to exempt organizations. Major differences are:

- Churches and small charities must apply for state tax exemption if they desire state tax-exempt status. California law does not provide an exception from applying for exemption for these entities.
- Homeowners’ associations:
  - ➔ For California purposes, an organization is not exempt as a homeowners’ association until it applies for and receives an exemption determination letter from us.

- ➔ For federal purposes, an association may make an annual election to be exempt by filing a *U.S. Income Tax Return for Homeowners' Associations* (form 1120H).

Get our *Guidelines for Homeowners' Associations* (FTB Pub. 1028) for detailed information about homeowners' associations.

- Farm cooperatives are not exempt from tax under California law, but are allowed exemption under federal law.
- Mutual ditch or irrigation companies may be exempt under Internal Revenue Code Section 501(c)(12). California does not have a similar law. However, under California law, a mutual water company may qualify for exemption as a homeowners' association.

Contact the Internal Revenue Service for information regarding federal tax exemption. The following federal forms may be helpful:

- Tax-Exempt Status for Your Organization (Pub. 557)
- Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (form 1023)
- Application for Recognition of Exemption Under Section 501(a) of the Internal Revenue Code (form 1024)

## **Incorporation as a Nonprofit Corporation**

Incorporating under the California Nonprofit Corporation Law does not mean the organization is exempt from California corporation taxes, regardless of the language in the articles of incorporation or the status of the organization for federal purposes. To obtain exemption from California income or franchise tax, the corporation must file an Exemption Application with us and we must issue a determination of exemption letter.

A nonprofit corporation that does not have a determination of exemption from us is subject to the franchise tax laws the same as any for-profit corporation. It must file Form 100, California Corporation Franchise or Income Tax Return, and pay at least the minimum franchise tax each year until it formally dissolves through the Secretary of State.

## **Unincorporated Associations or Trusts**

If an unincorporated association or trust wants exemption from state income tax, it must file an *Exemption Application* and provide all required documentation.

If the organization is not exempt, and it is:

- An unincorporated association, it must file Form 100 and compute its tax using the general corporation tax rate. It does not pay the minimum franchise tax.
- A trust, it must file Form 541, *California Fiduciary Income Tax Return*, and compute its tax using the appropriate trust tax rate.

## **Filing Requirements**

If we granted tax-exempt status to your organization, you may have to file one or more of the following returns with us:

- Form 199, California Exempt Organization Annual Information Return
- Form 109, California Exempt Organization Business Income Tax Return
- Form 100, California Corporation Franchise or Income Tax Return

Get our *Exempt Organizations – Requirements for Filing Returns and Paying Fees* (FTB Pub. 1068), for detailed information about the various state filing requirements, fees, and penalties.

## **Form 199: California Exempt Organization Annual Information Return**

The requirement to file Form 199 is generally based upon the normal amount of total gross receipts and pledges. "Normal" is defined as a three-year average.

If gross receipts and pledges are normally:

- Not more than \$25,000, you are not required to file Form 199.
- Greater than \$25,000, you are required to file Form 199.

## Exceptions

Regardless of the total amount of gross receipts:

- Private foundations must file form 199 every year.
- Churches, pension trusts, IRAs, and political organizations, do not file Form 199.

We impose a penalty if you do not file your organization's Form 199 by the extended due date regardless of whether you pay the fee. The penalty is \$5 per month, or part of a month the Form 199 is late. The maximum penalty is \$40. We impose the penalty from the original due date of the return.

## Form 109: California Exempt Organization Business Income Tax Return

Generally, an exempt organization must file Form 109 when it has income in excess of \$1,000 from a trade or business unrelated to its exempt purposes – even if the profits are used for exempt purposes.

**Exception:** Homeowners' associations and political organizations file Form 100 rather than Form 109 if they have income that is taxable.

The rate at which tax is computed depends upon how the organization was created.

- An incorporated organization or an unincorporated association computes its tax using the general corporation tax rate.
- A trust computes its tax using the appropriate trust tax rate.

The due date for filing Form 109 depends upon how the organization was created.

- An incorporated organization, unincorporated association, or a trust, other than a pension trust or IRA, must file on or before the 15<sup>th</sup> day of the fifth month after the close of its taxable year. If the taxable year ends on December 31, the due date is May 15.
- A pension trust or IRA must file on or before the 15<sup>th</sup> day of the fourth month after the close of its taxable year. If the taxable year ends on December 31, the due date is April 15.

We impose the same types of penalties and interest on exempt organizations as we impose on for-profit corporations.

Use this table to decide if you must file Form 199.

If your organization has existed	File Form 199 if the gross receipts/pledges exceed
One year or less	\$37,500
Two years	\$30,000 average for both years
Three years or more	\$25,000 average for the current year and the immediately preceding two years.

You must file Form 199 on or before the 15<sup>th</sup> day of the fifth month after the close of your organization's taxable year. If its taxable year ends on December 31, the due date is May 15.

Generally, if you must file Form 199, you must also pay a filing fee with the return. The amount depends on when you file and when you make the payment.

- The fee is \$10 if:
  - ➔ You file and pay by the original due date, OR
  - ➔ You file and pay after the original, but on or before, the extended due date.
- The fee is \$25 if:
  - ➔ You file by the original due date but pay after that date, OR
  - ➔ You file and pay after the extended due date.

## Form 100: California Corporation Franchise or Income Tax Return

Homeowners' associations and political organizations with income in excess of \$100 from non-exempt functions must file Form 100 and use the general corporation tax rate to compute the tax.

### Notes

1. These organizations do not pay the minimum franchise tax.
2. Homeowners' associations may also have to file Form 199.

File Form 100 on or before the 15<sup>th</sup> day of the third month after the close of the organization's taxable year. If the taxable year ends on December 31, the return is due on March 15.

We impose the same types of penalties and interest on homeowners' associations and political organizations as we impose on for-profit corporations.

**Exception:** Political organizations do not have to make estimate payments. Therefore, we do not impose the estimate penalty on them.

## Group Exemption

A parent, state, district, or like organization desiring exemption for its California unincorporated subordinates may file a single application for exemption on their behalf. However, the parent organization must first (or simultaneously) file its own application for exemption and receive a determination of exemption from us.

The application for the group must include, among other things, both of the following:

- Evidence that the subordinates agree to the parent organization filing an application.
- Evidence that the subordinates are subject to the control of the parent.

Get the *Instructions for Form FTB 3500* for detailed instructions about applying for group exemption.

**Note:** Group exemption and group filing are separate and distinct from each other. However, the parent may apply for both at the same time if approval for both is desired.

## Group Filing

A parent, state, district, or like organization may file a group return on Form 199 for two or more subordinate organizations. However, the parent must first obtain approval from us to file a group return.

Two of the requirements for group filing are, among other things:

- Each organization included in the group return must be exempt from tax under the same section of the California Revenue and Taxation Code.
- Each organization must have the same taxable year-end.

Get the *Instructions for Form FTB 3500* for detailed instructions about applying for group filing.

### Notes

1. Group filing and group exemption are separate and distinct from each other. However, if approval for both is desired, the parent may apply for both at the same time.
2. If a subordinate organization has gross unrelated business income of more than \$1,000 for the year, that subordinate must file its own Form 199. The parent cannot include the subordinate in the group return.

## Political Organizations

For tax purposes, the term "political organization" includes a political party, committee, association, or newsletter fund operated primarily to support or oppose a candidate for a public office. If the organization's non-exempt function income exceeds \$100, it must file Form 100 and report that income and expenses that are directly related to the non-exempt function income.

**Note:** The definition of “political organization” for tax purposes is much more restrictive than it is for purposes of the Fair Political Practices Commission. For example, organizations that support or oppose propositions or ballot measures are not political organizations for tax purposes -- but they are political organizations for purposes of the Fair Political Practices Commission.

California law has not conformed to federal law. The most significant differences relate to the taxability of income and requirements for filing returns.

- Federal law provides that if a non-political exempt organization expends any amount to influence the election or defeat of an individual running for political office, then that organization is subject to tax, to the extent of the expenditure (or of net investment income), as though it were a political organization. California has not conformed to this provision. If your organization is not a political organization, do not file Form 100 to report these expenditures.
- Federal law requires certain political organizations to file an exempt organization information return if gross receipts are normally more than \$25,000 for the taxable year. California has not conformed. If your organization is a political organization, do not file California Form 199.

Get our *Exempt Organizations – Guide for Political Organizations* (FTB Pub. 1075) for more information.

## Registry of Charitable Trusts

The Registry of Charitable Trusts (within the California Department of Justice) is responsible for ensuring that charitable organizations use their funds and manage their assets properly.

Most charitable organizations must register with the Registry of Charitable Trusts. Once registered, they must annually file a report with the Registry. If the organization does not file, the Registry notifies our Exempt Organizations Unit to disallow the organization’s exempt status and assess the minimum tax for each year the organization failed to file. We do not impose penalties on the minimum tax. However, we do impose interest. We cannot cancel the tax unless the Registry instructs us to do so.

## Dissolution

Tax-exempt organizations must obtain a tax clearance from us to complete their dissolution or surrender with the Secretary of State. If you have not filed all required returns and paid all liabilities, we will advise you of what you must do before we can issue a Tax Clearance Certificate. Get our *Instructions for Exempt Organizations Requesting a Tax Clearance Certificate* (FTB Pub. 1038A) for detailed instructions about dissolving your exempt organization.

## Bingo

Certain types of organizations qualify to conduct bingo games if they meet the requirements set forth in California Penal Code Section 326.5. These are the primary requirements:

The organization must:

- Be one of the following types of organizations.
  - ➔ A non-exempt senior citizens organization.
  - ➔ A non-exempt mobile home park association.
  - ➔ An organization exempt under one of the following California Revenue and Taxation Code Sections.
    - 23701a – labor, agricultural, or horticultural organization
    - 23701b – fraternal organization with benefits
    - 23701d – charitable organization
    - 23701e – business league, professional association, etc.
    - 23701f – social welfare organization
    - 23701g – social club
    - 23701i – fraternal organization without benefits
- Have a license to conduct bingo games.
- Use the funds for charitable purposes.



## Oversight Responsibility

Various agencies have responsibility for some aspect of bingo gaming. Following is a list of agencies and their respective responsibilities. Use it to decide whom to contact if you have questions.

- The local jurisdiction (city, county, or city and county)
  - ➔ Issues licenses to conduct bingo games.
  - ➔ Enforces the provisions in their ordinances and the Penal Code.
  - ➔ Revokes licenses when the facts and circumstances warrant.
- The Registry of Charitable Trusts ensures that the organization uses the funds for charitable purposes.

## Raffles

Certain types of organizations qualify to conduct raffles if they meet the requirements set forth under California Penal Code Section 320.5. These are the primary requirements:

The organization must:

- Be exempt under one of the following California Revenue and Taxation Code Sections:
  - ➔ 23701a – labor, agricultural, or horticultural organizations
  - ➔ 23701b – fraternal organizations with benefits
  - ➔ 23701d – charitable organizations
  - ➔ 23701e – business leagues, professional associations, etc.
  - ➔ 23701f – social welfare organizations
  - ➔ 23701g – social clubs
  - ➔ 23701k – apostolic and religious organizations
  - ➔ 23701l – fraternal organizations without benefits
  - ➔ 23701t – homeowners' associations
  - ➔ 23701w – veterans' organizations
- Register with the Registry of Charitable Trusts each year it plans to conduct a raffle.
- File a report with the Registry for each raffle conducted.
- Use at least 90 percent of the gross receipts for charitable or beneficial purposes.

The Registry of Charitable Trusts administers the raffles law. Contact that office if you have questions about registration, reporting, or specific requirements for conducting a raffle.

- Website: <http://ag.ca.gov/charities>
- Phone: (916) 445-2021 (not toll-free)
- Mailing address:

OFFICE OF THE ATTORNEY GENERAL  
REGISTRY OF CHARITABLE TRUSTS  
PO BOX 903447  
SACRAMENTO CA 94203-4470

- Street address:

1300 I STREET, ROOM 1130  
SACRAMENTO, CALIFORNIA

## Assistance: Franchise Tax Board

**Telephone:** Telephone assistance is available Monday through Friday from 7 a.m. until 7 p.m. We may modify these hours without notice to meet operational needs.

From within the United States, call (800) 852-5711  
From outside the United States, call (not toll-free) (916) 845-6500

If you have questions about exemption from California franchise or income tax, you may call (916) 845-4171 (not a toll-free number).

**Assistance for persons with disabilities:** We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD (800) 822-6268.



## Where to Get Forms and Publications

**By Internet:** You can download, view, and print California tax forms, instructions, and publications from our Website at: [www.ftb.ca.gov](http://www.ftb.ca.gov).

### By Phone

- To order current year tax forms:
  - ➔ Refer to the list below and find the code number for the form you want to order.
  - ➔ Call (800) 338-0505.
  - ➔ Select "Business Entity Information."
  - ➔ Select "Order Forms and Publications."
  - ➔ Enter the three-digit code for the form you want when you are instructed to do so.

Code	Form
817	Form 100, California Corporation Franchise or Income Tax Return
818	Form 100-ES, Corporation Estimated Tax
814	Form 109, Exempt Organization Business Income Tax Return
815	Form 199, Exempt Organization Annual Information Return
802	FTB 3500, Exemption Application

- For prior year forms, call (800) 852-5711.

Please allow two weeks to receive your order. If you live outside California, please allow three weeks to receive your order.

### By Mail

Write to: TAX FORMS REQUEST UNIT  
FRANCHISE TAX BOARD  
PO BOX 307  
RANCHO CORDOVA CA 95741-0307



## Assistance: Other Governmental Agencies

If you have questions about issues that are not related to income tax, use this table to decide whom to contact.

For questions about	Contact
Bingo issues	Your local law-enforcement agency
Employment tax	Employment Development Department <ul style="list-style-type: none"><li>• By phone: (916) 653-0707 (not toll-free)</li><li>• Website: <a href="http://www.edd.ca.gov">www.edd.ca.gov</a></li></ul>
Federal employer identification number (commonly referred to as “EIN” or “FEIN”)	Internal Revenue Service or file an Application for Employer Identification Number (federal form SS-4) <ul style="list-style-type: none"><li>• By phone: (866) 816-2065 (toll-free)</li><li>• Website: <a href="http://www.irs.gov">www.irs.gov</a></li></ul>
Federal tax exemption	Internal Revenue Service <ul style="list-style-type: none"><li>• By phone: (877) 829-5500 (toll-free)</li><li>• Website: <a href="http://www.irs.gov/eo">www.irs.gov/eo</a></li></ul>
Property tax	Your local assessor’s office
Raffle issues	Registry of Charitable Trusts <ul style="list-style-type: none"><li>• See page 6 of this publication.</li></ul>

# Exemption Application

Name of organization as shown in your organization's articles or documents of incorporation

Address (number and street)

City, Town, or Post Office

Name of representative to be contacted regarding application (name and phone)

Home address (number and street)

City, Town, or Post Office

**ALL Applicants must complete items 1 through item 9. Also furnish the information requested in item 6 through item 9. It applies to all organizations.**

Attach check or money order here

- 1 Enter the California Federal and Taxpayer Code (C&T) number under which exemption is claimed.
  - Incorporated  Unincorporated association  Trust
  - California charitable writer
- 2 Date organization formed (month and day)
  - Incorporated  Unincorporated association  Trust
- 3 Date incorporated in California
  - Incorporated  Unincorporated association  Trust
- 4 Date incorporated in another state, territory, or possession of the United States
  - Incorporated  Unincorporated association  Trust
- 5 Date incorporated in another country
  - Incorporated  Unincorporated association  Trust
- 6 Has this organization or its predecessor ever been organized in California under the laws of the State of California?
  - Yes  No
- 7 Enter the date of the incorporation in California
  - Yes  No
- 8 Has the organization ever been organized in another state, territory, or possession of the United States?
  - Yes  No
- 9 Has the organization ever been organized in another country?
  - Yes  No

**Be sure to include the C&T exemption fee. Make the check or money order payable to the Franchise Tax Board, 400 West...**

35-00002-1-01

