California State
Board *of* Equalization

Legislative Bill Analysis

Assembly Bill 1528 (Gipson)
Date: March 23, 2023 (Amended)
Program: Property Taxes
Health and Safety Code section 34400
Effective: Immediately

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Summary: This bill amends Health and Safety Code (HSC) section 34400 to extend the exemption from taxation for property owned by a housing authority to property owned by a nonprofit public benefit corporation controlled by a public housing authority (PHA).

Fiscal Impact Summary: This bill is estimated to have an indeterminable revenue loss.

Existing Law: Article XIII, section I of the California Constitution, and RTC section 201 provide that all property in this state, not exempt under the laws of the United States or of this state, is subject to taxation. The general rule of taxability is subject to numerous exemptions which are largely set forth in section 3 of Article XIII. Of relevance to this bill, section 3(b) provides that property owned by local government is exempt from taxation. The Housing Authorities Law establishes housing authorities within each county and city with the purpose of undertaking activities related to affordable housing. HSC section 34400 states that property held by PHAs is exempt from taxation.

Proposed Law: This bill would amend HSC section 34400 to state that property held by a nonprofit public benefit corporation controlled by a PHA would be included in the exemption for public entities if the following criteria are met:

- The nonprofit public benefit corporation is organized for purposes pursuant to the Housing Authorities Law and is solely directed and managed by directors, officers, or employees of the housing authority.
- The organizational documents of the nonprofit public benefit corporation contain provisions that in the event of the liquidation, dissolution, or winding up of the nonprofit public benefit corporation, all assets of the nonprofit public benefit corporation revert to ownership by the housing authority.

In General: Legislation has been enacted which specifically exempts properties owned by certain non-profit corporations, which corporations are solely owned by local governments. See Revenue and Taxation Code (RTC) sections 201.1, 201.3, and 201.4. Those statutes provide that property owned by the nonprofit corporations shall be deemed to be property owned by the local governments and, hence, such property is exempt from property taxation. However, the relevant statutes are entity specific.

Public Housing Authorities. The Housing Authorities Law creates PHAs as "corporate and politic public bodies exercising public and essential governmental functions." PHAs are independent public entities created by state law and generally funded by the federal government. PHA's administer Federal Section 8 Housing vouchers and occasionally also own and manage low-income properties. HSC section 34400 states that property owned by a PHA is tax exempt.

Nonprofit public benefit corporations. Some PHA's have subsidiary nonprofit branches. The U.S. Department of Housing and Urban Development provides guidance on how these must operate. They must have their assets, operations, and management legally and effectively controlled by the PHA. These are instruments to manage PHA's property more cost-efficiently.

Possessory Interest. In certain instances, a property tax assessment may be levied when a person or entity uses publicly owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly called "possessory interests" and are typically found where an individual or entity leases, rents, or uses federal, state, or local government facilities and/or land.

RTC section 107 establishes parameters within which Assessors and judicial authorities determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each case.

Commentary:

1. **Exempt from Taxation.** This bill is unclear as to what type of taxation to which the bill is referring. RTC sections 201.1, 201.2, 201.3, and 201.4 provide specific property tax exemptions for property owned by a nonprofit entity that is owned by local government. If the author is seeking a property tax exemption, the author may want to consider adding a section to article 1, chapter 1, part 2, division 1 of the RTC which implements article XIII, section 3.

2. **Property tax exemption for property not publicly owned.** Property not publicly owned is eligible for a property tax exemption under certain circumstances. To be exempt for property tax purposes, the real property must be owned by a qualified 501(c)(3) corporation and used for a specified exempt purpose (see Revenue and Taxation Code section 214 et seq.). In addition, as mentioned above, there are three other code sections specifically for nonprofit entities owned by local governments.

3. **Possessory Interest.** Exempt property that is exclusively used by a person or entity other than the government agency may be subject to a possessory interest tax.

4. **Constitutional Issue.** The amendment of a Health and Safety Code may not be able to expand an exemption under the Revenue and Taxation Code without making changes to the RTC code as well.

Costs: To implement AB 1528, the State Board of Equalization estimates a one-time cost of approximately $12,000.

Revenue Impact: The revenue impact of AB 1528 will be an indeterminable loss. The objective of the bill is to clarify existing law, i.e., that property held by a non-profit public benefit corporation that is controlled by a PHA is included in the existing exemption from taxation in HSC Section 34400. At the time of preparing this analysis, it has been reported that several properties in Los Angeles County have received tax bills for over $3 million. It is unknown if any other nonprofit public benefit corporation has been receiving possessory interest assessments; if so, this bill would result in the additional loss of those revenues.