California State
Board *of* Equalization

Legislative Bill Analysis

County-Assessed Properties Division

Assembly Bill 3152 (Chiu)
Date: 4/16/2018 (Amended)
Program: Property Taxes
Sponsor: Author
Revenue and Taxation Code Section 214
Effective: Upon enactment, but operative January 1, 2019

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Summary: This bill creates a property tax exemption for rental housing owned by nonprofit organizations[1] that are occupied by moderate-income households in certain counties in the state.

Purpose: To exempt moderate-income rental housing owned by nonprofit organizations.

Fiscal Impact Summary: The annual local revenue loss is $25,000 per qualified property.

Existing Law: Existing law provides that low-income rental housing owned and operated by a qualifying nonprofit organization may be exempt from property tax under the welfare exemption, provided certain conditions and requirements are met. The law allows an unlimited exemption for rental housing owned by a nonprofit organization if it receives government financing or low-income housing tax credits.[2] However, the law limits the exemption to the first $10 million in assessed value statewide[3] on low-income rental housing property owned by the nonprofit that does not receive government financing or low-income housing tax credits.

Lower Income Household Definition. Property tax law defines lower income households by cross reference to the Health and Safety Code.[4] In general, lower income households are those households with incomes that do not exceed 80 percent of the Area Median Income (AMI) adjusted for family size; income limits are established for all geographic areas of the state. The law also requires the California Department of Housing and Community Development (HCD) to annually publish these income limits based on data by the U.S. Department of Housing and Urban Development (HUD). Existing law[5] allows owners of low-income rental housing properties receiving federal low-income housing tax credits to continue to claim the property tax exemption on units occupied by tenants whose household income increases after move-in to a level above the lower income limit up to the federal law related limit of 140 percent of AMI (over-income tenant), provided that the units remain rent-restricted.

Proposed Law: This bill extends the welfare exemption to qualified rental housing and related facilities owned by certain nonprofit organizations that are occupied by moderate-income households.

Qualified Property. This bill specifies that a qualified property is property that is a rental housing development of five or more units for which construction will commence on or after January 1, 2019, and located in a high cost county, as identified by the California Housing Finance Agency (CHFA). In

[1] A qualified organization may also be an eligible limited liability company (LLC) or a limited partnership in which the managing general partner is an eligible nonprofit corporation or eligible LLC.
[2] RTC section 214(g)(1)(A) and section 214(g)(1)(B).
[3] RTC section 214(g)(1)(C).
[4] Health and Safety Code (HSC) section 50079.5. Additionally, the BOE annually reports the household income limits to assessors.
[5] RTC sections 214(g)(2)(A)(iii). See Letter To Assessors No. 2017/055.

addition, the property owner must certify that there is an agreement with a public agency, a recorded deed restriction, or other legal document that restricts the property's use and that the units designated for use by moderate-income households are continuously available to, or occupied by, moderate-income households. *RTC sections 214(h)(2)(A), 214(h)(3)(A) and (C)*

Rents Charged. This bill states that rents charged must be at least 10 percent below the fair market rent for the county, as determined by HUD. In addition, a city, county, or third party may provide a market study that establishes a higher fair market rent for a county, which shall be reviewed by the CHFA. *RTC section 214(h)(2)(C)*

Related Facilities. This bill provides that "related facilities" means any manager's unit and any and all common area spaces that are included within the physical boundaries of the rental housing development, including, but not limited to, common area space, walkways, balconies, patios, clubhouse space, meeting rooms, laundry facilities, and parking areas, except any portions of the overall development that are nonexempt commercial space. *RTC section 214(h)(3)(D)*

Moderate-Income Household. "Units serving moderate-income households" means units that are occupied by moderate-income households at an affordable rent, as defined by HSC section 50053. This bill provides that "moderate-income households" are households whose incomes are between 80 percent and 120 percent of AMI. *RTC section 214(h)(3)(E)*

Effective Date. This bill would go into immediate effect. However, its provisions are operative beginning with lien date January 1, 2019. *RTC section 214(h)(4)*

In General: **Property *with* Government Financing or Tax Credits: Unlimited Exemption.** Under existing law, when a nonprofit organization owns and operates a low-income rental housing property that receives government financing or low-income housing tax credits, these properties may be exempt from property tax. Generally, a low-income rental housing property[6] may qualify for the welfare exemption provided:

- **Government Financing or Tax Credits.** The property owner receives low-income housing tax credits or government financing on the property. *RTC section 214(g)(1)(A) and (B)*
- **Use Restriction.** The property is subject to a recorded deed restriction, regulatory agreement, or "other legal document" restricting its use for low-income housing purposes at specified rents. *RTC section 214(g)(2)(A)(i) and Property Tax Rule 140*
- **Rents Charged.** The rents charged to lower income household occupants do not exceed the rent prescribed by the deed restrictions or regulatory agreement. *RTC sections 214(g)(1)(A) and 214(g)(2)(A)(i)*
- **Property Tax Savings.** The owner certifies that the funds otherwise necessary to pay property taxes are instead used to maintain the affordability of, or reduce rents for, units occupied by the lower income households. *RTC section 214(g)(2)(B)*
- **Limited Partnership: Special Requirements.** In the case of housing owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation or an

[6] Such property may include single-family residences, multifamily residences (e.g., duplex, triplex, fourplex), and apartment complexes.

eligible LLC,[7] use and rent restrictions must be contained in an enforceable and verifiable agreement with a public agency or in a recorded deed restriction. *RTC section 214(g)(2)(A)(ii) and Property Tax Rule 140*

While there is no minimum percentage of units that must be occupied by lower-income households, the exemption only extends to the units serving lower-income households. *RTC section 214(g)(1)*

Current law requires property owners to annually file a claim to receive the exemption. The claim must state the number of units serving low-income households, including temporarily vacant units, and requires an attachment that lists qualified households.[8]

Property *without* Government Financing or Tax Credits: Capped Exemption. When a nonprofit organization or eligible LLC owns and operates a low-income rental housing property that does not receive government financing or low-income housing tax credits, a limited exemption is available under the provisions of RTC section 214(g)(1)(C). The exemption is capped at $10 million in assessed value statewide; the cap applies to all properties owned by the organization statewide that do not have government financing or low-income housing tax credits. Provided that the exemption cap is not exceeded, a particular low-income rental housing property may qualify for the welfare exemption provided:

- **Government Financing or Tax Credits.** These are not required. Any fund source could be used to buy and operate these properties.
- **Use Restriction.** The property is subject to a recorded deed restriction or "other legal document"[9] restricting its use for low-income housing purposes at specified rents. *RTC section 214(g)(2)(A)(i) and Property Tax Rule 140*
- **Rents Charged.** The rents charged do not exceed that prescribed in HSC Section 50053. *RTC section 214(g)(1)(C)*
- **Property Tax Savings.** The owner certifies that the funds otherwise necessary to pay property taxes are instead used to maintain the affordability of, or reduce rents for, units occupied by the lower income households. *RTC section 214(g)(2)(B)*
- **Occupancy.** Ninety percent or more of the properties' occupants are lower income households, as specified. With respect to the remaining occupancy, the law allows an exemption equal to the percentage of units serving low-income households. *RTC section 214(g)(1)(C)*
- **Limited Partnership: Special Requirements.** Not permitted. Limited partnerships with a nonprofit organization or eligible LLC serving as a managing general partner are not eligible for any exemption under this provision. *RTC section 214(g)(1)(C)*

In the case of low-income rental housing properties that do not receive government financing or low-income housing tax credits, there are additional requirements. Where the claimant seeks exemption

[7] See Property Tax Rule 136.
[8] RTC section 214(g)(3)(C).
[9] Property Tax Rule 140 defines an "other legal document" as used in RTC section 214(g) in part as a document adopted as a resolution or statement of policy that restricts the property's use to low-income housing, such that a minimum of 90 percent of the units of the property are made continuously available to or occupied by lower income households at rent levels that do not exceed those prescribed by HSC section 50053.

under the criteria of RTC section 214(g)(1)(C), current law requires additional reporting requirements for tenants; the claimant must report, among other things, actual household income and actual rent charged for each unit for which exemption is claimed.[10]

Commencing with the 2018-19 fiscal year, Assembly Bill 1193 (Stats. 2017, Ch. 756) extended the low-income housing property tax exemption to a rent-restricted unit occupied by an over-income tenant (up to 140 percent of AMI), who was income-qualified at first occupancy, as long as the property receives federal low-income housing tax credits. Proponents of AB 1193 stated that deed or regulatory restrictions generally prohibited the owner of these properties from evicting tenants for being over-income or increasing the over-income tenants' rent. Additionally, units with over-income tenants continued to qualify as lower income units for tax credit purposes; however, owners would lose their property tax exemption on them, creating a financial hardship.

Commentary:

1. **Summary of Amendments.** The **April 16, 2018** amendments provide that (1) in the case of a limited partnership where the managing general partner is an eligible nonprofit corporation, the restriction must be included in an enforceable and verifiable agreement with a public agency or in a recorded deed restriction; and (2) requires that a "qualified property" also be a rental housing development of five or more units for which construction commences on or after January 1, 2019. The **April 3, 2018** amendments clarify that (1) a property owner that is a corporation includes a limited partnership in which the managing general partner is an eligible nonprofit corporation or LLC, and (2) high cost county means a county identified by the California Housing Finance Agency, and adds a provision that rents charged must be at least 10 percent below the fair market rent for the county as determined by HUD.

2. **Moderate-Income Elderly and Handicapped Families.** Existing law provides an exemption for properties that are used for housing and related facilities for low- and moderate-income elderly or handicapped families.[11] The law allows a partial exemption equal to the percentage that the number of low- and moderate-income elderly and handicapped families represents of the total number of families occupying the property. This bill would extend the welfare exemption in certain counties to units rented by occupants with moderate income that are not elderly or handicapped.

3. **Income Capped at 120 Percent of Area Median Income.** As previously mentioned, AB 1193 extended the low-income housing property tax exemption to a unit occupied by an over-income tenant as long as, among other things, the increased household income did not exceed 140 percent of the AMI in that county.[12] AB 1193 extended the welfare exemption to units occupied by households with incomes over 80 percent and up to 140 percent of AMI *in properties eligible for and receiving low-income housing tax credits pursuant to section 42 of the Internal Revenue Code.* However, AB 3152 provides a property tax exemption to units occupied by moderate-income households whose incomes are between 80 percent and 120 percent of AMI, and not 140 percent.[13]

[10] RTC section 259.14 and 214.17
[11] RTC section 214(f).
[12] RTC section 214(g)(2)(A)(iii).
[13] RTC section 214(h)(3)(B).

As drafted, the bill limits the moderate-income exemption to units whose household income does not exceed 120 percent of AMI, since AB 3152 does not apply to properties eligible for and receiving low-income housing tax credits pursuant to section 42 of the Internal Revenue Code. The HCD State Income Limits for 2017 indicates that moderate-income limits range from 80 percent to 120 percent of AMI.

4. **Units Serving Moderate-Income Households.** By cross reference to HSC section 50053, this bill defines "units serving moderate-income households" as units that are occupied by moderate-income households at an affordable rent. However, this bill also expressly defines "moderate-income households" as households whose incomes are between 80 percent and 120 percent of AMI, rather than cross referencing HSC section 50093 that defines the "persons and families of moderate income." The upper or lower percentage of AMI may change as set forth in the HSC, which would require amendment to RTC.

5. **Limits Exemption to a High-Cost County.** As drafted, this bill provides that a qualified property must be located in a county identified by the CHFA as a high-cost county. Information from CHFA's website indicates that 36 counties are considered "High Cost Areas."

6. **Qualified Property.** This bill defines "qualified property" as property that is a rental housing development of five or more units located in a high-cost county, for which construction begins on or after January 1, 2019. This term is already defined in RTC section 214.17, relating to lower-income rental housing property where 90 percent or more of the occupants are lower-income households whose rent does not exceed HSC section 50053. RTC section 259.14 specifies that certain income and rent information be furnished in a welfare exemption claim on qualified property and defines "qualified property" by cross reference to RTC section 214.17.

7. **Filing Requirements.** Owners of low-income rental housing property that receive government financing or low-income housing tax credits, or of properties with an "other legal document"[14] must annually file a claim[15] to receive the exemption ensuring that certain criteria are met to qualify for exemption, including identification of a list of qualified households. As drafted, Assembly Bill 3152 requires property owners to certify under penalty of perjury as to the property's use restriction and units designated for use by moderate-income households, but does not indicate that any other information be furnished as to qualification.[16] How is this information on the restriction document or the number of qualifying units to be provided to the county assessor?

8. **Tenant Data—Actual Income and Rents Charged.** The bill provides for qualification for the exemption with an "other legal document" that restricts the project's usage and provides that the units designated for use by moderate-income households are continuously available to or occupied by moderate-income households. As drafted, the bill does not contain any reporting requirements of the household's actual income or actual rent charged as required by RTC section 259.14 for properties subject to the exemption cap.

9. **Exemption Cap.** Existing law provides an exemption cap of $10 million in assessed value for lower income housing rental property without government financing or low-income housing tax credits, specifically for property qualifying using an "other legal document" as defined in

[14] RTC section 214(g)(2)(A)(i) and Property Tax Rule 140.
[15] RTC section 214(g)(2).
[16] RTC section 214(h)(2).

Property Tax Rule 140. This bill provides for qualification with an "other legal document" that restricts the project's usage and provides that the units designated for use by moderate-income households are continuously available to or occupied by moderate-income households, but without a cap. As drafted, this bill does not provide for an exemption cap on properties qualifying using an "other legal document," thereby providing for an unlimited exemption.

10. **Occupancy.** This bill provides for qualification with an "other legal document" that restricts the project's usage to use by moderate-income households. However, unlike low-income housing rental property that uses an "other legal document" to restrict usage to low-income housing, there is no minimum number of units that must be rented to tenants at or below the moderate-income limit. In the case of low-income housing property without government financing, 90 percent or more of the property's occupants must be lower income households.

11. **Related Legislation.** Senate Bill 1115 proposes to also amend RTC section 214 to remove the $10 million in assessed value exemption cap for non-government assisted low-income rental housing owned and operated by eligible nonprofit organizations.

Costs: The BOE would incur cost. Detail pending.

Revenue Impact: This bill extends the welfare exemption to qualified rental housing and related facilities owned by certain nonprofit organizations that are occupied by moderate-income households. Assembly Bill 3152 further provides that a qualified property must be located in a county identified by the California Housing Finance Agency as a high-cost county. Currently, this includes 36 counties.

Background, Methodology and Assumptions. Existing law allows an unlimited exemption for rental housing owned by a nonprofit organization if it receives government financing or low-income housing tax credits. For nonprofit organizations that own and operate low-income rental housing properties that do not receive government financing or tax credits, the exemption is limited to $10 million in assessed value. An exemption is also provided for properties rented to low- and moderate-income elderly or handicapped families. The law allows a partial exemption equal to the percentage that the number of low- and moderate-income elderly and handicapped families represents of the total number of families occupying the property.

It is difficult to determine the number of rental properties that will qualify under Assembly Bill 3152. Staff conducted a survey in several high cost counties. We estimate there are over 400 qualified properties with units rented to elderly and/or handicapped occupants. These properties already receive the welfare exemption and would therefore not be affected by this change. While we do know the number of affected properties under this bill, we can estimate the average assessed value of a qualified property based on the results of the county survey. This will at minimum provide an order of magnitude of the effect of AB 3152.

The average assessed value of a qualifying property is about $2.5 million. Under Assembly Bill 3152, annual local revenue loss is:

$2.5 million x 1 percent, or $25,000 per qualified property.

Future revenue loss may increase significantly as the assessed values of newly constructed properties will be higher than existing assessed values.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Qualifying Remarks. Under existing law, affordable low-income housing nonprofit owners are subject to exemption limits on a property unless the property has government financing or low-income housing tax credits. Assembly Bill 3152 allows a nonprofit owner to enjoy an unlimited exemption if they rent to moderate-income persons. Additionally, for low-income rental housing properties, current law provides that the rents charged to the tenants be restricted. Assembly Bill 3152, as amended, requires that rents charged must be at least 10 percent below the fair market rent for the county, as determined by HUD. By choosing to rent to more moderate-income tenants and fewer low-income tenants, more low-income persons may be without housing.

Currently, in the case of low-income housing property without government financing, 90 percent or more of the property's occupants must be lower income households. This bill provides for qualification with an "other legal document" that restricts the project's usage to use by moderate-income households, but provides no minimum number of units that must be rented to tenants at or below the moderate-income limit.

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