



## Legislative Bill Analysis

[Assembly Bill 430](#) (Bennett)

Date: March 23, 2023 (Amended)

Program: Property Taxes

Revenue and Taxation Code sections 214 and 402.1

Effective: January 1, 2024

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**Summary:** This bill amends Revenue and Taxation Code (RTC) section 214 to expand the welfare exemption to property acquired, rehabilitated, developed, or operated, or any combination of these statuses, owned by community land trusts (CLT). The bill also amends RTC section 401.2 to expand the definition of property that could qualify as a CLT. It also has provisions that define a CLT in the Government Code, the Health and Safety Code, the Civil Code, and the Los Angeles County Affordable Housing Solutions Agency and the CalHome Program.

**Fiscal Impact Summary:** Indeterminable revenue loss.

**In General:** Under section 4(b) of article XIII of the California Constitution, the Legislature is authorized to exempt from taxation, in whole or in part:

Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operated for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual.

In exercising the above constitutional authorization, the Legislature enacted RTC section 214, reiterating the constitutional authorization, outlining numerous conditions and qualifications for receiving the exemption, and adding scientific as the fourth qualifying purpose. RTC section 214 provides that property used exclusively for charitable purposes owned and operated by entities organized and operated for charitable purposes is exempt from taxation if the entities are not owned and operated for profit, and the property is used for the actual operation of the exempt activity.

**Charitable Purposes.** An organization's primary purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. The State Supreme Court has broadly construed the charitable purpose aspect of the welfare exemption to include a wide range of activities that benefit the general public.<sup>1</sup> The term "charitable" is not confined to the relief of poverty but includes all kinds of humanitarian activities, rendered at cost or less, the object of which is the care of the physical and mental well-being of the recipients.

**Exclusive Use.** The Revenue and Taxation Code does not specifically define the term *used exclusively*; however, the courts have done so in a series of decisions. The California Supreme Court has stated that the phrase "exclusively used" may not be given a literal interpretation to mean that the property exempted must be used solely for the purposes communicated to the total exclusion of any other use. The Supreme Court held that *used exclusively* for exempt purposes includes any property which is used exclusively for any activity which is incidental to and reasonably necessary for the accomplishment of the

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<sup>1</sup> *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d. 13.

exempt purpose.<sup>2</sup> Courts have applied this precedent to mean that a qualified organization's primary use of its property must be for exempt purposes, and any other uses of property must be related to and reasonably necessary for the accomplishment of the exempt purpose.<sup>3</sup>

**Housing Welfare Exemption.** Property tax administrators have historically taken a narrow view of the exemption. They have viewed most housing as non-exempt because the property is used primarily for private residential purposes rather than exempt purposes and is not used exclusively for exempt purposes as required by RTC section 214.<sup>4</sup>

However, the courts have taken a broader view, consistent with the Supreme Court's directive that statutory and constitutional provisions granting exemptions are to be construed strictly but reasonably.<sup>5</sup>

In 1999, the BOE adopted [Property Tax Rule \(Rule\) 137](#), *Application of the Welfare Exemption to Property Used For Housing*, effective December 31, 1999. Rule 137 clarifies that the welfare exemption applies to housing and related facilities owned and operated by qualified nonprofit organizations. It establishes a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.<sup>6</sup>

In addition, [Property Tax Rule 140](#) further specifies requirements for the welfare exemption for low-income housing properties.

**CLTs.** A CLT is a land ownership model that allows moderate and low-income homeownership opportunities. It is based on the land owned by a nonprofit entity that then sells the dwelling unit(s) to those who qualify as low-income while maintaining ownership of the land the dwelling is built upon.

**Existing Law:** Under the California Constitution, all property is taxable unless otherwise provided for by the State Constitution or the laws of the United States.<sup>7</sup> The Legislature may exempt from property taxation in whole or in part property used exclusively for religious, hospital, scientific, or charitable purposes and owned or held in trust by nonprofit corporations or other entities if specific criteria are met.<sup>8</sup>

This exemption is known as the "welfare exemption" and is implemented according to RTC section [214](#).

RTC section 214 generally exempts from taxation, subject to certain conditions and qualifications, property (1) owned by nonprofit organizations organized and operated for charitable purposes and (2) used exclusively for those purposes.

RTC section 214(g)(1) generally provides that property used exclusively for low-income rental housing owned and operated by nonprofit organizations, including limited partnerships in which the managing

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<sup>2</sup> *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

<sup>3</sup> *Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23; *YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760; *St. Germain Foundation v. County of Siskiyou* (1963) 212 Cal.App.2d 911; *Greek Theatre Association v. County of Los Angeles* (1978) 76 Cal.App.3d 768.

<sup>4</sup> Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, p. 62.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.* at p. 65.

<sup>7</sup> California Constitution, [article XIII, section 1](#).

<sup>8</sup> California Constitution, [article XIII, section 4\(b\)](#).

general partner is an eligible nonprofit corporation, shall be deemed within the exemption authorized by RTC section 214.

The State Board of Equalization (BOE) and 58 County Assessors jointly administer the welfare exemption. The BOE is responsible for determining whether an organization is organized and operating for exempt purposes, which qualifies the organization for either an Organizational Clearance Certificate (OCC) or a Supplemental Clearance Certificate (SCC). The County Assessor is responsible for determining whether using a qualifying organization's property is eligible for the welfare exemption. The County Assessor shall not grant the welfare exemption for an organization's property unless the organization holds either a valid OCC or SCC issued by the BOE. However, the County Assessor may deny a welfare exemption claim based on non-qualifying use of the property, notwithstanding that the BOE has issued the organization an OCC or SCC. The BOE tracks [eligible nonprofit organizations and limited liability companies](#) that hold valid OCCs and SCCs and monitors those organizations for continued eligibility.

Once the BOE issues an OCC or an SCC to a qualified organization, the organization must file a BOE-267 Claim for the Welfare Exemption with the County Assessor where the property is located. The County Assessor is responsible for evaluating the application, determining whether the use of the property meets the statutory requirements for receiving the welfare exemption, and ultimately granting or denying the exemption to claimants.

Under existing property tax law, properties that meet these requirements and are used exclusively for rental housing, including related facilities, are entitled to a partial exemption, equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower income households represents of the total number of residential units, in any year that specific criteria apply. These criteria include that the property be subject to a legal restriction that provides that units designated for use by lower-income households are continuously available to or occupied by lower-income households at rents not exceeding specified limits.<sup>9</sup>

In 2019, the Legislature added RTC section [214.18](#) into law, which stated that property owned by a CLT that qualifies for a welfare exemption under RTC section 214 is also within the exemption provided by sections 4 and 5 of article XIII of the California Constitution as long as several conditions were met and repeals the section on January 1, 2025.<sup>10</sup>

SB 196 also required the BOE to annually collect data from County Assessors relating to CLTs and the number of units created by CLTs under the welfare exemption authorized under RTC section 214.18.

In 2020, the Legislature clarified the requirements for CLTs to claim the welfare exemption and made property owned by a CLT eligible for the welfare exemption before beginning construction. Additionally, this section prevented County Assessors from denying the welfare exemption to CLTs who were in the process of constructing affordable housing but did not have any units complete. However, this section made CLTs liable for property tax for the years the CLT received the exemption if the construction was not completed within a certain timeframe.<sup>11</sup>

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<sup>9</sup> RTC section 214(g)(1).

<sup>10</sup> SB 196, Chapter 669, Stats. 2019.

<sup>11</sup> SB 1473, Chapter 371, Stats. 2020; RTC section 214.18.

On December 1, 2021, the BOE issued a Letter To Assessors (LTA) providing information and guidance on treating CLT housing considering these legislative changes.<sup>12</sup>

RTC section 402.1 requires CLTs to maintain 99-year renewable leases for dwellings sold to qualified owners situated on land owned by the nonprofit.

### **Proposed Law:**

**Expands the Definitions of CLT to Include Wholly Owned Subsidiaries and Lessees.** This bill amends the definition of a CLT to include a wholly owned subsidiaries or lessees of the CLT, in addition to the CLT itself.

**Provides CLTs Three Options for Qualifying Land Use.** The bill also requires that land owned by a CLT satisfy at least one of the following three conditions:

- **Provide 99-Year Leases to Qualified owners.** The CLTs leases land to a qualified owner for a 99-year renewable term.
- **Rent to Low or Moderate Income Persons or Families.** AB 430 would allow a CLT to rent the land or any dwellings or units to qualified low income and moderate income tenants.
- **Not Using Vacant Land for Disqualifying Purposes.** AB 430 would allow a CLT to maintain land that is not intended for construction of dwellings or units, so long as the land is used for other purposes not grounds for revocation of its nonprofit tax exempt status.

**Consistency.** In addition to expanding the definition of a CLT, this bill would amend several code sections to provide a consistent definition of a CLT.

**Expands Welfare Exemption.** This bill expands the welfare exemption for low-income rental housing in three ways:

1. Expands the ability of vacant land to qualify for the welfare exemption and creates a requirement to certify that property tax savings be used appropriately in the case of unoccupied land and improvements to it, including buildings under construction, in addition to existing RTC section [214.18](#).
2. Allows an over-income household of 140 percent AMI to be treated as occupied by a lower-income household if the owner of the property is subject to an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document consistent with the requirements of RTC section [214\(g\)\(2\)\(A\)\(i\)](#). While the tenant must initially qualify for the housing with an AMI of 80 percent or below, the bill allows the tenant to stay indefinitely if they do not exceed 140 percent.
3. This bill modifies a sunset clause (RTC section [214\(g\)\(2\)\(A\)\(iii\)\(II\)](#)) for an over-income tenant of 140 percent AMI residing in a property that receives a low-income housing tax credit (LIHTC) from the 2023-24 fiscal year to the 2027-28 fiscal year, and replaces it with the new, expanded qualification described in #2 above, which begins in the 2023-24 fiscal year and does not have a sunset date.

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<sup>12</sup> Letter to Assessors No. 2021/052, California State Board of Equalization, December 1, 2021.

**Commentary:**

1. **Sunset Date.** The clause in AB 430 expanding the welfare exemption to CLTs would sunset in FY 2027-2028 if this bill were to pass.
2. **140% AMI.** This bill allows occupants initially qualifying as low-income to have an income of 140% of AMI. This creates a situation where many units intended for low income are occupied by moderate-income households. If their income were to rise beyond the 140 percent of AMI, it would cause the unit to be ineligible for the exemption and tracking this could be problematic.
3. **Land Use Restriction.** AB 430 would expand the land use restriction by allowing the definition of a CLT to include land owned or leased by other entities.

**Costs:** This bill would have initial implementation costs of approximately \$44,000 and ongoing costs of \$20,000 per year.

**Revenue Impact:** Staff views AB 430 as a clarification proposal as it makes changes to the definition of a community land trust (CLT) for purposes of property tax assessment and adds cross references in various statutes to the definition of a CLT. The clarification ensures the benefits already allowed under existing law.

In relation to allowing CLTs to own rental units that are not subject to the 99-year lease and allowing CLTs to own parcels that do not have dwellings or units on them, staff cannot estimate the number of CLTs that would qualify under this bill. Staff also does not know the location and value of those properties. Revenue impact depends on: (1) the number of properties that would qualify under this bill, (2) the taxable value of the property, and (3) the location of these properties. At this time, based on these unknown factors, the revenue loss is indeterminable.