



Legislative Bill Analysis

[Assembly Bill 84](#) (Ward)
Date: As Amended July 13, 2023
Program: Property Taxes
Revenue and Taxation Code section 214, 259.15
Effective: Immediately/Upon Signature

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Summary: This bill amends Revenue and Taxation Code (RTC) section 214 to expand the type of financing eligible for “welfare exempt” property to include qualified 501(c) (3) bonds.

The bill extends RTC provisions governing when a unit shall be treated as occupied by a lower income household when tenant income increases; however, unlike Low Income Housing Tax Credit (LIHTC) or Community Land Trust (CLT) administered properties, the bill treats units in this category as no longer low income when the occupant’s income increases to 100% of AMI, adjusted for family size, (not 140%).

The bill amends RTC 259.15 to require a property owner claiming a “partial exemption” for non-LIHTC/CLT properties to file an affidavit with specified information - when a tenant’s income increases to specified levels, including the percentage of AMI, and provides that the affidavit is not subject to public disclosure.

Summary of Amendments: July 13 amendments removed previously proposed changes to RTC section 214.1 that were in the July 5 version of the bill, which stipulated changes to “under course of construction” for properties located in San Diego County. The amendments also removed proposed changes to RTC section 259.15 Section 4, specific to San Diego County.

Fiscal Impact Summary: The bill will result in an indeterminable revenue loss.

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.¹ 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.²

This exemption is known as the "welfare exemption" and is implemented according to RTC³ section [214](#).

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.

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 general

¹ California Constitution, [article XIII, section 1](#).

² California Constitution, [article XIII, section 4\(b\)](#).

³ All statutory references are to the Revenue and Taxation Code, unless otherwise provided.

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.

partner is an eligible nonprofit corporation, shall be deemed within the exemption authorized by 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 Form BOE-267, *Claim for 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.⁴

Proposed Law: Expands Welfare Exemption. This bill expands the welfare exemption for low-income rental housing in two ways:

1. Allows an over-income tenant of 100 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\(g\)\(2\)\(A\)\(iii\)](#). While the tenant must initially qualify for the housing with an AMI of 80 percent or below, the bill allows the tenant to stay if they do not exceed 100 percent. This provision will only be operative fiscal year 2024-25 through fiscal year 2028-29.
2. Makes properties financed with qualified 501(c)(3) bonds eligible for the exemption.

501(c)(3) Bonds. This bill defines these bonds as that term is defined in [Section 145 of Title 26 of the United States Code](#). Qualified 501(c)(3) bonds are tax-exempt qualified private activity bonds issued by a state or local government, the proceeds of which are used by a 501(c)(3) organization to continue their mission and exempt purpose.

⁴ Section 214, subdivision (g)(1).

Form Requirement. The bill would require a claim for a welfare exemption pursuant to this requirement to be accompanied by an affidavit containing specified information regarding the units for which the exemption is claimed and would provide that the affidavit is not subject to public disclosure.

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 section 214, reiterating the constitutional authorization and outlining numerous conditions and qualifications for receiving the exemption, and adding scientific as the fourth qualifying purpose. 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 which benefit the general public.⁵ 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 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 stated 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 exempt purpose.⁶ 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.⁷

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 section 214.⁸

⁵ *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d. 13.

⁶ *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

⁷ *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.

⁸ Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, p. 62.

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.⁹

In 1999, the BOE adopted [Property Tax 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 and establishes a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.¹⁰

In addition, [Property Tax Rule 140, Welfare Exemption Requirements for Low-Income Housing Properties](#), further specifies requirements for the welfare exemption for low-income housing properties.

Background:

Commencing with fiscal year 2018-19, [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 (LIHTC). 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 financial hardship.

Assembly Bill 1193 is currently set to sunset in fiscal year 2027-2028.

Commentary:

1. **100% AMI.** This bill creates a new 100% AMI category to track for a specific type of qualifying tax credit, versus the 140% threshold allowed for LIHTC and CLT credits. This could prove difficult for tracking purposes.

Costs: The BOE would incur base year costs of approximately \$29,053 and on-going costs of approximately \$5,530 per year to update claim forms; Assessors' Handbook Section [267, Welfare, Church, and Religious Exemptions](#); and [Publication 149, Property Tax Welfare Exemption](#).

Revenue Impact: According to BOE 2022 data, more than five thousand non-profit entities have been issued SCCs concerning the welfare exemption for affordable housing. Neither this BOE data nor data reported by counties provide any specifics in relation to assessed value and income groups of low-income non-tax-credit projects; therefore, it is difficult to determine the number of entities, properties, or units that would additionally qualify for the expansion allowing tenants to stay in low-income housing up to 100 percent of AMI.

Additionally, BOE has no data available regarding how many existing 501(c)(3) bond financed projects will be exempt if the bill is passed. Therefore, based on these unknown factors, the revenue loss is indeterminable.

⁹ *Ibid.*

¹⁰ *Id.* at p. 65.