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October 19, 2015

Mr.
 Principal Deputy County Counsel
 Government Services Division
 Office of the Los Angeles County Counsel
 500 W. Temple Street, Rm. 648
 Los Angeles, CA 90012

**Re: Request for Legal Opinion – Welfare Exemption
 Assignment No.: 15-097**

Dear Mr. :

This is in response to your request for our opinion regarding the application of the welfare exemption as it pertains to low-income housing under Revenue and Taxation Code¹ section 214, subdivision (g). Your specific inquiries are set forth below, followed by our responses.²

Factual Background

The subject property is a 698-unit apartment house, located on three contiguous parcels and owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation. The property is subject to the regulatory agreement attached as Exhibit A to your March 13, 2015 letter to the State Board of Equalization (Regulatory Agreement). The Regulatory Agreement requires that at least twenty percent of the units be occupied by tenants who are "Low or Moderate Income Tenants."³ The Regulatory Agreement defines "Low or Moderate Income Tenants" as "persons and families whose income does not exceed the lesser of (i) 80% of the Median Gross Income for the County, or (ii) the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, as amended...." (Regulatory Agreement at section 1.) This is the same as the definition of "Lower income households" for purposes of the welfare exemption in section 214, subdivision (g)(3)(A) and Health and Safety Code section 50079.5, subdivision (a) (to which section 214 refers for the definition of "lower income households"). For this reason, we will refer to tenants who meet the income requirements under the Regulatory Agreement as well as the welfare exemption as low income tenants.

According to your March 13, 2015 letter, the Assessor has reviewed the tenant rolls for the subject property and has determined that the percentage of low income tenants that were residents of the property for the years 2006 through 2010 and that were paying rent at amounts

¹ All further statutory references are to the Revenue and Taxation Code, unless otherwise specified.

² It is our understanding that the inquiries arise out of a dispute in the Assessor's office, and are not the subject of current litigation.

³ See Regulatory Agreement at section 2(d).

not exceeding those prescribed by Property Tax Rule⁴ (Rule) 140, subdivision (d)(1), which are rents that do not exceed those prescribed by section 50053 of the Health and Safety Code, or, to the extent that the terms of the regulatory agreement conflict with section 50053, rents that do not exceed those prescribed by such terms,⁵ were as follows:

2006	18.19%
2007	19.05%
2008	20.2%
2009	19.48%
2010	17.05%

Law & Analysis

Article XIII of the California Constitution authorizes the Legislature to exempt from property taxation in whole or in part "[p]roperty used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operating 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." (Cal. Const., art. XIII, § 4, subd. (b).) The constitutional authority for the welfare exemption is implemented by Revenue and Taxation Code section 214, which provides in relevant part that:

Property used exclusively for rental housing and related facilities and owned and operated by . . . limited partnerships in which the managing general partner is an eligible nonprofit corporation . . . [meeting all the requirements of section 214, subdivision (a)], shall be deemed to be within the exemption provided for in [the above-stated Constitutional provision] . . . and shall be 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 in which any of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(Rev. & Tax. Code, § 214, subd. (g)(1).)

Section 214 goes on to state:

⁴ All subsequent references to "Rules" are to the Property Tax Rules promulgated under title 18 of the California Code of Regulations.

⁵ This is in accordance with section 214, subdivision (g)(2)(A).

In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) (i) For any claim filed for the 2000-01 fiscal year or any fiscal year thereafter, certify and ensure, subject to the limitation in clause (ii), that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(ii) In the case of a limited partnership in which the managing general partner is an eligible nonprofit corporation, the restriction and provision specified in clause (i) shall be contained in an enforceable and verifiable agreement with a public agency, or in a recorded deed restriction to which the limited partnership certifies.

(Rev. & Tax. Code, § 214, subd. (g)(2)(A).)

Your questions regarding the application of section 214, subdivision (g) to the facts described above are set forth below.

Question 1: *Is the property owner required to make continuously available at least 20 percent of the subject property's units for Low Income Tenants at rents that do not exceed those prescribed by Rule 140(d)(1) as a prerequisite to the property's eligibility for the Welfare Exemption?*

As stated above, subdivision (g)(2) of section 214 states that in order to be eligible for the welfare exemption, the property owner must certify and ensure that there is an "enforceable" agreement with a public agency that provides that the units designated for use by lower income households are "continuously" available to or occupied by lower income households at appropriate rents as defined therein. (See also Rule 140, subd. (d)(1).)

As also mentioned above, the Regulatory Agreement requires at section 2(d) that at least 20 percent of the units be occupied by low income tenants at all times. That paragraph goes on to state, "for purposes of this paragraph (d), but subject to the provisions of paragraph (g) of this Section 2, a unit occupied by an individual or family who at the commencement of the occupancy qualifies as [a low income tenant] is *treated as occupied* by such individual or family during their tenancy in such unit, *even if they subsequently cease to so qualify.*" (Emphasis added.)

Paragraph (g) of section 2 in the Regulatory Agreement states that:

No resident of a unit in the Project shall be denied continued occupancy because, after admission, the resident's family income increases to exceed the eligibility level. However, the Owner shall ensure that the percentage requirements of paragraph (d) of this Section 2 shall continue to be met by providing the next

available unit or units to [low income tenants] or by taking other actions to satisfy the percentage requirements of said paragraph (d).

It appears that one "other action[]" to satisfy the percentage requirements" of paragraph (d) is described on page 7, paragraph (n) of the Regulatory Agreement, which states that the property owner has granted the Housing Authority of the County of Los Angeles (Housing Authority) the option "to lease from time to time up to twenty percent of the units in the Project . . . for the purpose of subleasing such units to [low income tenants]," to cause the project to meet the requirements with respect to low income tenants set forth in section 2(d) of the Regulatory Agreement.

In summary, taking together sections 2(d) and 2(g) of the Regulatory Agreement, 20 percent of the property's units must be rented to low income tenants; the tenants' income is measured at the commencement of occupancy, and if any tenant's income eventually exceeds the definition of low income tenancy, the unit will still be treated as occupied by a low income tenant; provided, however, that 20 percent of the units must be made available to actual low income tenants as defined by the Regulatory Agreement, either by providing the next available units to low income tenants or by taking other actions to satisfy the 20 percent requirement.

Since the welfare exemption requires an enforceable agreement with a public agency, of course, a property owner must be in compliance with that agreement in order to receive the welfare exemption. In this case, although the Regulatory Agreement requires that 20 percent of the units be made available to low income tenants, it also provides that the property owner may still be considered to be in compliance with the Regulatory Agreement if a household eventually exceeds the income eligibility, provided that the owner make other units available or take other actions to satisfy the 20 percent requirement. Therefore, if the property owner is in compliance with the terms of the Regulatory Agreement by any of the means described therein, it remains eligible for the welfare exemption.

In determining compliance, it appears that the primary entity with the authoritative power to determine whether or not the property owner is in compliance with the Regulatory Agreement, and to enforce compliance, are the Housing Authority or its appointed Administrator.⁶ (Regulatory Agreement, at § 7.) To evidence compliance, among other things, the owner is to submit income computation and certification to the Authority's Administrator as often as is necessary to comply with the requirements of section 103 of the Internal Revenue Code and chapter 1, part 2 of division 24 of the California Health and Safety Code. (*Id.*, at § 2(f).) The certification is subject to independent investigation and verification, and the books and records of the owner pertaining to the incomes of low income tenants are to be open to inspection by the Housing Authority. (*Ibid.*; see also Regulatory Agreement, at §§ 2(j), 2(k).) The property owner is to correct any noncompliance within sixty days. (*Id.* at § 2(m); see also § 12.)

Thus, unless the enforcing agency determines that the terms of the Regulatory Agreement have not been met as described above, the property will be eligible for the welfare exemption (given, of course, that all other requirements for the welfare exemption are met).

⁶ "Administrator" means any administrator appointed by the Housing Authority as its agent in the administration of the Regulatory Agreement, and any successor so appointed. (Regulatory Agreement, at p. 2.)

Question 2: *Is the Assessor required to provide an apportioned grant of the Welfare Exemption despite a property owner not meeting the required 20% threshold under the applicable regulatory agreement?*

As mentioned above, if the Housing Authority or enforcing agency determines that the property owner is not in compliance with the Regulatory Agreement's terms regarding the 20 percent requirement, the owner will not be eligible for the welfare exemption. Otherwise, the assessor is required to provide an apportioned grant of the welfare exemption according to the percentage of housing actually provided to low income tenants, and is not limited to the percentage designated for use by lower income households in the Regulatory Agreement. (Rev. & Tax. Code, § 214, subd. (g)(1)(A); Rule 140, subd. (d)(2).)

Question 3: *Is the Assessor bound to accept compliance reports submitted by the taxpayer to the housing authority, or is it authorized to audit for purposes of the Welfare Exemption the actual number of the subject property's units occupied or made available for low income tenants at rents that do not exceed those prescribed by Rule 140(d)(1)?*

Section 254.5 states that "[t]he assessor may institute an audit or verification of the operations of the owner or operator of the applicant's property to ascertain whether both the owner and operator meet the requirements of Section 214." Assessor's Handbook section 267, *Welfare, Church, and Religious Exemptions* (AH 267) provides that "the assessor should determine whether an officer or manager of the organization verified that the income limits used on each statement provided to each occupant were correct. Independent verification is required." (AH 267 (October 2004) p. 81.) AH 267 further provides that the assessor can require a claimant to submit documentation in support of its claim for exemption for property used for housing and related facilities. (*Id.* at p. 68.) Therefore, the assessor is not limited to accepting compliance reports submitted by the taxpayer to the housing authority, but may request any relevant information it deems appropriate to ensure that the requirements for exemption under section 214 are met. This includes, but is not limited to, examining information regarding household composition and income as certified to by the tenant,⁷ and rents charged to qualifying tenants.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Sonya S. Yim

Sonya S. Yim
Tax Counsel III (Specialist)

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⁷ For example, the instructions on form BOE-267-L, *Welfare Exemption, Supplemental Affidavit Housing – Lower Income Households* state that the claimant should provide each household living on the property a copy of form BOE-267-L-A., *Lower Income Households – Family Household Income Reporting Worksheet*; and that the organization claiming exemption keeps the completed, signed statements in case of further audit.

Mr.

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October 19, 2015

cc: Los Angeles County Assessor's Office

Mr. Dean Kinnee (MIC:63)

Mr. Todd Gilman (MIC:70)

Ms. Lisa Thompson (MIC:64)