

Memorandum

To: Ms. Lisa Thompson (MIC:64)
Principal Property Appraiser

Date: December 11, 2012

From: Daniel Paul
Tax Counsel

Subject: *Request for Review of Supplemental Clearance Certificate Eligibility
Assignment No. 12-305*

This is in response to your memorandum requesting our opinion on whether _____ and _____, LP (Claimant) is eligible for a Supplemental Clearance Certificate (SCC). In particular, you ask whether the housing units are eligible under subdivision (g) of Revenue and Taxation Code¹ section 214. As explained below, it is our opinion that the property is used exclusively for low income housing within the meaning of section 214, subdivision (g). Therefore, as long as all other requirements are met, an SCC should be issued for the Claimant.

Facts

Claimant, a limited partnership, is the lessee of an eight bedroom apartment complex (the development). The lease is for a term of 99 years and is recorded in Los Angeles County. The lessor is J _____, Inc., which is also the managing general partner (MGP) of the Claimant. J _____, Inc. holds an Organizational Clearance Certificate (OCC), issued by the Board for the 2004-2005 fiscal year. The Claimant receives financing from the Housing Authority of the County of _____ and the development is subject to a recorded deed restriction specifying that all of the units in the development are restricted to rental to lower income households.² The development is divided into fifteen units, fourteen of which are designated as MHSA Units.³ MHSA refers to the Medical Health Services Act of 2004. The rental rate for the MHSA units is capped at 30 percent of 50 percent of the area median income.⁴ The targeted tenants are individuals who are homeless or at risk of homelessness and have mental illnesses.⁵ Fourteen of the units may only be rented to individuals with an income at or below 30 percent of the area median income; the remaining unit is the manager's unit, and it may only be rented to individuals with an income at or below 40 percent of the area median income.⁶ The eligible residents receive supportive services which are funded, in part, by the California Department of Mental Health.⁷

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

² Covenants, Conditions and Restrictions, § 1(a).

³ MHSA Regulatory Agreement, § 3(d).

⁴ MHSA Regulatory Agreement, §§ 3(iv), 4(b), 4(c).

⁵ MHSA Regulatory Agreement, §§ 2(n), 4(a).

⁶ Covenants, Conditions and Restrictions, § 1(a).

⁷ MHSA Regulatory Agreement, Recitals, D.

Law & Analysis

As you know, as of January 1, 2004, Senate Bill 1062 (Stats. 2003, Ch. 471) (SB 1062) amended statutory provisions relating to the welfare and veterans' organization exemptions, including sections 213.7, 214, 214.01, 214.8, 231, 254.5, 259.5, 259.7, and 272, and added section 254.6. Under this new administration, Board staff determines whether an organization is eligible for the welfare exemption and the county assessor determines whether the use of the property is eligible for the exemption.⁸

The welfare exemption is made applicable to certain low-income housing properties under section 214, subdivision (g)(1). The statute provides in relevant part that:

Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company, meeting all of the requirements of this section . . . shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution.

Thus, a qualifying organization includes limited partnerships in which the managing general partner is an eligible nonprofit organization that has obtained an OCC from the Board. The MGP must be organized and operated for a qualifying purpose under section 214, subdivision (a) and the property must be used by the limited partnership exclusively for low-income housing purposes. To evidence such use, a limited partnership must apply separately for an SCC for each low-income housing property on which it seeks exemption.⁹ Only the property owned by the limited partnership that is specifically used for low-income housing and for which the limited partnership holds an SCC is eligible for the exemption. Pursuant to Property Tax Rule¹⁰ (Rule) 140, subdivision (b)(1), such a limited partnership may qualify for the exemption provided:

(A) the claimant receives low-income housing tax credits or government financing for the particular property; and

(B) the property is subject to a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located.

For property to be eligible for the welfare exemption, it must be owned and operated by a qualifying organization that is organized and operated for an exempt purpose.¹¹ Here, Claimant is the lessee of the development for a term of 99 years.

⁸ Letter to Assessors (LTA) 2003/070.

⁹ See Rev. & Tax. Code, § 214, subd. (g)(1); see also Assessors' Handbook section 267 (AH 267), *Part I - Welfare, Church and Religious Exemptions* (October 2004), pp. 95-96.

¹⁰ All "Property Tax Rule" or "Rule" references are to title 18 of the California Code of Regulations.

¹¹ Rev. & Tax. Code, § 214, subd. (a). It is our understanding that Claimant leases the land under a long term lease. We express no opinion as to whether the land is eligible for the exemption.

The development is an apartment complex containing eight 2-bedroom apartments. Seven of the development's eight rooms will be occupied by two individuals each as shared housing. Each bedroom, known as an MHSA unit, is subject to a separate individual rental agreement.¹² The tenants living in these units will be charged rents that do not exceed 30 percent of 50 percent of the area median income, as required by the recorded deed restriction.¹³ Further, the MHSA units may only be rented to individuals with an income at or below 30 percent of the area median income, which is also required by the recorded deed restriction.¹⁴ Therefore, since the development is funded by government financing and the development is subject to a recorded deed restriction which specifies that all or a portion of the property's usage is restricted to rental to lower income households, the Claimant's use of the property qualifies for the exemption. We note that the manager's unit is also exempt pursuant to Rule 140, subdivision (d)(2).

The fact that supportive services will also be provided to the tenants is not disqualifying. Although section 214, subdivision (g) requires that the property be used exclusively for low-income housing and related facilities, the Supreme Court has held that *used exclusively* for exempt purposes includes uses that are incidental to and reasonably necessary for the accomplishment of the exempt purpose.¹⁵ Here, it appears that some services will be provided at the actual development and there is no dedicated area in the development itself for the provision of these services. These services include case management and referrals, counseling, legal services and life skills training, among others. In our opinion these services are incidental to and reasonably necessary for the purpose of providing the low-income housing. This is especially true, where, as here, the target population for the housing are those in need of such services.

Further while the Claimant's Support Services Plan states that certain services will be provided "on-site" it appears that some of those services are provided at adjacent buildings owned by J , Inc., such as the Youth Center located at Ave. Also, the Claimant may not mandate participation in these services as a condition of occupancy.¹⁶ For these reasons it is our opinion that the development is used exclusively for housing and any services provided are incidental to and reasonably necessary for the purpose of providing low-income housing. Of course, the county may verify whether the actual use of the property is consistent with the welfare exemption.

DMP:yg

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cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70

¹² MHSA Regulatory Agreement, § 2(hh)(B).

¹³ Covenants, Conditions and Restrictions, § 1(a).

¹⁴ Covenants, Conditions and Restrictions, § 1(a).

¹⁵ *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

¹⁶ MHSA Regulatory Agreement, § 6(b).