STATE OF CALIFORNIA

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April 20, 2009

Re: , LP - Welfare Exemption for Low-Income Housing under Revenue and Taxation Code section 214, subdivision (g)
Assignment No. 09-040

Dear Ms. :

This is in response to your correspondence addressed to the County-Assessed Properties Division of the Board concerning a claim for a Supplemental Clearance Certificate (SCC). This correspondence was subsequently forwarded to the Legal Department for response. In this case, , LP, a Delaware limited partnership (Operator), is the operator of a 299 unit low-income housing complex located in , California (Property). The Property is owned by V , LP, a California limited partnership (Owner). The managing general partner of both limited partnerships is the Housing , Inc., a California public benefit corporation (Housing), which has received an OCC. Further, the Owner has received an SCC for the Property.

The principal issue in this matter is whether the Operator can qualify for an SCC even though it does not receive low-income housing tax credits or government financing for the Property as required by Property Tax Rule 140, subdivision (b)(1)(A). As discussed in greater detail below, we conclude that the Operator may satisfy the requirements of Property Tax Rule 140, subdivision (b)(1)(A) as long as the Property itself receives government financing or low-income housing tax credits and is subject to a regulatory agreement. Thus, the Operator may receive an SCC, assuming all other requirements are satisfied.

Facts

On December 1, 2007, the Owner signed a regulatory agreement with the Community Redevelopment Authority of the City of Los Angeles, California, which transferred to the owner $25 million in government financing derived from the issuance of revenue bonds to be used specifically to acquire and renovate the property.

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On December 3, 2007, the Operator filed a form LP-1 with the California Secretary of State's office.

On December 21, 2007, the Operator signed a lease for the property with Associates LP, a Massachusetts limited partnership. Associates subsequently assigned its ownership interest in the property to the Owner.

On February 20, 2009, the Operator filed a claim for an SCC on the property with the Board.

Law and Analysis

California Constitution, article XIII, section 4, subdivision (b)[1] authorizes the Legislature to exempt property used exclusively for religious, hospital or charitable purposes, which is owned and operated by specified organizations. Revenue and Taxation Code[2] section 214 is the primary statute implementing the welfare exemption. As applicable herein, section 214, subdivision (g)(1)(A) exempts from property tax low-income rental housing properties, subject to the following relevant restrictions, when:

> The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, 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.[3]

For any low-income housing claim filed from the 2000-2001 fiscal year forward, the property must be subject to:

> . . . 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 . . . .[4]

Section 214, subdivision (g)(2)(A)(ii) governs how such a regulatory agreement functions in the case of a low-income housing property owned or operated by a limited partnership:

> 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.* (Emphasis added.)

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[1] See also Cal. Const., art. XIII, § 5.
[2] All statutory references are to the Revenue and Taxation Code unless otherwise indicated.
[3] Rev. & Tax. Code, § 214, subd. (g)(1)(A).
[4] Rev. & Tax. Code, § 214, subd. (g)(2)(A)(i).

Property Tax Rule 140.2, subdivision (c) likewise requires that in order to qualify for an SCC, a limited partnership must certify, among other things, that the property is acquired, built, rehabilitated, developed or operated using tax credits or government financing[5] and that it is subject to a regulatory agreement or recorded deed restriction limiting at least a portion of the property to low-income occupancy. [6]

Property Tax Rule 140, subdivision (a)(2) defines "government financing," in relevant part, as:

> . . . financing or financial assistance from local, state or federal government used for the acquisition, rehabilitation, construction, development, or operation of a low-income housing property in the form of . . . (6) tax-exempt mortgage revenue bonds . . . .

Property Tax Rule 140, subdivision (b)(1) provides the following requirements for claimants seeking a complete exemption on the property:

> (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. (Emphasis added.)

Property Tax Rule 140, subdivision (c) provides that the requirements of Property Tax Rule 140, subdivision (b)(1)(A) may be satisfied by a regulatory agreement that restricts the use of the property, as follows:

> *For purposes of subdivision (b)(1)(A) above, a property has low-income housing tax credits or government financing, as defined in subdivisions (a)(1) and (a)(2), respectively, for the period of time that a regulatory agreement or recorded deed restriction restricts the use of all or any portion of the property for rental to lower income households* even if the government financing has been refinanced or has been paid in full, or the allocation of the low-income housing tax credits has terminated or expired, provided that the government agency that is a party to the regulatory agreement continues to monitor and enforce compliance with the terms of the regulatory agreement. (Emphasis added.)

Property Tax Rule 140, subdivision (a)(6) defines "regulatory agreement," in relevant part, as:

> . . . an enforceable and verifiable agreement with a government agency that has provided low-income housing tax credits or government financing for the acquisition, rehabilitation, construction, development or operation of a low-income housing property that restricts all or a portion of the property's usage for rental to lower income households. The regulatory agreement shall identify the

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[5] Property Tax Rule 140.2, subd. (c)(1).
[6] Property Tax Rule 140.2, subd. (c)(2).

> number of units restricted for use as low-income housing, specify the maximum rent allowed for those units, and be recorded in the county in which the property is located.

Annotation 880.0408 provides that two separate limited partnerships, the owner of low-income housing property and the operator, may qualify under section 214, subdivision (g) provided that both limited partnerships (1) have an eligible nonprofit corporation as managing general partner (since expanded to include limited liability companies), (2) the managing general partners are nonprofit and (3) the limited partnership agreements specify management authority and specific management duties for each managing general partner. Additionally, both the owner and the operator must file claims for the welfare exemption.

In the present case, the Operator is not the recipient of government financing or tax credits. Nevertheless, Property Tax Rule 140, subdivision (c) provides that the requirements of Property Tax Rule 140, subdivision (b)(1)(A) may be satisfied as long as the *property* receives such government support. This is consistent with the requirements of section 214, subdivision (g)(2)(A)(ii) and Property Tax Rule 140.2, subdivision (c), which require only that a limited partnership *certify* that the property satisfies the above-stated requirements. This is also consistent with a Chief Counsel Memorandum of November 23, 2005 that interprets section 214, subdivision (g)(1)(A) as providing that a limited partnership may satisfy the low-income housing finance requirement as long as ". . . the *owner* of the property receives low-income housing tax credits or government financing for the particular property."[7] (Emphasis added). Once again, this is in conformity with our interpretation of Property Tax Rule 140, subdivisions (b)(1)(A) and (c).

As the present Regulatory Agreement states, the $25 million in bonds issued by the Community Redevelopment Authority of Los Angeles, California will be:

> . . . used to fund a mortgage loan (the ["]Loan["]) to the Owner [, LP] to finance the acquisition, rehabilitation and equipping of a 299-unit multifamily senior rental housing project know as the Apartments . . . .[8]

The regulatory agreement also provides that at least 40 percent of the units shall be rented to and occupied by low-income tenants.[9] As the property is subject to government financing under the terms of a regulatory agreement between a government agency and the owner, this satisfies the requirements of Property Tax Rule 140, subdivisions (b)(1)(A) and (c).

Therefore, based on the foregoing, it is our opinion that a limited partnership that operates a low-income housing property owned by another limited partnership may satisfy the requirement for a regulatory agreement under Property Tax Rule 140, subdivision (b)(1) as long as the low-income housing property receives government financing and is subject to a regulatory agreement. For this reason, the operator may qualify for an SCC assuming all other requirements are satisfied.

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[7] Chief Counsel Memorandum of November 23, 2005, Proposed Welfare Exemption Rules, p. 4.
[8] Regulatory Agreement, p. 1.
[9] Regulatory Agreement, section 4(a).

The opinions expressed in this letter are only advisory and represent the analysis of the legal staff of the Board based on current law and the facts set forth herein. These opinions are not binding on any person, office, or entity.

Sincerely,

/s/ Andrew Jacobson

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