STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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March 2, 2006

RE: S S & A H Corporation
Welfare Exemption Qualification

Dear Mr. :

This is in response to your October 10, 2005 letter to former Acting Assistant Chief Counsel Selvi Stanislaus, requesting a legal opinion regarding the welfare exemption for low-income housing properties. Assuming that all other requirements for the welfare exemption are met, the question presented is whether such properties qualify for the exemption for the entire 30-year period that a recorded regulatory agreement with the Mortgage Bond Tax Credit Allocation Committee (MBTCAC) is in effect even if the allocation of the 15-year federal low-income housing tax credits has terminated or expired.

Factual Background

In your letter, you state that your client, S S & A H Corporation (SS&AH), a California non-profit public benefit corporation, is the managing general partner of two limited partnerships that own four low-income housing properties in Los Angeles. Each property has received federal low-income housing tax credits under Internal Revenue Code section 42, which expired in 2005 or will expire in 2006. Each property has been used as low-income housing since either 1990 or 1991 and has continuously received the welfare exemption from property tax under Revenue and Taxation Code[1] section 214, subdivision (g) through 2004. You state that the limited partnerships have received a Supplemental Clearance Certificate for fiscal year 2005-2006 but the exemptions have not yet been granted by the county assessor pending this response to your request for a determination on the period of eligibility for exemption.

Legal Analysis

As you know, section 214, subdivision (g) of the Revenue and Taxation Code grants the welfare exemption for property owned and operated by qualifying organizations and used exclusively for rental housing which is occupied by lower-income households. As applicable herein, if the ownership and use requirements are met, section 214, subdivision (g)(1) states that the exemption applies:

[1] Unless otherwise specified, all further statutory references are to the Revenue and Taxation Code.

> In any year in which either of the following criteria applies:
>
> (1) The acquisition, rehabilitation, development, or operation of the property is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or 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 [Rev. & Tax. Code, § 214, subd. (g)(1)(A)]; or
>
> (2) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Internal Revenue Code section 42. [Rev. & Tax. Code, § 214, subd. (g)(1)(B).]

For purposes of section 214, subdivision (g)(1)(A), our position is that properties, which have received tax credits, whether federal or state, are eligible for exemption for the duration of the regulatory agreement that restricts the property's use to rental to lower income households. (See Alonzo 12/30/2004 letter, copy enclosed.) Assuming that the terms of the regulatory agreement are consistent with section 214, subdivision (g), and that the property is used in compliance with those terms, the exemption should apply to the percentage of units used for rental to lower income households as long as the regulatory agreement is in effect. Thus, properties, which received federal low-income housing tax credits for a 15-year period that has expired, may continue to receive the exemption if the property is subject to a regulatory agreement that restricts the use of the property for rental to lower income households.

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

Sincerely,

Richard S. Moon
Tax Counsel

Enclosure(s)

RM:eb
Prec/Welexqual/06/762-rm

cc: Honorable
County Assessor

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70