STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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November 3, 2004

Re: Welfare Exemption Eligibility of Property That Is Exempt on the Lien Date But Does Not Qualify for Exemption After It is Sold

Dear Mr. :

This is in response to your email of October 11, 2004, in which you indicate that the County Assessor's office Exemptions Unit staff has taken the position that the property tax exemption for lower-income housing property under section 214, subd. (g) of the Revenue and Taxation Code[1] is lost for the entire year when the property is sold during the year and can no longer qualify for exemption after the sale. In the case of a lower-income housing project, the property may no longer qualify either because the new limited partnership owner does not have an eligible nonprofit corporation as its managing general, or the property will no longer be used for lower-income housing. You disagree with the position of the assessor's staff, which you regard as inconsistent with the state's public policy supporting lower-income housing and as punitive toward owners of lower-income housing. You have requested our assistance in persuading the county to change its position on this matter. As discussed below, the lower-income housing property is entitled to receive the exemption until the date of acquisition by the new owner. The assessor's staff will receive a copy of this analysis, and we will contact them to discuss this matter further with them.

Unfortunately, there is no statutory or regulatory provision specific to this issue of what happens to the exemption after a property is sold and no longer qualifies for the exemption. Thus, it is necessary to construe general assessment and exemption provisions of property tax law to provide an answer to your question.

Pursuant to section 401.3, "[t]he assessor shall assess all property subject to general property taxation on the lien date as provided in Articles XIII and XIII A of the Constitution and any legislative authorization thereunder." Consistent with this mandate, section 405, subdivision (a), provides that "[a]nnually, the assessor shall assess all the taxable property in his county,

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[1] All section references are to the Revenue and Taxation Code unless otherwise indicated.

except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date." In California, the lien date is January 1st, which is the date that property taxes are levied and the date when property taxes for that year become a lien on the property pursuant to section 2192. In general, the taxable status of property, for purposes of property taxation, is determined as of the lien date.

Under California law, all property is subject to property taxation unless specifically exempt under federal or state statutory law. (California Constitution, article XIII, section 1; section 201). The California Constitution provides several exemptions from property taxes, among them, the welfare exemption, which is implemented by section 214 et. seq. (Article XIII, section 4, subd. (b)) The welfare exemption is available for the properties of qualifying organizations, only if both the owner and the property satisfy all the legal requirements. Section 4, subd. (b) of Article XIII and section 214 require the property to be owned by qualifying entities and used exclusively for one or more of the specified exempt purposes, and section 214 enumerates several additional requirements for exemption. Those entities claiming the exemption on their properties must meet all of the requirements for the exemption under section 214 on the January 1 lien date in order to receive the exemption for the upcoming fiscal year (July 1 – June 30).

A limited partnership must have an eligible nonprofit corporation as its managing general partner as of the lien date when the liability for taxes attaches, to qualify for the welfare exemption on the regular assessment roll. Further, the nonprofit managing general partner must qualify for the exemption as of the lien date as well, particularly, with regard to exercising sufficient management duties and authority in the limited partnership operation. In addition, the property must also meet the several requirements under section 214, subd. (g) as of the lien date, such as the rental of units at the prescribed rent levels to qualifying lower-income tenants within the prescribed household income levels established by statute or applicable regulatory agreements.

Once qualification for the exemption has been established as of the lien date, the property is exempt for the (July 1 through June 30th) fiscal year. But if exempt property that qualified for exemption on the January 1 lien date is sold after the lien date and no longer qualifies for exemption, the property may no longer receive the exemption, as of the transfer date. Thus, the new owner and the property would have to meet all the requirements for exemption as of the date of acquisition, or the property is taxable to the new owner as of that date. As noted above, lower-income housing projects owned by limited partnerships, may no longer qualify either because the new limited partnership owner does not have an eligible nonprofit corporation as its managing general, or the property will no longer be used for lower-income housing. The nonprofit entity that claimed and received the exemption on the property is to inform the assessor when the property becomes ineligible due to change in ownership, or the other reasons discussed here.

In this case, the facts presented indicate that the lower-income housing property was exempt under section 214 as of the lien date of the year in question. As such, the property was entitled to receive the property tax exemption for the period of time from the January 1 lien date to the subsequent date of transfer to the new owner. To construe exemption provisions otherwise would be inconsistent with the holding of the landmark welfare exemption law case, *Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal.2d 729, 735. The California Supreme Court ruled that constitutional provisions and statutes granting exemption are to be strictly, but reasonably construed. The court explained that the rule of strict construction does not require the narrowest possible meaning to be given to statutory language, “for a fair and reasonable interpretation must be made of all laws and a strict construction must still be a reasonable construction.”

If you have further concerns regarding this matter, you may contact me at (916) 324-1392.

Sincerely,

/s/ Mary Ann Alonzo

Mary Ann Alonzo
Senior Tax Counsel

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cc:

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