STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
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November 17, 2023

No. 2023/044

TO COUNTY ASSESSORS:

WELFARE EXEMPTION:
BUILDING/REHABILITATING HOUSING
FOR SALE TO LOW-INCOME FAMILIES

Since October 10, 1999, Revenue and Taxation Code (RTC) section 214.15 allows the welfare exemption to apply to property owned and operated by an eligible nonprofit corporation that would otherwise qualify for the exemption, if that property is used for the rehabilitation or construction of housing for the purposes of selling the property to a low-income homebuyer when the sale is financed with a zero-interest rate loan.

Effective September 28, 2022, Assembly Bill 1933 (Stats. 2022, ch. 643) added section 214.15.1 to the RTC to expand the welfare exemption to eligible nonprofit organizations for the purpose of rehabilitating single or multifamily residences units for sale at cost to low-income families, regardless of the type of financing if the property is subject to a recorded agreement meeting certain conditions. RTC section 214.15.1 is operative for lien date January 1, 2023 through lien date January 1, 2027.

Specifically, RTC section 214.15.1(a) provides that the welfare exemption applies to property owned and operated by a nonprofit corporation, otherwise qualifying for exemption under RTC section 214, that is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residential units, if the property is subject to a 45-year recorded agreement with the appropriate local agency and the agreement requires all of the following:

(1) Requires some or all of the property's units to be owner occupied and sold only to and purchased only by first-time homebuyers that are low-income families.

(2) Requires the initial down payment on the units described in paragraph (1) to be 5 percent or less of the market value of the unit at the time of purchase.

(3) Requires the units described in paragraph (1) to be made available at an affordable housing cost to buyers. "Affordable housing cost" means a cost, with respect to low-income families, that does not exceed 30 percent of gross income (see RTC section 214.15.1(d)(2)).

A "first-time homebuyer" means a person who does not currently have any ownership interest in any principal residence and has not had any ownership interest in any principal residence in the three-year period prior to the date that the mortgage is executed for a unit purchased by the person described in section 214.15.1(a)(1) (see RTC section 214.15.1(d)(3)).

"Low-income families" means lower income households, very low income households, and extremely low income households and also includes persons and families of low income, very low income, and extremely low income. RTC section 214.15.1(d)(4) defines these terms by references to certain sections of the Health and Safety Code.

In the case of property not previously designated as open space, the exemption may not be denied to a property on the basis that the property does not currently include a single or multifamily residential unit or a single or multifamily residential unit that is in the course of construction (see RTC section 214.15.1(c)(1)).

RTC section 214.15.1(b)(1) provides that in the case of a larger, mixed-income development project where a portion of the units may be available to persons or families that are not low income families, the exemption applies only to those units that meet the requirements of RTC section 214.15.1(a).

On each lien date, the Assessor must adjust the exemption allowed under this section by a proration factor that reflects the portion of the property proposed to be built or rehabilitated with units that meet the requirements of subdivision (a) as a percentage of the total development. Following completion of construction, the adjustment shall reflect the portion of the property with units that meet the requirements of subdivision (a) as a percentage of the total development (see RTC section 214.15.1(b)(2)).

Independent Audit. The statutory provisions for this exemption require an audit annually. RTC section 214.15.1(e) requires that a nonprofit corporation utilizing this exemption be subject to an independent audit each year to ensure that the buyers of the units meet the requirements of this section. The nonprofit corporation must make the audit available upon request to the County Assessor where the unit is located in order to continue to qualify for the exemption.

Affidavit. The statutory provisions for this exemption require an affidavit declaring the requirements are met. RTC section 214.15.1(f) requires an officer of the nonprofit corporation claiming the exemption to sign under penalty of perjury an affidavit affirming to the County Assessor that the property owned and operated by the nonprofit corporation is for the future construction of single or multifamily residential units on that property. If the property was not developed or rehabilitated or at least in the course of construction within the following specified time periods, then the nonprofit corporation will be liable for property tax for the years for which the property was exempt from taxation:

- In the case of property acquired by the nonprofit corporation before January 1, 2023, by January 1, 2028.
- In the case of property acquired by the nonprofit corporation on and after January 1, 2023, and before January 1, 2028, within five years of the lien date following the acquisition of the property by the nonprofit corporation.

The nonprofit corporation must notify the County Assessor if property is not at least in the course of construction by the above applicable date.

Escape Assessments. In accordance with RTC 214.15.1(b)(3), the Assessor must issue an escape assessment, pursuant to RTC section 532, for any portion of property for which an exemption was granted under section 214.15.1 if either of the following occurs:

- Construction is abandoned, as defined in RTC section 214.2.
- Upon completion of construction the property does not meet the requirements of RTC section 214.15.1(a). Only that portion of the property that was proposed to be, but was not, built or rehabilitated with units that meet the requirements of subdivision (a) are to be assessed as escaped property.

Enclosed are (1) a copy of new RTC section 214.15.1, and (2) the Health and Safety Code sections referenced in section 214.15.1(d)(4), as those sections read on January 1, 2022. If you have any questions regarding these provisions, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:gs
Enclosures

REVENUE AND TAXATION CODE SECTION 214.15.1 (in effect September 28, 2022)

214.15.1. (a) Subject to subdivision (b), property shall be fully exempt from property taxation and is within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution if that property is owned and operated by a nonprofit corporation, otherwise qualifying for exemption under Section 214, that is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residential units, if the property is subject to a 45-year recorded agreement with the appropriate local agency, and if the agreement requires all of the following:

(1) Requires some or all of the property's units to be owner occupied and sold only to and purchased only by first-time homebuyers that are low-income families.

(2) Requires the initial downpayment on the units described in paragraph (1) to be 5 percent or less of the market value of the unit at the time of purchase.

(3) Requires the units described in paragraph (1) to be made available at an affordable housing cost to buyers.

(b) (1) The property for which the exemption under this section is sought may be related to a larger, mixed-income development project where a portion of the units may be available to persons or families that are not low-income families. However, only the portion of the property proposed to be built or rehabilitated with units that meet the requirements under subdivision (a) shall receive the exemption. Following completion of construction, only the portion of the property with units that meet the requirements under subdivision (a) shall receive the exemption.

(2) On each lien date, the assessor shall adjust the exemption allowed under this section by a proration factor that reflects the portion of the property proposed to be built or rehabilitated with units that meet the requirements of subdivision (a) as a percentage of the total development. Following completion of construction, the adjustment shall reflect the portion of the property with units that meet the requirements of subdivision (a) as a percentage of the total development.

(3) The assessor shall assess as escaped property, pursuant to Section 532, any property for which a welfare exemption was granted pursuant to this section if either of the following occurs:

(A) Construction is abandoned.

(B) Upon completion of construction, the property does not meet the requirements in subdivision (a). For properties described in this subparagraph, the assessor shall assess as escaped property that portion of the property that was proposed to be, but was not, built or rehabilitated with units that meet the requirements of subdivision (a).

(c) (1) In the case of property not previously designated as open space, the exemption specified by subdivision (a) may not be denied to a property on the basis that the property does not currently include a single or multifamily residential unit as described in that subdivision, or a single or multifamily residential unit as so described that is in the course of construction.

(2) With regard to paragraph (1), the Legislature finds and declares all of the following:

(A) The exempt activities of a nonprofit corporation as described in subdivision (a) qualitatively differ from the exempt activities of other nonprofit entities that provide housing in that the exempt purpose of a nonprofit corporation as described in subdivision (a) is not to own and operate a housing project on an ongoing basis, but is instead to make housing, and the land reasonably necessary for the use of that housing, available for prompt sale to low-income residents.

(B) In light of this distinction, the holding of real property by a nonprofit corporation as described in subdivision (a), for the future construction on that property of a single or multifamily residence as described in that same subdivision, is central to that corporation's exempt purposes and activities.

(C) In light of the factors set forth in subparagraphs (A) and (B), the holding of real property by a nonprofit corporation described in subdivision (a), for the future construction on that property of a single or multifamily residence as described in that same subdivision, constitutes the exclusive use of that property for a charitable purpose within the meaning of subdivision (b) of Section 4 of Article XIII of the California Constitution.

(d) For purposes of this section, all of the following definitions apply:

(1) "Abandoned" has the same meaning as that term is used in Section 214.2.

(2) "Affordable housing cost" means a cost, with respect to low-income families, that does not exceed 30 percent of gross income.

(3) "First-time homebuyer" means a person who does not currently have any ownership interest in any principal residence and has not had any ownership interest in any principal residence in the three-year period prior to the date that the mortgage is executed for a unit purchased by the person described in paragraph (1) of subdivision (a) of this section. For purposes of this paragraph, "principal residence" means any property used as the person's principal place of residence.

(4) "Low-income families" means very low income households, as defined in Section 50105, extremely low income households, as defined in Section 50106, lower income households, as defined in Section 50079.5, and persons and families of low income, as defined in Section 50093, and includes persons and families of extremely low income and persons and families of very low income, as those terms are used in Section 50093 of the Health and Safety Code, as those sections read on January 1, 2022.

(e) The nonprofit corporation that utilizes the exemption in this section shall be subject to an annual independent audit to ensure that the buyers of the units meet the requirements of this section. The nonprofit corporation shall make the audit available upon request to the city, county, and county assessor where the unit is located and to the Department of Housing and Community Development in order to continue to qualify for the exemption pursuant to this section.

(f) (1) A nonprofit corporation making a claim for an exemption pursuant to this section shall not be eligible for the exemption under this section unless an officer of the nonprofit corporation signs under penalty of perjury an affidavit affirming to the county assessor that the property owned and operated by the nonprofit corporation is for the future construction of single or multifamily residential units on that property, as required by this section.

(2) (A) Notwithstanding any other law, the nonprofit corporation shall be liable for property tax for the years for which the property was exempt from taxation pursuant to this section if the property was not developed or rehabilitated, or if the development or rehabilitation is not in the course of construction, in accordance with subdivision (a) as follows:

(i) In the case of property acquired by the nonprofit corporation before January 1, 2023, by January 1, 2028.

(ii) In the case of property acquired by the nonprofit corporation on and after January 1, 2023, and before January 1, 2028, within five years of the lien date following the acquisition of the property by the nonprofit corporation.

(B) The nonprofit corporation shall notify the assessor of the county in which the property is located if property owned by the nonprofit corporation granted an exemption pursuant to this section is not in the course of construction by the dates specified in subparagraph (A).

(g) (1) This section shall be operative for lien dates occurring on or after January 1, 2023, and before January 1, 2028.

(2) This section shall remain in effect only until January 1, 2034, and as of that date is repealed.

HEALTH AND SAFETY CODE SECTIONS

50079.5. (a) "Lower income households" means persons and families whose income does not exceed 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. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.
(b) "Lower income households" includes very low income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.
(c) As used in this section, "area median income" means the median family income of a geographic area of the state.

50093. "Persons and families of low or moderate income" means persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of Business, Consumer Services and Housing, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify a substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.

"Persons and families of low or moderate income" includes very low income households, as defined in Section 50105, extremely low income households, as defined in Section 50106, and lower income households as defined in Section 50079.5, and includes persons and families of extremely low income, persons and families of very low income, persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:

(a) "Persons and families of low income" or "persons of low income" means persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(b) "Persons and families of moderate income" or "middle-income families" means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

(c) "Persons and families of median income" means persons and families whose income does not exceed the area median income, as adjusted by the department for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

As used in this section, "area median income" means the median family income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. In the event these federal determinations of area median income are discontinued, the department shall establish and publish as regulations income limits for persons and families of median income for all geographic areas of the state at 100 percent of area median income, and for persons and families of low or moderate income for all geographic areas of the state at 120 percent of area median income. These income limits shall be adjusted for family size and shall be revised annually.

For purposes of this section, the department shall file, with the Office of Administrative Law, any changes in area median income and income limits determined by the United States Department of Housing and Urban Development, together with any consequent changes in other derivative income limits determined by the department pursuant to this section. These filings shall not be subject to Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, but shall be effective upon filing with the Office of Administrative Law and shall be published as soon as possible in the California Regulatory Code Supplement and the California Code of Regulations.

The department shall establish and publish a general definition of income, including inclusions, exclusions, and allowances, for qualifying persons under the income limits of this section and Sections 50079.5, 50105, and 50106 to be used where no other federal or state definitions of income apply. This definition need not be established by regulation.

Nothing in this division shall prevent the agency or the department from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for programs of the agency or department, as the case may be.

50105. (a) "Very low income households" means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. These qualifying limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for very low income households for all geographic areas of the state at 50 percent of area median income, adjusted for family size and revised annually.

(b) "Very low income households" includes extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.

(c) As used in this section, "area median income" means the median family income of a geographic area of the state.

50106. "Extremely low income households" means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in

Section 5.603(b) of Title 24 of the Code of Federal Regulations. These limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for extremely low income households for all geographic areas of the state at 30 percent of area median income, adjusted for family size and revised annually. As used in this section, "area median income" means the median family income of a geographic area of the state.