



Legislative Bill Analysis

[Assembly Bill 1206](#) (Bennett)

Date: January 3, 2022 (Amended)

Program: Property Taxes

Revenue and Taxation Code Section 214

Effective: Immediately

Dustin Weatherby (Division Chief) 916.274.3423

Ronil Dwarka (Revenue) 916.274.3391

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Summary: For property that meets the requirements for the welfare exemption and is used exclusively for rental housing and related facilities, this bill would require that a unit continue to be treated as occupied by a lower income household if the owner is a community land trust whose land is leased to low-income households who make up to 140% of the area's median income adjusted for household size and, subject to a contract that complies with specified requirements for fiscal years 2022-23 through 2027-28.

Fiscal Impact Summary: Indeterminable.

Existing Law:

Under the California Constitution, all property is taxable, unless otherwise provided for by the state Constitution or the laws of the United States.¹ The Legislature may exempt from property taxation in whole or in part, property used exclusively for religious, hospital, scientific, or charitable purposes and owned or held in trust by nonprofit corporations or other entities, if certain criteria are met.²

This exemption is known as the "welfare exemption" and is implemented pursuant to Revenue and Taxation Code³ section [214](#).

Section 214 generally exempts from taxation, subject to certain conditions and qualifications, property that is (1) owned by nonprofit organizations organized and operated for charitable purposes, and (2) used exclusively for those purposes.

Section 214(g)(1) provides generally that property used exclusively for rental housing used for low-income rentals owned and operated by nonprofit organizations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, shall be deemed to be within the exemption authorized by section 214.

Under existing property tax law, property that meets these requirements and is used exclusively for rental housing and related facilities is entitled to a partial exemption, equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower income households represents of the total number of residential units, in any year that certain criteria apply, including that the property be subject to a legal restriction that provides that units designated for use by lower income households are continuously available to or occupied by lower income households, at rents not exceeding specified limits.⁴

¹ California Constitution, [article XIII, section 1](#).

² California Constitution, [article XIII, section 4\(b\)](#).

³ All statutory references are to the Revenue and Taxation Code, unless otherwise provided.

⁴ Section 214, subd. (g)(1).

This staff analysis is provided to address various administrative, cost, revenue, and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

For fiscal years 2018-19 through 2027-28, in the case of an owner of property receiving a low-income housing tax credit under specified federal law, existing property tax law requires that a unit continue to be treated as occupied by a lower income household for these purposes if the occupants were lower income households on the lien date in the fiscal year in which their occupancy of the unit commenced and the unit continues to be rent restricted, notwithstanding an increase in the income of the occupants of the unit up to 140% of area median income (AMI), adjusted for family size.⁵

In 2019, the Legislature added section [214.18](#) into law which stated property owned by a community land trust (CLT) that qualifies for a welfare exemption under section 214 is also within the exemption provided by sections 4 and 5 of article XIII of the California Constitution as long as several conditions were met.⁶ In 2020, the Legislature clarified the requirements for CLTs to claim the welfare exemption and made property owned by a CLT eligible for the welfare exemption prior to beginning construction.⁷

Additionally, this section prevented County Assessors from denying the welfare exemption to CLTs who were in the process of constructing affordable housing but did not have any units complete. However, this section made CLTs liable for property tax for the years the CLT received the exemption if construction was not completed by a certain timeframe.

On December 1, 2021, the State Board of Equalization (BOE) issued a Letter to Assessors providing information and guidance on the treatment of CLT housing in light of these legislative changes.⁸

The BOE and 58 County Assessors are jointly responsible for administering the welfare exemption. The BOE is responsible for determining whether an organization is qualified for either an Organizational Clearance Certificate (OCC) or a Supplemental Clearance Certificate (SCC), while the Assessor is responsible for determining whether the use of a qualifying organization's property is eligible for the welfare exemption. The Assessor shall not grant the welfare exemption on an organization's property unless the organization holds either a valid OCC or SCC issued by the BOE. However, the Assessor may deny a welfare exemption claim based on non-qualifying use of the property, notwithstanding that the BOE has issued the organization an OCC or SCC. The BOE tracks [eligible nonprofit organizations and Limited Liability Companies](#) who hold valid OCCs and SCCs and monitors those organizations for continued eligibility.

Once an OCC or an SCC is issued by the BOE to a qualified organization, the organization will then file a claim for the welfare exemption with the County Assessor where the property is located. The County Assessor is responsible for evaluating the application, determining whether the use of the property meets the statutory requirements for receiving the welfare exemption, and for ultimately granting or denying the exemption to claimants.

Proposed Law:

Allows CLTs to Continue to Utilize Welfare Exemption if Tenants Earn Up to 140% of AMI. The **February 19, 2021** version added subdivision (g)(2)(A)(iv)(I) of section 214, which allows, in cases where the property is owned by a CLT and leased to a lower income household, subject to certain contract restrictions under section 402.1, a unit to continue to be treated as occupied by a lower income household if the occupants were lower income households on the lien date in the fiscal year in which their occupancy

⁵ Section 214, subd. (g)(2)(iii)(I).

⁶ SB 196, Chapter 669, Stats. 2019.

⁷ SB 1473, Chapter 371, Stats. 2020.

⁸ [Letter to Assessors No. 2021/052](#), California State Board of Equalization, December 1, 2021.

of the unit commenced and the unit continues to be rent restricted, notwithstanding an increase in the income of the occupants of the unit to 140% of area median income, adjusted for family size. However, the unit shall cease to be treated as a lower income unit if the income of the occupants of the unit increases above 140% of area median income, adjusted for family size. The **January 3, 2022** amendments made narrowing changes of who a CLT leases to.

Sunset Date. This bill provides for a five-year sunset date to the newly added section 214(g)(2)(A)(iv)(I), which expires at the end of the 2027-28 fiscal year.

Defines Community Land Trust. The bill provides that the term "community land trust" has the same meaning as defined in section 402.1.

Limited-Equity Housing Cooperative. AB 1206, as introduced, also provided that CLTs who lease property to limited-equity housing cooperatives could continue to utilize the welfare exemption provided that tenants earn up to 140% of the AMI. The **January 3, 2022** amendments remove the limited-equity housing cooperative provisions.

Removes Definition of Rental Housing. The **January 3, 2022** amended version removes the proposed definition of rental housing for purposes of the welfare exemption.

Change in Ownership Exclusion. The **January 3, 2022** amendments removed potential changes to section 62.

Understanding Goals and Objectives. To comply with Section 41, the **January 3, 2022** amendments added specific goals, purposes, and objectives of expanding the welfare exemption to CLTs who rent to low-income households up to 140 percent of the area's median income. The Legislative Analyst's Office (LAO) would be required on an annual basis beginning January 1, 2023 until January 1, 2043 to collaborate with the BOE to review the effectiveness of the tax exemption allowed by section 214(g) as amended by this bill.

Information Sharing. The LAO may request information from the BOE to analyze the effectiveness of the exemption but may only post the information in an anonymized and aggregated manner. Additionally, the BOE may request information from each County Assessor.

In General:

Under section 4(b) of article XIII of the California Constitution, the Legislature is authorized to exempt from taxation, in whole or in part:

Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operated for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual.

In exercising the above constitutional authorization, the Legislature enacted section 214, which reiterates the constitutional authorization and outlines numerous conditions and qualifications for receiving the exemption, and adds scientific as the fourth qualifying purpose. Section 214 provides that property used exclusively for charitable purposes owned and operated by corporations organized and operated for charitable purposes is exempt from taxation if the owner is not organized and operated for profit and the property is used for the actual operation of the exempt activity.

Charitable Purposes. An organization's primary purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. The courts have broadly construed *charitable* to include some educational purposes and activities.⁹ These court decisions have been codified in section 214(j), which provides that charitable purposes include certain educational purposes and activities, subject to the following requirements:

- The educational purposes and activities must benefit the community as a whole or an unascertainable and indefinite portion thereof.
- The educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

Section 214(j) expressly precludes exemption to educational purposes and activities primarily for the benefit of the organization's shareholders.

Exclusive Use. The Revenue and Taxation Code does not specifically define the term *used exclusively*; however, the courts have done so in a series of decisions. The California Supreme Court has stated that the phrase "exclusively used" may not be given a literal interpretation so as to mean that the property exempted must be used solely for the purposes stated to the total exclusion of any other use. The Supreme Court held that *used exclusively* for exempt purposes includes any property which is used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment of the exempt purpose.¹⁰ Courts have applied this precedent to mean that a qualified organization's primary use of its property must be for exempt purposes and any other uses of property must be related to and reasonably necessary to the accomplishment of the exempt purpose.¹¹

Housing Welfare Exemption. Property tax administrators have historically taken a narrow view of the exemption and have viewed much housing to be non-exempt on the grounds that the property is being used primarily for private residential purposes rather than exempt purposes and is not being used exclusively for exempt purposes as required by section 214.¹²

However, the courts have taken a broader view, consistent with the Supreme Court's directive that statutory and constitutional provisions granting exemptions are to be construed strictly, but reasonably.¹³

In 1999, the BOE adopted [Property Tax Rule 137](#), *Application of the Welfare Exemption to Property Used For Housing*, effective December 31, 1999. The purpose of Rule 137 is to clarify that the welfare exemption from property taxation applies to housing and related facilities owned and operated by qualified nonprofit organizations and to establish a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.¹⁴

⁹ See *Lundberg v. County of Alameda* (1956) 46 Cal.2d 644, 653; *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d 13; *Greek Theatre Association v. County of Los Angeles* (1978) 76 Cal.App.3d 768, 778-779.

¹⁰ *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

¹¹ *Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23; *YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760; *St. Germain Foundation v. County of Siskiyou* (1963) 212 Cal.App.2d 911; *Greek Theatre Association v. County of Los Angeles* (1978) 76 Cal.App.3d 768.

¹² Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, p. 62.

¹³ *Ibid.*

¹⁴ *Id.* at p. 65.

In addition, [Property Tax Rule 140](#) further specifies requirements for the welfare exemption for low-income housing properties.

Background:

Community Land Trusts. Federal law, the Cranston-Gonzalez National Affordable Housing Act (Act), allows CLTs to obtain organizational support, technical assistance, education, training, and community support from the government in fulfilling their housing mission.¹⁵ The Act defines "CLT" to mean a community housing development organization not sponsored by a for-profit organization, with a specified board membership, that is established to carry out the following activities:

- Acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
- Transfer ownership of any structural improvements located on the leased parcels to the lessees; and
- Retain a preemptive option to purchase any structural improvement at a price determined by a formula designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity.

CLTs are nonprofit organizations governed by a board of CLT residents, community residents and public representatives that provide lasting community assets and shared equity homeownership opportunities for families and communities. CLTs develop rural and urban agriculture projects, commercial spaces to serve local communities, affordable rental and cooperative housing projects, and conserve land or urban green spaces. However, the heart of their work is the creation of homes that remain permanently affordable, providing successful homeownership opportunities for generations of lower income families.¹⁶

CLTs provide an affordable housing model to help low- and moderate-income households that may not otherwise be able to purchase homes. The CLT acquires and develops properties for sale to income-qualified households, but then retains ownership of the underlying land and leases the land to the homeowner for a nominal fee through a long-term ground lease (usually a 99-year term). The home is, therefore, more affordable because the homeowner is only buying the building and leasing the land underneath. If the homeowner decides to sell the property, the home must be resold to another income-qualified household, and the original owner will only be eligible for a smaller share of its appreciated value. Since the CLT is the owner of the land, it will be a party to all future sales and enforce resale restrictions.

For California property tax purposes, a "community land trust" is defined in section 402.1(a)(11)(C)(ii) as a nonprofit corporation organized pursuant to section 501(c)(3) of the Internal Revenue Code that satisfies all the following:

- Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.

¹⁵ [42 U.S.C. 12773](#)

¹⁶ <https://groundedsolutions.org/strengthening-neighborhoods/community-land-trusts>.

- All dwellings and units located on the land owned by the nonprofit corporation are sold to a qualified owner to be occupied as the qualified owner's primary residence or rented to persons and families of low or moderate income.
- The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years.

Commentary:

1. **Exemption for Five Years.** The proposed extension of the welfare exemption to CLT property leased to qualifying income households is effective for a five-year period beginning with the 2022-23 fiscal year. Property owned by CLTs will become assessable beginning with the 2027-28 fiscal year unless this period is extended by the Legislature.
2. **Data Collection.** This bill requires the BOE to collaborate with the LAO to review the effectiveness of this exemption for CLT property and to request data from County Assessors, if necessary.

Costs: The BOE would incur absorbable costs to update claim forms and Assessors' Handbook Section [267](#), *Welfare, Church, and Religious Exemptions*.

Revenue Impact: Estimating the revenue impact of this bill is difficult. Staff cannot estimate the number of CLTs that would qualify under this bill. Staff also does not know the location and value of those properties. Revenue impact depends on: (1) the number of properties that would qualify under this bill, (2) the taxable value of the property, and (3) the location of these properties. At this time, based on these unknown factors, the revenue loss is indeterminable.