



[AB 2353](#) (Ward)

Date: February 12, 2024

Program: Property Taxes

Revenue and Taxation Code Section 4985.05

Effective: 01/01/25

Ted Angelo (Division Chief) 916-274-3423

Ted Angelo (Analyst) 916-274-3423

Ronil Dwarka (Revenue) 916-274-3391

Analysis Date: April 17, 2024

**Summary:** Allows an affordable housing developer to withhold property tax otherwise due to a county tax collector once a “welfare exemption” application has been submitted to qualify the property for a low-income housing welfare exemption.

**Revenue Impact:** Unknown potential loss of revenue, as property taxes currently collected at the time of application are ultimately refunded later if the exemption is approved under current law. The corresponding tax revenue would ultimately be due if the welfare exemption application is denied.

**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.<sup>1</sup> 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 specific criteria are met.<sup>2</sup>

This exemption is known as the "welfare exemption" and is implemented according to RTC section [214](#). RTC section 214 generally exempts from taxation, subject to certain conditions and qualifications, property (1) owned by nonprofit organizations organized and operated for charitable purposes and (2) used exclusively for those purposes.

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

**Housing Welfare Exemption.** Historically, property tax administrators took a narrow view of whether the welfare exemption extends to property used for housing and related facilities provided by religious, hospital, scientific, and charitable organizations. Previously, they viewed most housing as non-exempt because the property was used primarily for private residential purposes rather than exempt purposes and was not being used exclusively for exempt purposes as required by prior interpretations of RTC section 214.<sup>3</sup>

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

---

<sup>1</sup> Cal. Const., [art. XIII, section 1](#).

<sup>2</sup> Cal. Const., [art. XIII, section 4\(b\)](#).

<sup>3</sup> Assessors’ Handbook Section 267, *Welfare, Church, and Religious Exemptions*, p. 62.

*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.*

reasonably.<sup>4</sup> As a result, the courts have exempted properties used for a wide range of housing as property used exclusively for exempt [religious, charitable or hospital] purposes within the meaning of RTC section 214(a).

The State Board of Equalization (BOE) has worked to establish clearer exemption qualification standards. In 1999, the BOE adopted [Property Tax Rule \(Rule\) 137, \*Application of the Welfare Exemption to Property Used For Housing\*](#). Rule 137 clarifies that the welfare exemption applies to housing and related facilities owned and operated by qualified nonprofit organizations. It establishes a single uniform statewide standard for determining qualification for the welfare exemption as it applies to such properties.<sup>5</sup>

Subdivision (g) of section 214 extends the welfare exemption to property owned and operated by qualifying organizations and used exclusively for rental housing, which is occupied by lower - income households. "Lower income households" are defined by reference to Health and Safety Code (H&SC) section 50079.5, which provides persons and families whose income does not exceed the qualifying limits under Section 8 of the United States Housing Act of 1937. In 2006, the BOE adopted [Property Tax Rule 140, which](#) interprets RTC section 214 (g) and specifies numerous definitions and requirements for a full-or-partial welfare exemption for low-income housing properties; Rule 140 was amended in 2019.

**Proposed Law:** AB 2353 adds RTC section 4985.05 to provide that a taxpayer is not liable for interest or penalties imposed by a county tax collector, nor shall a county tax collector attempt to collect delinquent property taxes levied on a property, if:

- 1) The taxpayer has submitted an application to exempt the property from property taxes under the existing property tax exemption provisions for deed-restricted affordable lower income rental housing (subsection (g) of RTC section 214), and provided the application for exemption including all of the following:
  - An Organizational Clearance Certificate (OCC) or Supplemental Clearance Certificate (SCC) from the BOE.
  - A description of the property that includes the total number of residential units, the number of residential units eligible for exemption, the total square footage of the improvements, and the square footage of improvements not eligible for exemption.
  - An enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document consistent with the requirements of the property tax welfare exemption under RTC section 214 (g)(2)(A).

Exclusions from Relief: The bill provides that the process created by this bill does not apply to either of the following:

- a) The prorated portion of any delinquent installments of property taxes that are related to improvements ineligible for exemption or to residential units not restricted as affordable to lower income households pursuant to the agreement, restriction, or document; or

<sup>4</sup> *Ibid*; *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 735.

<sup>5</sup> *Id.* at p. 65.

*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.*

b) Any late or delinquent installments related to property which the Assessor deems ineligible for exemption after reviewing the application for property tax welfare exemption.

Acknowledgement of Application for Exemption: This bill requires the County Assessor to acknowledge to the taxpayer and the county tax collector receipt of the application for exemption within 60 days of the taxpayer's submittal of the application.

The bill provides that any routine communication sent to the taxpayer from the tax collector shall not constitute a collection action under this bill.

**Fiscal Impact Summary:** None

**Commentary:**

According to the sponsor of this bill, the California Housing Partnership, "even though most affordable housing developers have been approved for exemptions numerous times and the use of a particular site as affordable housing and the percentage of affordable units on that site are set in recorded affordability restrictions, developers must pay the taxes up front and seek reimbursement after both the Board of Equalization (BOE) and the county assessor approve a development's exemption. As a result, developers float hundreds of thousands of dollars in tax payments for as much as three years, only to get the money back (albeit without interest) once their application is approved. The developers pay interest to borrow this money, which further increases development costs."

**Qualifying Remark:**

This bill impacts assessors as it adds a 60-day period to acknowledge receipt of an exemption claim. Such a requirement might be better placed in RTC section 254.5, which covers the processes for filing a welfare exemption claim with the County Assessor, instead of a section within Chapter 4, regarding Cancellations.

BOE is not directly impacted by this proposal as currently drafted, but would be involved if required to review and approve an OCC in a specified timeframe (e.g., 60 days).

*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.*