

PILOT PROGRAMS

Introduction

Low-income housing property may be exempt from property taxation under the Welfare Exemption. Since the local government would not receive its portion of property tax if the property is exempt, low-income housing developers or owners sometimes enter into agreements (often called payment in lieu of taxes (PILOT) agreements) to compensate local government for costs associated with the property.

For property tax purposes, the focus is on the effect of a PILOT on the eligibility of the low-income housing property for the Welfare Exemption.

Effect on the Welfare Exemption for Low-Income Housing Projects

Under authority granted by the California Constitution, the Legislature has chosen to exempt from property taxation property used exclusively for religious, hospital, or charitable purposes. The main provisions of this exemption, known as the "Welfare Exemption," are set forth in Revenue and Taxation Code section 214, subdivision (a), which enumerates many requirements that the use of the property and its owner must meet in order to be eligible for the exemption.

In addition to the requirements set forth in section 214, subdivision (a), such projects must meet criteria set forth in section 214, subdivision (g). Specifically, under subdivision (g)(2)(B) the owner of the low-income housing property must certify that:

[T]he funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income individuals.

Where this certification cannot be made, the Welfare Exemption may not be granted. Potentially more far-reaching is the prospect of revoking exemptions for prior years for which PILOT payments were made. The consideration of such revocations would also require consideration of the levying of escape assessments and, potentially, penalties on project owners not anticipating such liabilities. Thus, the revocation of the property tax exemption may also have financial ramifications to property owners.

A current Legal annotation states that the Section 214(g)(2)(B) certification could not be made because there was a PILOT agreement where in-lieu payments were made to the local government. (Annotation 880.0155 is available at <http://www.boe.ca.gov/lawguides/property/current/ptlg/annt/880-0155.html>.) The annotation

opines that because a portion of property tax savings were required to go directly to make the in-lieu payments, section 214, subdivision (g)(2)(B) was not satisfied. Recently, however, the Legal Department has examined this issue more comprehensively and opined that as long as the low-income housing developer or claimant has maintained rents in accord with statutory requirements and has a reasonable belief that its PILOT payments will be used to support or benefit the Development, the Section 214(g)(2)(B) certification can be made in good faith. This legal memorandum has recently been proposed to be annotated (Proposed Annotation 880.0155.005 is available at <http://www.boe.ca.gov/proptaxes/pdf/CLD2013-1.pdf>) and parties have written both in support of and in opposition to it.

Policy Issues

Assessors, the Board, and non-profit organizations all have an interest in consistent treatment of properties subject to PILOT agreements and their respective eligibility for the Welfare Exemption. More broadly, legislators may also need to examine whether PILOT agreements and the Welfare Exemption serve compatible governmental interests.