



ANTONIO VAZQUEZ
MEMBER
CALIFORNIA STATE BOARD OF EQUALIZATION

MEMORANDUM

Date: March 28, 2024

To: Sally J. Lieber, Chair
Ted Gaines, Vice Chair
Mike Schaefer, Board Member, Fourth District
Malia M. Cohen, State Controller

From: Antonio Vazquez, Board Member, Third District

Re: **April 16-17, 2024, Board Meeting Item 11. Affordable Housing Board Work Group Report: Blueprint of Property Tax Incentives for Affordable Housing**

Honorable Members, attached for possible discussion and approval at the April 16-17, 2024, Board Meeting is the final "*Blueprint of Property Tax Incentives for Affordable Housing*." Your review and input into this document, as well as that of the Executive Director and her staff, has been instrumental in its production, and your full engagement in the affordable housing issue relative to property tax matters over the last several years has provided the data and lens.

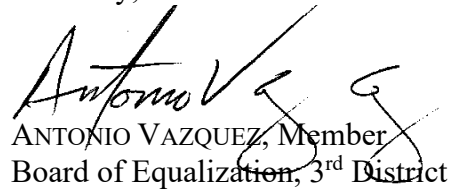
The *Blueprint* highlights the results of the October 19, 2023, Statewide Informational Hearing on Modernizing California's Property Tax System and Board Work Group on Affordable Housing by:

- Identifying the relevant property tax exemptions and incentives under current law,
- Setting out the gaps/challenges that were pointed out in various testimonies and are not currently addressed by the welfare exemption for low-income housing (RTC section 214), and
- Describing the proposals made for addressing these gaps.

Resource documents used for developing the Blueprint were the transcript, testimonial data, and Board-approved minutes and report (<https://www.boe.ca.gov/meetings/pdf/2023/202312-BWG-Housing-Minutes-Rprt.pdf>), as well as previous testimony provided to the Board and previously approved Board documents, white papers, Assessors' Handbooks, and legislation.

I would be very grateful for your approval of the final *Blueprint*, so that it can be distributed in a timely manner to our stakeholders, the Governor, and the Legislature.

Sincerely,



ANTONIO VAZQUEZ, Member
Board of Equalization, 3rd District

Ms. Deborah Bautista-Zavala, Chief Deputy, Office of Member Antonio Vazquez

Mr. Douglas Winslow, Chief Deputy, Office of Chair Sally J. Lieber

Mr. Matt Cox, Chief Deputy, Office of Vice Chair Ted Gaines

Mr. Cody Petterson, Chief Deputy, Office of Member Mike Schaefer

Mr. Hasib Emran, Deputy State Controller

Ms. Yvette Stowers, Executive Director



California State
Board *of* Equalization

Board Work Group on Affordable Housing



Blueprint of Property Tax Incentives for Affordable Housing

April 2024

Honorable Antonio Vazquez, Board Member, Third District

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1. Intent and Purpose

The intent of this document is to serve as a Blueprint of Property Tax Incentives for Affordable Housing by:

- a. Identifying the relevant exemptions and incentives under current property tax law,
- b. Setting forth specific gaps/challenges that exist and are not currently addressed by the welfare exemption for low-income housing in Revenue & Taxation Code section 214 and in other provisions, and
- c. Describing the potential policy ideas/action items for addressing these gaps.

Most of the content regarding the gaps and proposed solutions was presented to the Board Members in the October 19, 2023, Board of Equalization Informational Hearing on Modernizing California's Property Tax System, Board Work Group on Affordable Housing Crisis and in prior testimony on related issues in 2022 and 2023, including the Property Tax Abatement Board Work Group hearings in 2022. Speakers included legislators, community leaders, developers, and nonprofit advocates to explore gaps and identify comprehensive strategies and incentives to tackle the challenges Californians face in securing affordable housing. This Blueprint is a compilation based on such testimony, designed to offer a roadmap for addressing the gaps identified.

2. Current Property Tax Incentives for Affordable Housing¹

Generally Available

The primary property tax incentive for low-income housing is the full or partial tax relief under Revenue and Taxation Code (RTC) section 214, enacted by the Legislature to implement section 4(b) of California Constitution article XIII. It exempts from taxation *“property used exclusively for religious, hospital or charitable purposes and owned or held in trust by corporations or other entities.”* The exemption is generally implemented by subdivision (g) of section 214, based on the proportion of the units rented exclusively to low-income households if the property is owned and operated by a qualified organization or a limited partnership with a qualified entity as its managing general partner, and if specified financing and rent restrictions are met.

Current Limitations

Cap for Certain Nonprofits: If a qualified owner meets all of the requirements, but does not receive government financing, the statute requires 90% or more of the property’s occupants

¹<https://www.boe.ca.gov/meetings/pdf/2021/072721-K3b-Welfare-Exmp-Prg.pdf>,
<https://www.boe.ca.gov/meetings/pdf/2023/0423-WExmpt-Rprt.pdf>

to be lower income households and limits the exemption to the first \$20 million of assessed value owned by that organization statewide.

Possessory Interest Units: Until recently, if a government entity, including a joint powers agency, owned property used for public housing projects, the lease of that property was taxable as a possessory interest because there was no exemption for possessory interests for units leased to low-income households for the private benefit of that household. However, on October 11, 2023, the Governor signed into law SB 734 (Rubio) which added RTC section 107.10 defining a lease of public housing so that a low-income tenant as not meeting the definition of a taxable possessory interest. This codified BOE's opinion that low-income tenants should not be charged a possessory interest tax on leases of public housing.

Income Restrictions: Starting in fiscal year 2018-19 through 2027-2028, the legislative exemption for rent-restricted units occupied by an over-income tenant (up to 140 percent of AMI) still applied provided that the tenant was income-qualified at first occupancy and the property receives federal low-income housing tax credits (LIHTC). The reasons stated are that the deed or regulatory restrictions generally prohibited the property owners from evicting tenants for being over-income or from increasing their rent; and the units with over-income tenants continued to qualify as lower-income units for tax credit purposes. Thus, the owners should not be forced to lose their property tax exemption in such circumstances.

Revenue and Taxation Code section 214 subdivision (g)(2)(A)(iv)(I) also allows for an increase in the income level of the occupants of a Community Land Trust unit to 140 percent of AMI, if the occupants initially qualified at 80 percent AMI and the unit continues to be rent restricted, notwithstanding the income increase. However, the assessor must cease to treat the unit as lower income and exempt if the income of the occupants increases above 140 percent AMI.

Additional Provisions

Community Land Trusts: Section 214.18 applies the welfare exemption under section 214 to property owned by Community Land Trusts (CLT) that facilitate the development of permanently affordable for-sale and rental housing, provided that the CLT's land is under a renewable 99-year ground lease that restricts all resales to low- and moderate-income purchasers at affordable prices.

Reduced Assessments: Though not an exemption, RTC section 402.1 requires assessors to consider the effect of any enforceable restrictions upon the land being valued, which restrictions include certain recorded contracts on the use of such land exclusively for affordable housing for certain households and for a term of years as specified in the statute. The purpose is to allow a reduced, below market assessment if the criteria are met.

Public Benefit

The main benefit of the welfare exemption is similar to other tax exemptions for charitable purposes: that is, revenues paid in tax to the government divert needed resources away from

good works, and good works that provide for a government purpose – providing for public needs – in turn, reduce costs for government.

The welfare exemption is essential in maintaining low-income housing affordability because it:

- Decreases the total expenses associated with the ownership and operation of an affordable housing development;
- Increases the size of the loans that lenders are willing to offer to project owners; and
- Incentivizes investors and property owners to willingly incur both up-front construction and long-term operating expenses for housing rented to low-income individuals and families at only a fraction of the market rent.

Institutions that finance these projects are willing to invest in affordable housing projects in part because there is an expectation that a properly structured and managed project will “pencil out” financially over time in part because it will qualify for a welfare exemption.

The question is the extent to which the benefit outweighs the cost. BOE and other state and local agencies as well as housing advocacy organizations have provided some data regarding the costs vs. benefits of providing housing for homeless and low-income persons. For example, in calculating costs in 2022-23, some assumed that the average property value of a low-income rental unit is \$40,000 per unit. If there are 5000 units that qualify for the exemption in a county, the estimated property tax revenue loss (at the rate of 1%) would be \$2 million in that county. In terms of public benefit however, some state agencies and the AIDS Healthcare Foundation estimated in 2022 that there were approximately 172,000 homeless statewide and that the public spending required to support them is approximately \$42,000 per homeless person, which amount vastly decreases if they are properly housed. Thereby, they conclude that the benefit outweighs the cost of the exemption.

3. How to Obtain the Welfare Exemption²

a. BOE Approves the Charitable Organization (Property Owner)

- i. BOE requires all non-profit organizations to apply and be approved for an Organizational Clearance Certificate (OCC) using form BOE-277 with the following documentation:

² A Welfare Exemption Process Map of the steps listed in this section is provided for quick reference in Appendix A, attached.

1. Formative documents (e.g., articles of incorporation for corporations, etc.)
2. A limited partnership, in addition to its managing general partner having an OCC, must also apply for a Supplemental Clearance Certificate (form BOE-277-L1).
3. A tax-exempt status letter evidencing exemption from federal income tax (section 501(c)(3) of the Internal Revenue Code) or a copy of the letter evidencing exemption from state franchise or income tax (Revenue and Taxation Code section 23701d)
4. Financial statements
5. Documentation supporting/describing the activities of the organization.

b. Assessor Approves Charitable Use of Property

- i. Once the BOE has certified the organization, the assessor of the county where the property is located requires the organization to file BOE-267 (Claim for Welfare Exemption), 267-L (Welfare Exemption Supplemental Affidavit, Housing – Lower Income Households) and other documentation to determine whether the property is used for exempt purposes on the lien date. Generally, a low-income housing property qualifies for exemption *only after* the assessor finds that the property satisfies all of the following criteria:
 1. Government assistance: The property owner receives low-income housing tax credits or government financing on the property.
 2. Use restriction: The property is subject to a recorded deed restriction, regulatory agreement, or other legal document restricting its use for low-income housing purposes at specified rents (80% of AMI).
 3. Rents charged: The rents charged to lower income household occupants do not exceed the rent prescribed by the deed restrictions or regulatory agreement.
 4. Property tax savings: The owner certifies that the funds otherwise spent to pay taxes are instead used to maintain affordability of, or reduce rents of units occupied by, the lower income households.

5. Occupancy: While there is generally no minimum percentage of units that must be occupied by lower income households,³ the exemption *only* extends to the units serving lower-income households.
 6. Limited partnership: In the case of housing owned by a limited partnership in which *the managing general partner is an eligible nonprofit organization or an eligible limited liability company*, use and rent restrictions must be contained in an enforceable and verifiable agreement with a public agency or in a recorded deed restriction to which the limited partnership certifies.
- ii. The timeline for approval varies from county to county, sometimes ranging from 6 to 18 months. Although the OCC approval from BOE is not required to begin the county approval process, county assessors cannot complete their review of the welfare exemption claim until the organization receives the OCC from BOE. Generally, only after the OCC is granted, and the assessor determines and verifies that the use and occupancy of the property is consistent with welfare exemption requirements, is the welfare exemption granted.

4. Gaps/Problem Areas in Obtaining the Welfare Exemption

Issue 1: Welfare Exemption Cap for Privately Funded Affordable Housing Projects

As indicated, government financing is one of the mandatory criteria for receiving the welfare exemption for affordable housing. However, nonprofit developers of *privately funded* projects that meet the same *use* requirements relative to renting exclusively to low-income persons, are limited to a property tax welfare exemption of \$20 million in *total* assessed value annually, statewide, and must pay tax on any and all properties valued above \$20 million. As a result, nonprofit affordable housing owners and developers with rental projects in high-priced property areas and those with multiple projects throughout the state face more cost burdens and tax liabilities than their publicly funded counterparts, even though they provide housing for the homeless and for low-income households.

Issue 2: Time Gap for Proof of Use, Low-Income Occupancy

The Board heard significant testimony regarding the length of time required for an assessor to approve the exemption for a property used as affordable housing after the BOE issues the OCC and after the Claim for Welfare Exemption (BOE 267) is filed. However, the assessor

³ One notable exception is found under RTC section 214, subdivision (g)(1)(c), which provides low-income housing property owned by an eligible nonprofit corporation may qualify for exemption if *90 percent or more* of the occupants of the property are low-income households within the prescribed rent levels of section 50053 of the Health and Safety Code.

is required by statute to confirm that the property is used and actually occupied by a “qualified” family or individual on the lien date.

The property owner/operator must submit a Welfare Exemption Supplemental Affidavit, Housing – Lower Income Households (BOE 267-L or a version thereof). In general, the affidavit must disclose the units that were/are rented to and occupied by low-income persons, the number of persons in the household, the maximum income allowed, and the rent level, as of the lien date. The assessor may then make a field inspection to confirm the veracity of the information submitted. Because of this requirement, it takes time for the property owner/operator to obtain project approval, start and finally complete construction, lease up the units and confirm their occupancy by qualified low-income persons with adequate data to the assessor. Once the assessor receives this information and is able to confirm its accuracy, approval of the exemption generally does not exceed 3 – 6 months.

One model suggested is found under RTC section 214.18, which applies the welfare exemption to Community Land Trust (CLT) properties though vacant. Once it is determined that the CLT property is or will be developed as a qualifying property, as defined, it is deemed to qualify for the exemption under sections 4 and 5 of Article XIII of the California Constitution, and, on subsequent lien dates, if all of the following required “pre-conditions” establishing low-income housing use are met:

- The property is or will be developed as an owner-occupied single-family dwelling, an owner-occupied unit in a multifamily dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development;
- Improvements are or will be available for use and ownership or for rent by qualified persons; and
- A deed restriction or other instrument, requiring a contract or contracts serving as an enforceable restriction on the sale or resale value of owner-occupied units or on the affordability of rental units, is recorded on or before the lien date following the acquisition of the property by the CLT.

In addition, section 214 subdivision (g)(2)(A)(iv)(I) allows for an increase in the income level of the occupants of a CLT unit to 140 percent of AMI, if the occupants initially qualified at 80 percent of AMI and the unit continues to be rent restricted, notwithstanding the income increase. However, the assessor shall cease to treat the unit as lower income and exempt if the income of the occupants increases above 140 percent of AMI.

Issue 3: Adaptive Reuse for Affordable Housing

Speakers at the October 19, 2023, as well as prior Board hearings in 2022, identified adaptive reuse of older, vacant hotels as one of the most cost effective and efficient ways to create permanent housing—with estimated costs of \$100,000 per unit, as compared to \$500,000 to \$700,000 per unit for new construction—and enables them to “pencil out” at rents of \$400 to \$800 per unit.

Recently enacted legislation AB 529 (Gabriel) encourages local jurisdictions to provide incentives for adaptive reuse housing and creates a state working group to identify challenges to, and opportunities that help support, the creation and promotion of adaptive reuse residential projects; and AB 1490 (Lee) requires local governments to permit and expand the adaptive reuse of all existing residential and commercial buildings in urban areas that create new low- and very-low-income housing more quickly and at a lower cost.

Similarly, SB 4 (Wiener) was signed into law on October 10, 2023, allowing religious institutions and higher education institutions to build affordable, multi-family homes on lands they own by streamlining the permitting process and overriding local zoning restrictions. The bill also guarantees “by-right” approval⁴ of new homes, as long as they are consistent with all objective building standards and comply with existing environmental protections.

Due to the specificity of the use requirements under exemption law however, there will likely continue to be a “time gap” between the date a change in ownership of the property and project approval occurs and the date that the buildings are actually occupied by low-income tenants. The exemption for property owned and operated by religious institutions and higher education institutions does not automatically apply when the property use is changed to low-income housing; rather, these organizations may need to separately claim and qualify for the exemption under section 214(g) to low-income housing.

The challenge is that for a change in use that would necessarily require new construction, property is reassessed at current market value as of the date of completion and use, which establishes a new base year value for the property’s newly constructed improvements and/or the land if it was previously put to another use. Therefore, even if the nonprofit organization files a claim for exemption (BOE 267), the assessor is required to have documentation including the 267-L, establishing that the newly refurbished hotel is no longer *used* as a hotel, but is actually in *use and occupied by* low-income housing tenants, and that the rents paid are commensurate.⁵ Thus, in cases where a change in use requires new construction, the exemption will not be granted until the units are occupied by low-income tenants; until such time, the property will be assessed at the market rate and the property owner will later have to file a claim for cancellation or refund for property taxes paid during the construction phase of otherwise qualifying property.

There is currently no streamlined method for property owners and developers to document the new use so that assessors can be assured that properties acquired and remodeled for

⁴ By-right approval (also known as an as-of-right approval) is granted when a development proposal strictly conforms to zoning and building codes and, thus, qualifies for construction without requiring discretionary approval.

⁵ As explained below, while affordable housing projects under construction may qualify for the welfare exemption, property owners must pay any applicable property taxes on such properties until the exemption is granted; i.e., until the assessor verifies that the property meets the relevant criteria for the exemption, the property is taxable. Once the exemption is granted, property owners may file a claim for refund for taxes paid during the construction phase of qualifying properties.

adaptive reuse as low-income housing projects under AB 1490 will be eligible for the welfare exemption.

Issue 4: Accessory Dwelling Units

On January 1, 2023, new laws went into effect encouraging Accessory Dwelling Units (ADUs): SB 897 (Wieckowski), AB 2221 (Quirk-Silva), and AB 916 (Salas). This legislative package allows (in some instances) 2-story ADUs, provides more flexibility in where ADUs can be located on a property, and makes obtaining an ADU permit a more transparent and streamlined process.⁶

The California budget for fiscal year 2023-2024, signed by Governor Newsom in late June 2023, also allocated \$50 million to incentivize building ADUs. It is a revival of a previous program that distributed \$100 million in funds through 2022 and aimed to increase ADU construction to address California's housing shortage. According to the California Housing Financing Agency (CHFA), the previous program gave homeowners grants of up to \$40,000 to develop at least one additional housing unit on their property. According to a bulletin from the CHFA (<https://www.calhfa.ca.gov/homeownership/bulletins/2022/2022-12.pdf>), the program was expected to help 2,500 homeowners add an ADU to their primary residence.

While the relaxation of ADU building standards and the grant program have sought to address the housing shortage and incentivize the construction of ADUs, there appears to be no current state policy that identifies ADUs as a potential source of *affordable or low-income* housing. That is, owners of ADUs wishing to rent their ADU to low-income or very low-income tenants may do so at their own expense, but without any property tax incentive or benefit. ADUs offer benefits that address common housing development barriers, such as affordability and environmental quality, while also being an affordable type of home to construct in California because they do not require paying for land, major new infrastructure, structured parking, or elevators.

Currently, the welfare exemption does not apply to ADUs unless the ADU is sold or conveyed separately from the primary residence to a qualified buyer (if certain conditions are met), and the property was built or developed by a qualified nonprofit corporation. (See State Board of Equalization Letter to Assessors No. 2021/056, Assembly Bill 345 Accessory Dwelling Units: Separate Conveyance (Dec. 6, 2021); see also Revenue and Taxation Code section 214.15.)

⁶ Previously, local governments could limit the height of ADUs to 16 feet; now, ADUs taller than 16 feet are allowed in certain circumstances, including the following: 1) detached ADUs can be up to 18 feet high if the property is located within a half-mile of a major transit stop or a high-quality transit corridor, or is located on a property with a multistory multifamily dwelling; and 2) attached ADUs can be up to 25 feet high or as high as the main house, whichever is lower.

Issue 5: Limitations on the Exemption for Affordable Housing Projects During Construction

Similar to Issue 2 above, non-profit affordable rental housing developers have expressed concern that, although the welfare exemption may apply to property used for affordable housing during the construction phase of such projects, the exemption is typically granted retroactively to the date of construction. This means that property owners typically must pay property tax on projects under construction and file a claim for refund for taxes paid on properties that qualify for the welfare exemption, dating back to the beginning of construction. This is consistent with Section 5 of California Constitution Article XIII, which extends the welfare exemption to buildings under construction, land required for their convenient use, and equipment in them, if the intended use would qualify the property for exemption.

Under RTC sections 271(a)(1)-(3) and 4985, the property taxes (including any penalties and interest) may be retroactively cancelled back to the start of construction once the assessor is able to grant the exemption, provided that the assessor verified that the property meets all of the relevant criteria (government assistance, use restriction, rents charged, property tax savings, occupancy, etc.) However, even though the property taxes may ultimately be canceled, property owners must consider the upfront cost of the taxes in financing the construction of their affordable housing projects – usually for several years according to the testimony received.

Issue 6. Current Incentives are Administered on a Case-by-Case Basis.

Numerous stakeholders, including some government entities, repeatedly expressed concerns about the complexity of the current exemption process and the uncertainty or extent of its application to their respective affordable housing projects. According to the BOE whitepaper on *Affordable Housing and Property Tax Relief* (July 27, 2021), a key issue is the large number of differences among the types of affordable housing programs and projects that exist. Per the white paper, the California Department of Housing & Community Development listed a total of 34 state sponsored programs promoting affordable housing in a variety of ways. Because of the uniqueness of each program and the specificity of the property tax exemptions in terms of property ownership and property use, the BOE and assessors must determine the applicability of the exemption on a “case-by-case” basis, which leaves a variety of “gaps” depending upon the structure and character of the project.

For example, as mentioned, units leased to persons in public housing projects owned by government entities, including a joint powers agency, are taxable as possessory interests, unless qualified RTC section 107.10 (stating that leases of public housing to low-income tenant does not meeting the definition of a taxable possessory interest. This provision does not apply however, to units that are not rented to low-income households. The low-income definition in this case, as with most exemptions for low income housing, functions as a mandatory criteria.

Both the BOE and Assessors have, and will continue to update processing methods, implement electronic filing, and otherwise respond to the requests for “streamlining” and simplifying. However, there is no “one-size fits all,” under the current laws and rules, particularly where the properties and projects are so different, and the legislation and/or ballot initiatives passed to authorize such projects, rarely, if ever, include specific property tax relief provisions that would clarify the property tax relief that should be made available to that type of project/property use.

5. Potential Policy Ideas/Action Items for Addressing the Gaps

Potential Policy Idea 1: Welfare Exemption Cap for Privately Funded Affordable Housing Projects

At the October 19, 2023, Board Work Group hearing, Susie Shannon, Policy Director of Housing is a Human Right of the AIDS Healthcare Foundation and Senator Ben Allen called to increase or remove the welfare exemption cap of \$20 million to privately funded projects owned by nonprofit corporations. Currently, SB 588 (Allen) seeks to remove the \$20 million exemption cap if at least 90 percent of the property’s units are made continuously available to or are occupied by lower income households, at rents prescribed by section 50053 of the Health and Safety Code.

In addition to removing the \$20 million exemption cap, SB 588 requires privately funded affordable housing projects to meet the other criteria for the welfare exemption, including rents charged, use restrictions, property tax savings, etc. The bill would require the claimant seeking an exemption pursuant to the bill’s provisions to provide to the county assessor any additional documents and materials requested by the county assessor necessary to evaluate the claimant’s eligibility for the exemption. The Board voted to support SB 588 at its March 2023 meeting.

Potential Policy Idea 2: Time Gap for Proof of Use, Low-Income Occupancy

Input was received that advocated amending Revenue and Taxation Code section 214 to explicitly allow an affordable housing project under construction to be granted a full or partial welfare exemption (with the full exemption provided upon completion of construction), as is provided for community land trusts under RTC section 214.18. Specifically, those affordable housing projects that are not owned by community land trusts should be able to claim the exemption, provided that owners certify with assessors that the property is or will be developed as an affordable rental housing development, and improvements are or will be available for use and rent by qualified low-income persons, subject to a recorded deed restriction or other legal document executed under section 214, subdivision (g)(2)(A).

According to the testimony, the property taxes that are incurred during the construction phase (after project approval) until occupancy of the units by qualified persons (and their income levels) can be verified, are a significant cost-burden especially during the construction and

lease-up phases. Although they sometimes have the option to claim a refund or cancellation of some of the taxes under RTC section 271(a)(1)-(3), it involves additional filing, waiting, and work both for them and for the assessor and other county officers to proceed through this process.

A practical, cost-efficient solution via legislation that would authorize application of the exemption at an earlier point would simplify the process, further reduce the costs, and incentivize the development of low-income housing. Some speakers recommended support for legislation similar to that initially proposed in AB 84 (Ward)⁷ that would have established a presumption that property is eligible for exemption and requires assessors to conditionally grant the exemption within 30 days of application. BOE's analysis of that bill however, stated that 30 days is not feasible, and if the exemption is deemed granted but the assessor later finds that many units are ineligible for exemption, the assessor would be required to make escape assessments per Revenue and Taxation Code sections 75.11 and 532 within the four-year statute of limitations.

New legislation, AB 2353 (Ward) was proposed to provide that a taxpayer is not liable for interest or penalties imposed by a county tax collector and would prohibit the county tax collector from taking or continuing any collection action on taxes levied upon a property for which the taxpayer has submitted to the assessor an application for the welfare exemption for low income housing. The bill would set forth the content of the exemption application and would require the assessor to acknowledge to the taxpayer and the county tax collector the receipt of the exemption application within 60 days of the taxpayer's submittal.

Potential Policy Idea 3: Adaptive Reuse for Affordable Housing

At the October 19, 2023 hearing, speakers—including Susie Shannon, Policy Director of Housing is a Human Right of the AIDS Healthcare Foundation; Noah Marty, Senior Legislative Aide for Assemblymember Jesse Gabriel; and Amy Bodek, Director of the County of Los Angeles Department of Regional Planning—indicated the need for additional board guidance as to how non-exempt properties acquired for adaptive reuse affordable housing projects pursuant to recent legislation may receive existing exemptions and avoid unintended tax burdens. Some suggested that legislation may be needed to specify that properties acquired for adaptive reuse affordable housing projects, and whose improvements will be used exclusively for affordable housing purposes, are excluded from reassessment if they are deed-restricted for occupancy by low-income households.

Speakers also commented that even properties owned by religious institutions and higher education institutions that are currently receiving the exemption for those purposes will not retain that exemption once they are acquired for use as affordable housing. Therefore, they will be subject to reassessment and taxed accordingly until they separately claim and qualify for the exemption under Revenue and Taxation Code section 214, subdivision (g). As stated above, this involves a “time gap” that may be significant since the new exemption (for low-

⁷ The Board supported AB 84 in its original form.

income housing) cannot be granted until the property is actually occupied by low-income tenants. If the goal is to incentivize adaptive reuse, some suggested that property tax legislation is needed to provide a full or partial exemption at an earlier point in the development phase.

Potential Policy Idea 4: Accessory Dwelling Units

At the October 19, 2023, hearing, Christopher Koontz, Community Development Director of the City of Long Beach, Katherine Peoples, Founder and Executive Director of HPP CARES, and Amy Bodek, Director of the County of Los Angeles Department of Regional Planning, all called for clarification of current application of exemptions to ADUs, as well the enhancement of tax incentives for production of ADUs. Examples included creating or allowing either a “partial” exemption for taxpayers who wish to rent their ADU at affordable rates for low-income or very low-income households, or provide other meaningful property tax incentives, such as a reduction in the property tax assessed on the construction of the ADU.

Recently introduced legislation, SB 1164 (Newman) would exclude from classification as “new construction,” the construction of an ADU, until 15 years have passed since construction on the ADU was completed or there is a subsequent change in ownership of the ADU. The bill would require the property owner to, prior to or within 30 days of completion of the project, notify the assessor that the property owner intends to claim the exclusion for an ADU and submit an affidavit stating that the owner shall make a good faith effort to ensure the unit will be for single family or multi-family use for the duration the owner receives the exclusion. The bill would require the BOE to prescribe the manner and form for claiming the exclusion and would require all additional documents necessary to support the exclusion to be filed with the assessor no later than 6 months after the completion of the project.

Potential Policy Idea 5: Expansion of the Welfare Exemption for Affordable Housing Projects During Construction

As stated in the BOE analysis of AB 84 (Ward) in 2023, having an exemption before construction is essentially an exemption of vacant land and can create difficulties in establishing base year value. This could possibly cause a delay in assessing property that is ultimately deemed ineligible for exemption. Due to the four-year statute of limitations in issuing supplemental and escape assessments, the county may lose out on tax dollars. New legislation introduced in 2024, AB 2353 (Ward), appears to be a means of strengthening the provisions currently in RTC section 271 and 4985 that allow for retroactive cancellation of property taxes back to the start of construction after the exemption is granted.

Potential Policy Idea 6: Policy Considerations for Addressing How Current Incentives are Administered on a Case-by-Case Basis

Nearly all speakers at the October 19, 2023, hearing called for streamlining and simplifying the current exemption process, as well as removing any uncertainty and/or clarifying the

extent of its application to their respective affordable housing projects. A few proposed a “blanket” exemption or partial exemptions for any and all low-income housing that met certain criteria. Others suggested a “start-up exemption” to incentivize construction the first 10 years of operation for all low-income housing but allow longer terms (15-20 years) for all housing for the homeless. Most practical and immediate was a potential policy idea/action item for the Board to engage with the Legislature and fully explore this issue, and work together to develop policies and solutions in collaboration with stakeholders. At the hearing, Senator Ben Allen emphasized the Board’s importance in helping address the current affordable housing crisis through its tax policy role and encouraged the Board to continue working with the Legislature, and that continued dialogue between the Legislature and the Board is important for increasing affordable housing in California through tax incentives.

6. Appendix A: Exemption Process Map

WELFARE EXEMPTION PROCESS MAP

