

Memorandum

To: Honorable Ted Gaines, Chairman
Honorable Sally J. Lieber, Vice Chair
Honorable Antonio Vazquez, Third District
Honorable Mike Schaefer, Fourth District
Honorable Malia M. Cohen, State Controller

Date: June 6, 2025

From: Richard Moon, Chief Counsel
Legal Department

Subject: ***Board Meeting, June 18, 2025***
Chief Counsel Matters – Rulemaking
Authorization to Adopt Proposed Amendments to Property Tax Rule 140 Under CCR, Title 1, Section 100

We request your adoption of the proposed amendments to Property Tax Rule¹ 140 under California Code of Regulations, title 1, section 100, *Publication of “Changes Without Regulatory Effect”* (Section 100). The proposed amendments to Rule 140 make the rule consistent with a changed California statute.

I. Background

Property Tax Rule 140, *Welfare Exemption Requirements for Low-Income Housing Properties*, sets forth definitions which govern the construction of Revenue and Taxation Code (RTC) section 214, subdivision (g) regarding the property tax welfare exemption for low-income housing properties. Specifically, subdivision (a)(2) of Rule 140 lists the different forms of “government financing” allowed under RTC section 214. Rule 140 also sets forth the requirements for claimants to qualify for the welfare exemption for low-income housing properties.

Assembly Bill No. 84, which was signed by the Governor and went into effect on October 11, 2023, amended RTC section 214 to expand the partial exemption on rental housing and related facilities for organizations which have a welfare exemption to properties “acquired, rehabilitated, developed, or operated, or any combination of these factors, with financing from qualified 501(c)(3) bonds.” Currently Rule 140, subdivision (a)(2) which lists the different forms of government financing allowed under RTC 214 does not include “qualified 501(c)(3) bonds”.

The proposed amendments to Rule 140 include adding “qualified 501(c)(3) bonds” to the forms of government financing listed under subdivision (a)(2) of the rule and renumbers the remaining items listed to account for the addition of qualified 501(c)(3) bonds to the list.

Staff has determined that the changes to Rule 140 are appropriate for processing under California Code of Regulations, title 1, section 100 because the changes make “a regulatory provision consistent with a changed California statute” where “the regulatory provision is inconsistent with and superseded by the changed statute” and the Board has “no discretion to adopt a change that differs in substance from the one chosen.” (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).) Furthermore, the changes are merely reflective of

¹ All references to Property Tax “Rule” or “Rules” are to sections of title 18 of the California Code of Regulations.

existing law and therefore, they do “not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.” (Cal. Code Regs., tit. 1, § 100, subd. (a).) Finally, the amendments include renumbering elements of a regulatory provision. (*Id.* at subd. (a)(1).)

II. Staff's Recommendation

Based on the information stated above, staff requests adoption of the proposed changes to Rule 140 under Section 100, without the normal notice and public hearing process. These changes are appropriate for processing under Section 100 because the changes are consistent with current law and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

The proposed amendments to the Rule are attached hereto, in strikeout and underline format. If you need more information or have any questions please contact Richard Moon, Chief Counsel, at 949-224-4830.

Recommended by:

Approved:

/s/ Richard Moon

Richard Moon
Chief Counsel

/s/ Yvette M. Stowers

Yvette M. Stowers
Executive Director

Approved:

BOARD APPROVED on: _____

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

Catherine Taylor
Chief
Board Proceedings Division

Attachment: Proposed text for Property Tax Rule 140 and Statement of Explanation

cc: Mr. Matt Cox, Deputy to Board Member
Mr. Douglas Winslow, Deputy to Board Member
Mr. Juan Carlos Flores, Assistant to Board Member
Mr. Cody Petterson, Deputy to Board Member
Mr. Hasib Emran, Deputy Controller
Ms. Yvette M. Stowers, Executive Director
Ms. Lisa M. Renati, Chief Deputy Director
Ms. Catherine Taylor, Chief of Board Proceedings

Text of Proposed Amendments to
California Code of Regulations
Title 18. Public Revenues

Division 1. State Board of Equalization-Property Tax
Chapter 2. Assessment
Article 3. Exemptions and Immunities

Rule 140. Welfare Exemption Requirements for Low-Income Housing Properties.

Authority: Section 15606, Government Code.

Reference: Section 214, Revenue and Taxation Code.

(a) DEFINITIONS. The definitions set forth in this regulation shall govern the construction of Revenue and Taxation Code section 214, subdivision (g):

(1) "Low-income housing tax credits" means that the property owner is eligible for and receives state low-income housing tax credits pursuant to Revenue and Taxation Code sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5 or federal low-income housing tax credits pursuant to section 42 of the Internal Revenue Code.

(2) "Government financing" means financing or financial assistance from local, state or federal government used for the acquisition, rehabilitation, construction, development, or operation of a low-income housing property in the form of: (1) tax-exempt mortgage revenue bonds; ~~(2) qualified 501(c)(3) bonds;~~ ~~(3)(2) general obligation bonds;~~ ~~(4)(3) local, state or federal loans;~~ ~~(5)(4) local, state or federal grants;~~ ~~(6)(5) any loan insured, held, or guaranteed by the federal government;~~ or ~~(7)(6) project-based federal funding under section 8 of the Housing Act of 1937.~~ The term "government financing" does not include properties that solely receive federal rental assistance through tenant rent-subsidy vouchers under section 8 of the Housing Act of 1937.

(3) "Other legal document" means a document that is adopted as a resolution or statement of policy by an organization's board of directors, or executed by an organization's chief executive officer, provided that the board of directors has delegated this authority in writing to the chief executive officer, that restricts the property's use to low-income housing, such that a minimum of 90% of the units of the property are made continuously available to or occupied by lower income households at rent levels that do not exceed those prescribed by section 50053 of the Health and Safety Code.

(4) "Lower income households" means "lower income households" as defined by section 50079.5 of the Health and Safety Code.

(5) "Recorded deed restriction" means a deed recorded as an encumbrance against title to the property in the official records of the county in which the property is located, which specifies that all or a portion of the property's usage is restricted to rental to lower income households and identifies the number of units restricted to use as low-income housing.

(6) "Regulatory agreement" means an enforceable and verifiable agreement with a government agency that has provided low-income housing tax credits or government financing for the acquisition, rehabilitation, construction, development or operation of a low-income housing property that restricts all or a portion of the property's usage for rental to lower income households. The regulatory agreement shall identify the number of units restricted for use as low-income housing, specify the maximum rent allowed for those units, and be recorded in the county in which the property is located. Until such time as the Regulatory Agreement is finalized and recorded, the Preliminary Reservation Letter from the California Tax Credit Allocation Committee or California Debt Limit Allocation Committee Bond Cap Allocation Letter is acceptable.

(b) QUALIFIED CLAIMANTS. Claimants may qualify for the welfare exemption for low-income housing properties provided that the requirements set forth in either (1) or (2) below are met:

(1) All claimants listed under Revenue and Taxation Code section 214, subdivision (g)(1) as a qualifying organization, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or an eligible limited liability company, may qualify for the exemption for a particular property provided that:

(A) the claimant receives low-income housing tax credits or government financing for the particular property; and

(B) the property is subject to a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located.

(2) All low-income housing properties, subject to restrictions imposed by any other legal document, defined in subdivision (a)(3) above, owned by claimants listed under Revenue and Taxation Code section 214, subdivision (g)(1) as a qualifying organization, other than limited partnerships in which the managing general partner is an eligible nonprofit corporation or an eligible limited liability company, qualify for the welfare exemption but the amount of the exemption shall not exceed \$20,000,000 in assessed value for a single claimant with respect to a single or multiple properties as provided in Revenue and Taxation Code section 214, subdivision (g)(1)(C).

(c) LOW-INCOME HOUSING TAX CREDITS AND GOVERNMENT FINANCING. For purposes of subdivision (b)(1)(A) above, a property has low-income housing tax credits or government financing, as defined in subdivisions (a)(1) and (a)(2), respectively, for the period of time that a regulatory agreement or recorded deed restriction restricts the use of all or any portion of the property for rental to lower income households even if the government financing has been refinanced or has been paid in full, or the allocation of the low-income housing tax credits has terminated or expired, provided that the government agency that is a party to the regulatory agreement continues to monitor and enforce compliance with the terms of the regulatory agreement.

(d) PERCENTAGE OF UNITS AND RENT.

(1) For claims qualifying under subdivision (b)(1) above, an exemption shall be granted equal to that percentage of the value of the property, which is made continuously available for rental to or occupied by lower income households at rents that do not exceed those prescribed by section 50053 of the Health and Safety Code, or, to the extent that the terms of the regulatory agreement or recorded deed restriction conflict with section 50053, rents do not exceed those prescribed by such terms.

(2) The percentage of the value of the property qualifying for the exemption is based on the actual use of the property for rental to lower income households for the qualifying rent, and is not limited to the percentage designated for use by lower income households in the regulatory agreement, recorded deed restriction, or other legal document. Units reserved for the resident property manager are included in the percentage of units that qualify for the exemption.

History: Adopted March 28, 2006, effective July 23, 2006.
Amended April 30, 2019, effective January 29, 2020.

**CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE
1, SECTION 100**

Statement of Explanation

California Code of Regulations, Title 18. Public Revenues

Division 1, State Board of Equalization – Property Tax

Chapter 2, *Assessment*, Article 3. Exemptions and Immunities

Section 140, *Welfare Exemption Requirements for Low-Income Housing Properties*

California Code of Regulations, title 18, section (Rule) 140, *Welfare Exemption Requirements for Low-Income Housing Properties*, sets forth definitions which govern the construction of Revenue and Taxation Code (RTC) section 214, subdivision (g) regarding the property tax welfare exemption for low-income housing properties. Specifically, subdivision (a)(2) of Rule 140 lists the different forms of “government financing” allowed under RTC section 214. Rule 140 also sets forth the requirements for claimants to qualify for the welfare exemption for low-income housing properties.

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