

Welfare Exemption for Low-Income Housing – Supplemental Clearance Certificate Requirement

To facilitate a discussion at the State Board of Equalization Property Tax Committee Meeting in March 2016, the following information has been compiled. The purpose of this paper is to document the current Supplemental Clearance Certificate requirement as it pertains to the Welfare Exemption for low-income housing and to identify the duplicative review functions between the Board of Equalization and county assessors. The information contained herein will facilitate discussion of possible future streamlining efforts that will shorten the timeframe for approving exemption claims.

Introduction

More than 1.5 million of the state's lowest income households lack access to affordable housing.¹ California's high housing costs have a broad range of effects on all Californians, but they have a particularly negative impact on the development of affordable housing for low-income households. The Welfare Exemption is an important element of a multi-faceted effort to mitigate the effects of California's affordable housing crisis. Delays in receiving the Welfare Exemption can be detrimental to a low-income housing property since funds needed to provide necessary services for occupants and pay back government loans must instead be used to pay property taxes.

In the past there have been legislative changes that shortened the time frame for approval of the exemption; specifically, the streamlined administration of the Welfare Exemption resulting from Senate Bill 1062, effective January 1, 2004. These changes were implemented by the Board of Equalization (BOE) through guidance and rulemaking. However, as explained below, such rulemaking also included the requirement that certain types of organizations owning low-income housing property, namely limited partnerships with a qualified managing general partner (MGP), obtain a Supplemental Clearance Certificate (SCC) from BOE for each property it owned. This had the effect of extending the exemption approval timeframe and may now warrant revisiting.

¹ "Update on California's Affordable Housing Crisis: The Critical Role of Housing Access and Affordability in Reducing Poverty," California Housing Partnership Corporation, April 2015
www.chpc.net/dnld/2015StatewideHousingNeedReportFINAL.pdf.

Welfare Exemption

In general, the Welfare Exemption is a property tax exemption for property (1) used exclusively for religious, hospital, scientific or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption is co-administered by the BOE and the state's 58 county assessors.

Revenue and Taxation Code² section 214 sets forth the many requirements and provisions of the Welfare Exemption. Section 214(g) provides exemption for certain property used exclusively for low-income rental housing by households meeting certain income limits. In most cases, these properties are restricted by a regulatory agreement or deed restriction designating that a minimum number of units must be rented to qualifying households at certain rent levels. The qualifying claimant (property owner) must receive low-income housing tax credits or government financing for the particular property.³ Low-income housing properties that have some units not used for low-income households are eligible for partial exemption.

The following types of organizations qualify under the low-income housing provision of the Welfare Exemption: nonprofit funds, foundations, limited liability companies, corporations, and limited partnerships in which the MGP is an eligible nonprofit corporation or limited liability company, meeting all of the requirements of section 214.

Prior to Senate Bill 1062, both BOE and assessors processed the same exemption claim, duplicating efforts which resulted in delays in making Welfare Exemption qualification determinations.⁴ Senate Bill 1062, however, eliminated BOE and assessors performing the same review functions. Instead, it required BOE to determine whether an *organization* meets the Welfare Exemption requirements and the county assessor to determine whether the *property* qualifies for exemption. If the BOE determines that an organization meets the qualification for exemption, it issues an organizational clearance certificate (OCC).

Organizational Clearance Certificate

Section 254.6 contains the BOE's duties in administering the Welfare Exemption. It requires that an organization that intends to claim the Welfare Exemption file a claim for an OCC. It further requires the BOE to review OCC claims to determine whether the organization meets the requirements of section 214 and issue an OCC to a claimant that meets those requirements. As part of the review process, the BOE reviews an organization's formative documents (such as

² All statutory references are to the Revenue and Taxation Code, unless otherwise provided.

³ Section 214(g)(1)(C) provides another option for exemption of low-income housing owned and operated by a qualifying nonprofit organization; the property may be restricted with an "other legal document".

⁴ Letter To Assessors 2003/070 provides information on the revised administration.

www.boe.ca.gov/proptaxes/pdf/lta03070.pdf.

the Articles of Incorporation), tax exemption letters from the Internal Revenue Service or California Franchise Tax Board, and financial statements to ensure the organization is organized and operated for qualifying Welfare Exemption purposes.

Section 254.5 provides for the duties of the county assessor in the administration of the Welfare Exemption. It provides that the assessor may not approve a property tax exemption claim until the claimant has been issued a valid OCC. Therefore, a Welfare Exemption claimant must provide a copy of its OCC to the county assessor in which its property is located to demonstrate that the organization qualifies for the Welfare Exemption. The assessor can then consider whether the organization's property qualifies for exemption. However, section 254.5(c)(1) provides that the assessor may deny a claim for the Welfare Exemption on a property, notwithstanding that the claimant has been issued an OCC.

Therefore, all organizations filing a claim for Welfare Exemption, including those owning low-income housing property, must have an OCC. In addition, as explained below, limited partnerships with a qualified MGP, must also hold a supplemental clearance certificate (SCC) for each property owned.

Supplemental Clearance Certificate

Senate Bill 1062 did not specifically address low-income housing owned by a limited partnership with a qualified MGP. However, the BOE's Property Tax Department (PTD) believed it necessary to add a requirement for limited partnerships with qualified MGPs to provide information and documents and make certifications required by section 214. The SCC was created for this purpose;⁵ an SCC is issued to a claimant to indicate qualification of a specific low-income housing property owned by a limited partnership with a qualifying MPG. The following Rules were promulgated to clearly set forth the requirements for the Welfare Exemption for low-income housing.

- Rule 140 defines terms used in section 214(g) and outlines the requirements for a claimant to qualify for the Welfare Exemption on low-income housing properties.
- Rule 140.1 discusses the requirements for a managing general partner of a limited partnership to qualify for the Welfare Exemption on low-income housing properties.
- Rule 140.2 discusses the requirements for obtaining an SCC on low-income housing properties.

⁵ Letter To Assessors 2003/095 provides information on the administration of the Welfare Exemption regarding low-income housing. www.boe.ca.gov/proptaxes/pdf/lta03095.pdf.

Duplicative Review Functions Resulting in Delays

Since the BOE has been reviewing SCC claims for over ten years in accordance with Rules 140.1 and 140.2, the PTD sees a duplication of efforts between the county assessors and the BOE which leads to a delay in the exemption approval process. Unlike an OCC, an SCC is property specific. Therefore, the information and certifications required by Rule 140.2 are essentially the same as the information and certifications the claimant must provide to the assessor when applying for the Welfare Exemption.

- The table below identifies the information and certifications required by Rule 140.2, the section of the SCC claim form where such information and certifications are required to be reported and the section of the Welfare Exemption claim form where the identical information and certifications are required to be reported.

Information and Certifications Required by Rule 140.2	Section of Supplemental Clearance Certificate Claim Form (BOE-277-L1) Where Reported to BOE	Section of Welfare Exemption Claim Supplemental Affidavit Form (BOE-267-L1) Where Reported to Assessor
Information – 140.2(d)(1)-(7) <ul style="list-style-type: none"> - LP name - MGP name, id, & admission date - OCC number & date - Property address - Fiscal year 	Section 1 Section 2 Section 2 Section 1 Heading	Section 1 Section 2 Section 2 Section 1 Heading
Certifications – 140.2(c) <ul style="list-style-type: none"> - Proper Financing - Enforceable Regulatory Agreement or Recorded Deed Restriction - Use of Property Tax Savings - Rule 140.1 Requirements met - Information is true, correct, & complete 	Section 4 Section 4 Section 4 Sections 5, 6 & 7 Section 9	Section 3 Section 3 Section 3 Sections 5 & 6 Section 7

- Rule 140.2(d)(8) through (d)(10) require submission of the following documents in support of qualification for an SCC: property grant deed, regulatory agreement or recorded deed restriction evidencing government financing or low-income housing tax credits, and a copy of Secretary of State Form LP-1, *Certificate of Limited Partnership*, and if applicable Secretary of State Form LP-2, *Amendment to Certificate of Limited Partnership*. Section 8 of the SCC claim form requires those documents to be submitted to the BOE. Of those documents, the only document that is either not already submitted

to the assessor as part of the exemption claim or which the assessor does not have access through ownership records in its county is a copy of Secretary of State Form LP-1 and, if applicable, Form LP-2. Currently form BOE-267-L1 requests the claimant to identify if Form LP-2 has been filed within the last year; the form can be revised to require submission of Form LP-1 and, if applicable, Form LP-2 with the claim filing.⁶ BOE can provide direction to assessors on what to examine on Form LP-1 and LP-2 (namely, the date of admission of the MGP) so the assessor can ensure the MGP was admitted to the partnership before the lien date upon which exemption is sought on the property.

Although the information and certifications provided to the BOE on the SCC claim form and the information and certifications provided to the assessor on the Welfare Exemption claim form are essentially identical, a claimant is required to provide copies of its OCC and SCC certificates to the assessor. Since the assessor is precluded by law from granting exemption on property unless the claimant submits the BOE-issued OCC and the BOE-issued SCC with the exemption claim, the assessor may not review the claim until the certificates are received. Depending on the number of OCC and SCC claim filings received by the BOE at a given time, and the order and completeness of those claims, there can be a time period of 4 to 9 months from the date an SCC claim is received to the date the SCC certificate is issued. Therefore, if the SCC requirement is deleted, a Welfare Exemption determination could potentially be made 4 to 9 months faster.

Consideration of Future Streamlining Efforts Pertaining to SCCs

In light of the fact that duplicative review functions exist between the BOE and county assessors in the review process of low-income housing property of a limited partnership with a qualified MGP, consideration should be made to streamline the review by no longer requiring the BOE issue SCCs. This would require Rule 140.1 and 140.2 to be amended to state that information, certification, and documents be submitted to the county assessor where the property is located, rather than submitted to the BOE. Consideration should be given as to whether to begin an interested parties process to discuss such revisions to Rules 140.1 and 140.2.

Removal of the regulatory requirement to hold an SCC will mitigate delays for qualifying claimants to receive the Welfare Exemption on its low-income housing properties. Other benefits include:

- Receiving the Welfare Exemption more timely can increase a low-income housing provider's ability to provide housing to low-income households, provide needed services

⁶ Form LP-1 and if applicable, Form LP-2 would be submitted with the first exemption claim filing for the property, and submission of any subsequent Form LP-2 filings with the annual claim.

to existing occupants of the low-income housing property, and pay debt service or loan payments from government financing sooner.

- Not requiring an SCC would enable assessors to grant the Welfare Exemption on the low-income housing property of a limited partnership as long as the requirements of section 214(g) were met and the managing general partner holds an OCC. Since exemption approval time would decrease, assessors may be able to enroll the exemption from property tax before the assessment roll is issued rather than performing a roll correction to apply the exemption.