

Amend Revenue and Taxation Code Sections 254.5 and 254.6 to clarify the procedures for supplemental clearance certificates for managing general partners. (Housekeeping)

Source: Property and Special Taxes Department and Legal Department

Existing Law:

Senate Bill 1062 (Chapter 471, Stats. 2003), effective January 1, 2004, amended statutory provisions relating to the welfare and veterans' organization exemptions that streamlined the administration of the exemptions by eliminating duplicative review functions performed by the assessors and the State Board of Equalization (Board). The Board's role in the new administration centers on determining whether the organization is eligible to receive the welfare or veterans' organization exemption. In general, the organization files with the Board a claim form with organizational documents (articles of incorporation, tax exemption letters, etc.). The Board then issues an *Organizational Clearance Certificate* to qualified organizations.

Subdivision (g) of Revenue and Taxation Code Section 214 provides that the welfare exemption is available to property owned and operated by a qualifying organization and used exclusively for rental housing occupied by lower income households. Qualifying organizations include limited partnerships in which the managing general partner is an eligible nonprofit corporation meeting all of the requirements of Section 214. The exemption under subdivision (g) of Section 214 is unique because it exempts lower-income housing property owned and operated by a limited partnership that is not a nonprofit organization, provided that the managing general partner of the limited partnership is an eligible nonprofit organization with sufficient management authority and duties.

Therefore, consistent with the Board's role under the new administration in determining whether an organization is eligible for the welfare or veterans' organization exemption, Board staff initially determines whether the managing general partner is a qualifying nonprofit organization eligible for an organizational clearance certificate. Board staff then determines if the organizational structure for the limited partnership qualifies for exemption. That is, Board staff determines if the nonprofit organization has sufficient management authority and duties to qualify as the managing general partner of the limited partnership, as required by subdivision (g) of Section 214.

The Board issues a *Supplemental Clearance Certificate for Managing General Partner* to nonprofit organizations, with a valid *Organizational Clearance Certificate*, upon a further determination that the organization and the property meet all the organizational requirements for exemption under section 214, subdivision (g).

This Proposal:

To correct the omission of language in SB 1062 that addresses the unique needs of limited partnerships qualifying for the welfare exemption under Section 214(g), the following is suggested:

- The addition of language to Section 254.6 that clarifies that board staff is required to review claims for supplemental clearance certificates for managing general partner and to issue these certificates to organizations meeting the requirements of subdivision (g) of Section 214.
- The addition of language to Section 254.5 consistent with the existing statutory requirement for the organization clearance certificate, stating that the assessor may not approve a property tax exemption claim for a lower-income housing property owned and operated by a limited partnership until the claimant has been issued a valid supplemental clearance certificate for managing general partner.

Section 254.5 of the Revenue and Taxation Code is amendment to read:

254.5. (a)(1) Claims for the welfare exemption and the veterans' organization exemption shall be filed on or before February 15 of each year with the assessor. Financial statements shall be submitted only if requested in writing by the assessor.

(2) The assessor may not approve a property tax exemption claim until the claimant has been issued a valid organizational clearance certificate pursuant to Section 254.6.
~~Financial statements shall be submitted only if requested in writing by the assessor.~~

(3) The assessor may not approve a property tax exemption claim for a lower income housing property owned and operated by a limited partnership in which the managing general partner is an eligible nonprofit corporation until the managing general partner has been issued a valid supplemental clearance certificate for this property pursuant to Section 254.6.

(b)(1) The assessor shall review all claims for the welfare exemption to ascertain whether the property on which the exemption is claimed meets the requirements of Section 214. In this connection, the assessor shall consider, among other matters, whether:

(A) Any capital investment of the owner or operator for expansion of a physical plant is justified by the contemplated return thereon, and required to serve the interests of the community.

(B) The property on which the exemption is claimed is used for the actual operation of an exempt activity and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(2) The assessor may institute an audit or verification of the operations of the owner or operator of the applicant's property to ascertain whether both the owner and operator meet the requirements of Section 214.

(c)(1) The assessor may deny a claim for the welfare exemption on a property, notwithstanding that the claimant has been granted an organizational clearance certificate by the board.

(2) The assessor may deny a claim for the welfare exemption on a lower income housing property owned and operated by a qualifying limited partnership in which the managing general partner is an eligible nonprofit corporation, notwithstanding that the managing general partner has been granted a supplemental clearance certificate for this property by the board.

(2 3) If the assessor finds that the claimant's property is ineligible for the welfare exemption, the assessor shall notify the claimant in writing of all of the following:

(A) That the property is ineligible for the welfare exemption.

(B) That the claimant may seek a refund of property taxes paid by filing a refund claim with the county.

(C) That if the claimant's refund claim with the county is denied, the claimant may file a refund action in superior court.

(d) Notwithstanding subdivision (a), an applicant, granted a welfare exemption and owning any property exempted pursuant to Section 214.15 or Section 231, shall not be required to reapply for the welfare exemption in any subsequent year in which there has been no transfer of, or other change in title to, the exempted property and the property is used exclusively by a governmental entity or by a nonprofit corporation described in Section 214.15 for its interest and benefit. The applicant shall notify the assessor on or before February 15 if, on or before the preceding lien date, the applicant became ineligible for the welfare exemption or if, on or before that lien date, the property was no longer owned by the applicant or otherwise failed to meet all requirements for the welfare exemption.

Prior to the lien date, the assessor shall annually mail a notice to every applicant relieved of the requirement of filing an annual application by this subdivision.

The notice shall be in a form and contain that information that the board may prescribe, and shall set forth the circumstances under which the property may no longer be eligible for exemption, and advise the applicant of the duty to inform the assessor if the property is no longer eligible for exemption.

The notice shall include a card that is to be returned to the assessor by any applicant desiring to maintain eligibility for the welfare exemption under Section 214.15 or Section 231. The card shall be in the following form:

To all persons who have received a welfare exemption under Section 214.15 or Section 231 of the Revenue and Taxation Code for the ____ fiscal year.

Question: Will the property to which the exemption applies in the ____ fiscal year continue to be used exclusively by government or by an organization as described in Section 214.15 for its interest and benefit in the ____ fiscal year?

Signature: _____ YES ____ NO ____
Title: _____

Failure to return this card does not of itself constitute a waiver of exemption as called for by the California Constitution, but may result in onsite inspection to verify exempt activity.

(e) Upon any indication that a welfare exemption on the property has been incorrectly granted, the assessor shall redetermine eligibility for the exemption. If the assessor determines that the property, or any portion thereof, is no longer eligible for the exemption, he or she shall immediately cancel the exemption on so much of the property as is no longer eligible for the exemption.

(f) If a welfare exemption on the property has been incorrectly allowed, an escape assessment as provided by Article 4 (commencing with Section 531) of Chapter 3 in the amount of the exemption, with interest as provided in Section 506, shall be made, and a penalty shall be assessed for any failure to notify the assessor as required by this section in an amount equaling 10 percent of the escape assessment, but may not exceed two hundred fifty dollars (\$250).

(g) Pursuant to Section 15640 of the Government Code, the board shall review the assessor's administration of the welfare exemption as part of the board's survey of the county assessment roll to ensure the proper administration of the exemption.

Section 254.6 of the Revenue and Taxation Code is amended to read:

254.6. (a)(1) An organization that intends to claim the welfare exemption shall file with the State Board of Equalization a claim for an organizational clearance certificate.

(2) If the claimant organization is a managing general partner of a limited partnership that owns and operates lower income housing property, the organization shall also file with the board a claim for a supplemental clearance certificate for exemption of this property.

(b)(1) The board staff shall review each claim for an organizational clearance certificate to ascertain whether the organization meets the requirements of Section 214 and shall issue a certificate to a claimant that meets these requirements.

(2) The board staff shall review each claim for a supplemental clearance certificate to ascertain whether the managing general partner meets the requirements of subdivision (g) of Section 214 and shall issue a certificate to a claimant that meets these requirements.

~~In this connection, the (c)~~ The board staff, in its review of an organization's qualification for an organizational clearance certificate, shall consider, among other matters, whether:

(1) The services and expenses of the owner or operator (including salaries) are excessive, based upon like services and salaries in comparable public or private institutions.

(2) The operations of the owner or operator, either directly or indirectly, materially enhance the private gain of any individual or individuals.

~~(e-d)~~ Any claim of any organization that files for an organizational clearance certificate for the first time shall be accompanied by the claimant's corporate identification number, mailing address, and all of the following documents:

(1) A certified copy of the financial statements of the organization.

(2) A certified copy of the articles of incorporation and any amendments thereto, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, constitution, or regulations and any amendments thereto.

(3) A copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or, in the alternative, the Internal Revenue Service, that states that the organization qualifies as an exempt organization under the appropriate provisions of the Bank and Corporation Tax Law or the Internal Revenue Code.

~~(de)~~ (1) If the board staff determines that a claimant is not eligible for an organizational clearance certificate or a supplemental clearance certificate, the board shall notify the claimant of the ineligibility.

(2) The claimant may file an appeal of the board staff's finding of ineligibility with the board within 60 days of the date of mailing of the notice of ineligibility. The appeal of the board staff's finding shall be in writing and shall state the specific grounds upon which the appeal is founded.

(3) The board shall conduct a hearing on the appeal in accordance with any rules of notice, procedure, and briefing as the board shall prescribe. The parties to the hearing or proceeding shall be the board staff and the claimant appealing the finding of ineligibility. The board staff and the claimant may agree in writing to submit the matter to the board for a decision without a hearing. The board shall provide written findings and conclusions or a written decision to support its decision.

~~(ef)~~ (1) Once granted, an organizational clearance certificate or a supplemental clearance certificate shall remain valid until the board staff determines that the organization no longer meets the requirements of Section 214.

(2) If the board staff determines that the organization no longer meets the requirements of Section 214, the board staff shall revoke the certificate and notify the claimant and each county assessor of the revocation.

(3) The organization may file an appeal of the board staff's revocation with the board within 60 days of the date of mailing of the notice revocation. The appeal of the revocation shall be in writing and shall state the specific grounds upon which the appeal is founded.

(4) The board shall conduct a hearing on the appeal in accordance with any rules of notice, procedure, and briefing as the board shall prescribe. The parties to the hearing or proceeding shall be the board staff and the claimant appealing the finding of ineligibility. The board staff and the claimant may agree in writing to submit the matter to the board for decision without hearing. The board shall provide written findings and conclusions or a written decision to support its decision.

(fg) Pursuant to Section 15618 of the Government Code, the board may institute an audit or verification of an organization to ascertain whether the organization meets the requirements of Section 214.