



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
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State Controller
CYNTHIA BRIDGES
Executive Director

**STATE BOARD OF EQUALIZATION
TOWN HALL MEETING
450 N Street, Board Room, Sacramento
Wednesday, November 6, 2013
1:00 p.m. – 3:00 p.m.
NOTICE AND AGENDA**

Board of Equalization Members Jerome E. Horton and Betty T. Yee will hold a Town Hall Meeting regarding Proposed Annotation 880.0155.005. The Town Hall Meeting will provide a forum for open discussion on the proposed annotation and alternatives.

The town hall panel will consist of:

- Treasurer's Office/California Tax Credit Allocation Committee, William Pavão, Executive Director
- California Debt Limit Allocation Committee, Sean Spear, Executive Director
- Assembly Committee on Housing and Community Development, Assemblymember Ed Chau, Chairman (invited)
- Senate Transportation and Housing Committee, Mark Stivers, Consultant
- Lender representative, Richard Gerwitz, Managing Director
- Low Income Housing Developers, Patrick R. Sabelhaus, Esq.
- Board of Equalization, Richard Moon, Tax Counsel IV

The panel discussion will address:

- Whether a non-profit, low-income housing developer subject to a payment in lieu of taxes (PILOT) agreement with a local government can properly make the certification required by Revenue and Taxation Code section 214(g)(2)(B).
- Whether Proposed Annotation 880.0155.005 should be annotated, and Annotation 880.0155 deleted. Is there a benefit with the proposed annotation? If so, to whom, what is it, and when does it occur?
- Instead, whether Annotation 880.0155 should be followed. If so, should it be followed prospectively or retroactively?
- Other possible alternatives, including legislation.

Contact Person

Ms. Camille Dixon at Camille.Dixon@boe.ca.gov or at 1-916-445-4154.

Questions may either be submitted to the panel via email during the meeting by using Townhall@boe.ca.gov, or you may submit question(s) to Camille Dixon, at Camille.Dixon@boe.ca.gov by noon on Tuesday, November 5, 2013.

Three ways to participate:

- **In-person** - Attendance in-person will be on a first-come, first-served basis and limited to the maximum seating capacity of the Board Room. We cannot accommodate reservations and/or pre-scheduling of attendance.
- **Teleconference** – Interested parties may participate via teleconference by dialing 1-888-557-8511 at the scheduled meeting date/time. The participant pass code is 6627768. Email all questions to Townhall@boe.ca.gov.
- **Viewing recorded video on BOE website** - The meeting will be recorded and posted on BOE's website after close of business on Thursday, November 14, 2013.

The meeting location is accessible to people with disabilities. Please contact Ms. Dixon if you require special assistance.

Background

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.

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 Department 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 is available at 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 www.boe.ca.gov/proptaxes/pdf/CLD2013-1.pdf) and parties have written both in support of and in opposition to it.