

Memorandum

To : Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chairman
Ms. Betty T. Yee, Acting Member
Honorable Bill Leonard
Honorable Steve Westly

Date: June 10, 2005

From : Kristine Cazadd 
Chief Counsel, Legal Department

Subject: Chief Counsel Matters - June 30/July 1, 2005 Board Meeting

- Proposed Rule 140 - Welfare Exemption Requirements for Low-Income Housing Properties
- Proposed Rule 140.1 - Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties
- Proposed Rule 140.2 - Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties
- Proposed Rule 143 - Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption

Staff recommends that the Board approve for publication the referenced proposed Property Tax Rules 140, 140.1, 140.2 related to the welfare exemption for low-income housing properties under Revenue and Taxation Code¹ section 214, subdivision (g), and proposed Property Tax Rule 143 related to the requirements for qualifying irrevocable dedication and dissolution clauses for nonprofit organizations claiming the welfare exemption under section 214.

WELFARE EXEMPTION FOR LOW-INCOME HOUSING PROPERTIES

Section 214, subdivision (g) provides the requirements for the welfare exemption for low-income housing properties. To summarize, that statute provides that properties used exclusively for low-income rental housing, which are owned and operated by certain qualifying organizations qualify for the welfare exemption if certain requirements are satisfied. The statute specifically provides that for-profit limited partnerships in which the managing general partner ("MGP") is an eligible nonprofit corporation or eligible limited liability company is a qualifying organization. Proposed Rules 140,

¹ Unless otherwise specified, all statutory references are to the Revenue and Taxation Code.

140.1 and 140.2, interpret and define the requirements to qualify for the welfare exemption under section 214, subdivision (g).

PROPOSED RULE 140 - Welfare Exemption Requirements For Low-Income Housing Properties (Exhibit 1)

The proposed rule defines the terms “regulatory agreement,” “deed restriction,” “federal low-income tax credits,” “government financing,” “lower income households,” and “other legal document” as used in section 214, subdivision (g) with respect to the requirements for the welfare exemption for low-income housing properties. Under section 214, subdivision (g)(1)(A) and (B), property used exclusively for rental housing and related facilities owned and operated by religious, hospital, scientific, or charitable fund, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or an eligible limited liability company meeting all of the requirements for the welfare exemption under section 214, or by qualifying veterans’ organizations described in section 215.1, are entitled to the welfare exemption if: (1) the owner of the property receives low-income housing tax credits or government financing for the particular property; and (2) 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. Additionally, section 214, subdivision (g)(1)(C) provides an alternative basis to qualify for the welfare exemption for low-income housing properties owned by qualifying nonprofit organizations, other than properties owned by limited partnerships with a nonprofit managing general partner, if 90 percent or more of the occupants of the property are lower income households whose rent do not exceed the rent prescribed by section 50053 of the Health and Safety Code; however, the total exemption amount allowed under this subdivision to a taxpayer with respect to a single or multiple properties for any fiscal year may not exceed \$20,000 in tax.

PROPOSED RULE 140.1 - Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties (Exhibit 1)

The proposed rule defines the term “managing general partner” of a limited partnership and the requirements that the MGP must meet in order for the low-income housing property, owned and operated by the limited partnership, to qualify for the welfare exemption.

PROPOSED RULE 140.2 - Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties (Exhibit 1)

The proposed rule sets forth the requirement that the limited partnership, in which the MGP is a qualifying nonprofit organization, must file an application for a supplemental clearance certificate (“SCC”) with the Board for each low-income housing property for which it intends to claim the welfare exemption, certifying that it meets all of requirements under section 214, subdivision (g), to qualify for the welfare exemption.

IRREVOCABLE DEDICATION AND DISSOLUTION CLAUSES

Section 214, subdivision (a)(6) provides that, in order for property owned and operated by nonprofit organizations to qualify for the welfare exemption, property owned by a nonprofit organization must be irrevocably dedicated to a qualifying purpose, and upon liquidation, dissolution, or abandonment of the nonprofit organization, the property will not inure to the benefit of any private person except another qualifying nonprofit organization. Section 214.01 provides that the nonprofit organization’s formation documents, such as articles of incorporation, must contain an irrevocable dedication clause.

PROPOSED RULE 143 - Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption (Exhibit 1)

The proposed rule clarifies the requirements for qualifying irrevocable dedication and dissolution clauses under section 214, subdivision (a)(6), which is a prerequisite for obtaining the organizational clearance certificate under section 254.6.

INTERESTED PARTIES PROCESS

In September 2004, staff commenced the interested parties process for the proposed welfare exemption rules in response to requests by assessors and other interested parties for clear guidance with respect to the requirements for the welfare exemption for low-income housing properties, in general, and the requirements for a qualifying nonprofit MGP of a limited partnership, in particular. Since the commencement of the interested parties process, staff has held two interested parties meetings; the first was held on March 16, 2005, and the second was held on May 11, 2005.

On May 11, 2005, at the second interested parties meeting, staff and interested parties resolved all of the issues with respect to proposed Rules 140, 140.2, and 143. The only unresolved issues relate to proposed Rule 140.1, regarding the definition of a MGP of a limited partnership.

On May 16, 2005, after the second interested parties meeting, staff posted on the Board's website the staff's proposed drafts of the welfare exemption rules attached hereto as Exhibit 1. Staff also identified three unresolved issues, discussed below, with respect to proposed Rule 140.1 for comment: (1) provision of charitable services by MGP; (2) definition of MGP's substantial management duties; and (3) compliance period (i.e., retroactive or prospective-only application).

In response, staff has received 27 letters providing comments on proposed Rule 140.1, 21 of which are in support of adopting staff's May 16, 2005 draft of the proposed rule (see Exhibit 9 for a list of organizations who have submitted letters in support of staff's draft of proposed Rule 140.1). The remaining 6 letters, attached hereto as Exhibits 3-8, suggest alternative language to staff's draft of proposed Rule 140.1, discussed below:

ISSUE 1 – CHARITABLE SERVICES:

Whether the MGP is required to provide charitable services or benefits or information regarding charitable services or benefits to low-income housing tenants.

1. Staff's Position (see Exhibit 1):

The provision of charitable services to low-income housing tenants is not an express statutory requirement to qualify for the exemption, and therefore, the MGP should not be required to provide such services. As presently administered, staff does not require the provision of charitable services in granting the welfare exemption for low-income housing properties due to the lack of statutory or regulatory authorization.

2. California Assessors' Association ("CAA") and Los Angeles County Assessor's Positions (see Exhibits 3 and 4):

The CAA and the Los Angeles County Assessor recommend more tightly written requirements for low-income housing properties owned and operated by limited partnerships

with a nonprofit MGP. They recommend that the definition of MGP should require the actual provision of charitable services by the MGP to benefit the low-income housing tenants.

Proposed Rule 140.1, subdivision (a)(6)(iv) should provide that the MGP:

“ensures that charitable services or benefits, such as vocational training, educational programs, childcare and after school programs, cultural activities, and family counseling are provided.”

ISSUE 2 – SUBSTANTIAL MANAGEMENT DUTIES

Proposed Rule 140.1, subdivision (a)(10):

Whether "substantial management duties" means that the MGP performs 2 or more of any of the 11 duties listed in subdivision (a)(10).

1. Staff's Position (see Exhibit 1):

The MGP must perform two or more of any of the 11 substantial management duties listed in subdivision (a)(10). The MGP may elect which duties it agrees to perform. As presently administered, in order to qualify as a MGP, the MGP must perform 2 or more of 19 listed management duties, see Exhibit 2. The proposed rule eliminates and consolidates some of the 19 duties.

2. Los Angeles County Assessor's Position (see Exhibit 4):

The Los Angeles County Assessor believes that the MGP must ensure that the property is managed in a manner consistent with the regulations of the governmental agencies that have provided loans, grants or tax credits. The assessor recommends deleting the list of 11 duties under subdivision (a)(10), and requiring the MGP to perform both of the following 2 duties:

(1) “actively participates in the day-to-day operations and management of the low-income housing property, or if such duties are delegated to a property management agent, participates in overseeing the work of the property management agent; and

(2) monitors compliance with government regulations and the filing or supervision of the filing of required documents with government agencies.”

3. CAA's Position (see Exhibit 3):

The CAA recommends a more tightly written requirement for low-income housing properties owned and operated by limited partnership with a nonprofit MGP. It recommends deleting the list of 11 duties under subdivision (a)(10), and requiring the MGP to perform both of the following 2 duties:

(1) “actively participates in the day-to-day operations and management of the low-income housing property, or if such duties are delegated to a property management agent, participates in overseeing the work of the property management agent; and

(2) monitors compliance with government regulations and the filing or supervision of the filing of required documents with government agencies.”

Alternatively, CAA recommends that if the Board elects to keep the list of 11 duties in subdivision (a)(10) from which the MGP may elect which duties it agrees to perform, CAA recommends that the MGP be required to perform more than 2 of the 11 listed duties.

4. Community Investments' Position (see Exhibit 5):

Community Investment recommends adding the provision of charitable services or information regarding charitable services to low-income housing tenants to the list of substantial management duties. The MGP will then have 12 duties from which it can choose to perform.

It recommends the addition of proposed Rule 140.1, subdivision (a)(10)(xii):

“ensures that charitable services or benefits, such as vocational training, educational programs, childcare and after school programs, cultural activities, family counseling, transportation, meals, and linkages to health and/or social services are provided or information regarding charitable services or benefits are made available to the low-income housing tenants.”

Community Investments also recommends a stricter definition of substantial management duties by requiring the MGP to perform 4 of the 12 listed duties, provided that the regulation only applies to partnerships formed after the effective date of the regulation (see Issue 3 below).

It recommends that subdivision (a)(10) provide that:

“‘Substantial management duties’ means that the managing general partner actually performs four or more of the following partnership management duties on behalf of the limited partnership.”

5. California Housing Partnership Corporation's Position (see Exhibit 6):

California Housing Partnership Corporation recommends a stricter definition of substantial management duties by requiring the MGP to perform 8 of the 11 listed duties. It believes that requiring only 2 of the 11 duties is inadequate because the MGP could merely execute and deliver partnership documents and cause reports for partners and lenders to be prepared.

It recommends that subdivision (a)(10) provide that:

“‘Substantial management duties’ means that the managing general partner actually performs eight or more of the following partnership management duties on behalf of the limited partnership.”

6. Community Economics, Inc.s' Position (see Exhibit 7):

Community Economics, Inc. recommends a stricter definition of substantial management duties by requiring the MGP to perform all 11 of the listed duties. It believes that requiring all 11 duties will address the widespread belief that there is abuse in the current system.

It recommends that subdivision (a)(1) provide that:

“Substantial management duties’ means that the managing general partner actually performs all of the following partnership management duties on behalf of the limited partnership:”

7. Santa Clara County Assessor (see Exhibit 8):

The Santa Clara County Assessor believes that by allowing a MGP to perform only 2 of 11 substantial management duties, the regulation will institutionalize the increasing number of “sham” transactions in which the MGP is merely a “shell” for the limited partnership.

Accordingly, the assessor recommends that the Board not adopt proposed Rule 140.1 and the welfare exemption for low-income housing should remain as it is currently administered. In the alternative, the assessor recommends that the Board support a constitutional amendment to allow nonprofit organizations that partner with for-profit developers to receive the property tax exemption, regardless of their level of management responsibility.

ISSUE 3 – COMPLIANCE PERIOD

Proposed Rule 140.1, subdivision (f):

Whether Proposed Rule 140.1 should apply prospectively to new partnerships formed after the effective date of the regulation.

1. Staff's Position (see Exhibit 1):

Proposed Rule 140.1 should apply prospectively to claims for the welfare exemption or applications for a SCC filed on or after the effective date of the regulation. For SCCs issued prior to the effective date of the regulation, claimants must be in compliance with the regulation by the January 1, 2007 lien date unless the Board has issued a written notice of noncompliance, in which case claimants will have 90 days from the date of the notice of noncompliance to comply with the regulation. Upon written request for an extension of time prior to the expiration of the 90-day period, the Board will grant a reasonable amount of time to comply with the regulation.

2. Community Investments' Position (see Exhibit 5):

Community Investment recommends that proposed Rule 140.1 should only apply to limited partnerships formed after the effective date of the regulation and should not apply to previously formed limited partnerships even on a prospective-only basis. It explains that existing projects followed the requirements for the welfare exemption as presently administered to obtain loans and equity investments from third-party lenders and investor limited partners. Some of these projects may have slim margins, and little or no cash flow above debt service, and therefore, the requirements to qualify for the welfare exemption should not be changed for such projects.

OTHER COMMENTS

In addition to the three issues discussed above, staff received comments from two organizations regarding proposed Rule 140.1, subdivision (a)(5) and comments from one organization regarding subdivision (a)(6) and (a)(7).

1. **Definition of "Majority in Interest of the General Partners"**
Proposed Rule 140.1, subdivision (a)(5)

Staff's Position (see Exhibit 1):

"Majority in interest of the general partners" means more than 50 percent of the interests of the general partners, and does not include the interests of any of the limited partners, in the current profits derived from business operations of the limited partnership.

Staff's language is adapted from the California Revised Limited Partnership Act, Corporations Code section 15611, subdivision (t), which provides that "Majority in interest of all partners" means more than 50 percent of the interest of all partners" and subdivision (o), which provides that "Interest of all partners" means the aggregate interest of all partners in the current profits derived from business operations of the partnership."

Community Economics, Inc.'s Position (see Exhibit 7):

Community Economics, Inc. believes that the MGP should have a controlling interest in the limited partnership.

It recommends that subdivision (a)(5) provide that:

"Majority in the managing general partner" means more than 50 percent of the ownership interest, profits, losses, gain, and cash distribution of the general partners, in the ownership interest, profits, losses, gain and cash distributions derived from the business operations of the limited partnership."

California Housing Partnership Corporation's Position (see Exhibit 6):

Community Housing Partnership Corporation believes that the MGP should be a meaningful participant in the limited partnership.

It recommends that subdivision (a)(5) provide that:

"Majority in interest of the general partners" means more than 50% of the interests of the general partners in the current ownership interest, profits, losses, gain, and cash distributions derived from the business operation of the limited partnership, and does not include the interest of any limited partners."

2. **Definition of Managing General Partner – Management Fee**
Proposed Rule 140.1, subdivision (a)(6)(ii)

Staff's Position (see Exhibit 1):

In order to qualify as a MGP, among other requirements, the MGP must be authorized to receive a partnership management fee, or similar form of compensation for performing its management duties, but the amount of the compensation should be determined by the contracting parties to allow flexibility in structuring the projects according to the various business models which exist.

California Housing Partnership Corporation's Position (see Exhibit 6):

California Housing Partnership Corporation believes that the current language allows the limited partnership to pay the MGP as little as \$1 per year calling into question whether the MGP is in fact managing the partnership at all.

It recommends that subdivision (a)(6)(ii) provide that the MGP:

“is authorized to receive a partnership management fee commensurate with its role as managing general partner and consistent with industry norms in California.”

3. **Definition of Material Participation**
Proposed Rule 140.1, subdivision (a)(7)(i)

Staff's Position (see Exhibit 1):

The MGP has a right to vote in all major decisions as defined in subdivision (a)(8), thereby allowing the MGP to participate in all major decisions made by the limited partnership.

California Housing Partnership Corporation's Position (see Exhibit 7):

California Housing Partnership Corporation believes that in order to be the MGP, the nonprofit general partner should have a majority vote in all major decisions.

It recommends that subdivision (a)(7)(i) provide that the MGP:

“has a majority vote in all ‘major decisions,’ defined in subdivision (a)(8) below;”

4. **Definition of Managing General Partner**
Proposed Rule 140.1, subdivision (a)(6)

California Housing Partnership Corporation's Position (see Exhibit 6):

California Housing Partnership Corporation recommends adding three new subdivisions to proposed Rule 140.1, discussed below.

Add New Subdivision (a)(6)(iii)

MGP “receives the Right of First Refusal as defined in IRC Section 42.”

California Housing Partnership Corporation believes that adding this subdivision will ensure that the benefit of the tax exemption will be preserved beyond the 15-year tax credit compliance period.

Add New Subdivision (a)(6)(iv):

MGP, "to the extent there is any cash flow available after payment of all project expenses, debt service, reserves, deferred developer fee and partnership management fee, receives an incentive management fee consistent with industry norms in California and in no event less than 25% of the remaining cash flow."

California Housing Partnership Corporation believes that incentive management fees are critical to provide motivation to the MGP to ensure that the low-income housing project operates as efficiently as possible.

Add New Subdivision (a)(6)(v):

MGP "employs personnel qualified and in a number reasonably sufficient to perform the required substantial management duties for all of the properties under its supervision."

California Housing Partnership Corporation believes that this will ensure that the MGP is actually performing its management duties.

REVENUE IMPACT

No revenue loss resulting from the adoption of the proposed rules is anticipated. The definition of MGP of a limited partnership in proposed Rule 140.1 is more specific than the current definition of MGP as presently administered. Additionally, the requirements of a qualifying irrevocable dedication clause and dissolution clause under proposed Rule 143 reflect statutory requirements as presently administered. Therefore, the proposed rules do not expand the welfare exemption.

COST IMPACT

There is no cost impact to the Board as a result of the adoption of the proposed rules.

CONCLUSION

Staff recommends that the Board approve staff's draft of the proposed welfare exemption rules and authorize that a public hearing be scheduled, in order to proceed with the rule-making process. Proposed Rule 143 will clarify the requirements for irrevocable dedication and dissolution clauses under sections 214, subdivision (a)(6) and 214.01. Additionally, proposed Rules 140, 140.1 and 140.2 will provide clear guidance to for-profit and nonprofit developers, lenders, and tax credit investors, as well as the county assessors and the Board's staff as to the requirements to qualify for the welfare exemption for low-income housing properties under section 214, subdivision (g), thereby promoting clarity and consistency in the administration of the welfare exemption.

The staff's draft of the proposed rules for the welfare exemption for low-income housing, while providing more specific set of requirements than currently administered, provide flexibility to the low-income housing community to allow nonprofit organizations working with developers, lenders, and investors so that the low-income housing industry can structure their transactions according to the various business models consistent with the legislative intent to promote the production of low-income housing in California.

If you have any questions on this matter, please contact Ms. Selvi Stanislaus, Acting Assistant Chief Counsel, at (916) 324-2579, or Supervising Tax Counsel Sophia Chung at (916) 445-8485.

KEC:jlh

Attachments

Rules/140, 140.1, 140.2, 143/Welfare.doc

cc: Mr. Ramon J. Hirsig, MIC:73
Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Selvi Stanislaus, MIC:82
Ms. Mickie Stuckey, MIC:62
Mr. Stanley Siu, MIC:61
Mr. Todd Gilman, MIC:70
Ms. Anita Gore, MIC:86
Ms. Sophia Chung, MIC:82

bc: Ms. Marcy Jo Mandel (Controller's Office)
Mr. Steve Kamp MIC:71
Mr. Tom Hudson MIC:78
Mr. Neil Shah MIC:77
Ms. Audrey Noda MIC:72

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 140 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**

4
5 **DRAFT OF PROPOSED PROPERTY TAX RULE 140**
6 **WELFARE EXEMPTION REQUIREMENTS**
7 **FOR LOW-INCOME HOUSING PROPERTIES**
8

9 **(a) DEFINITIONS.** The definitions set forth in this regulation shall govern the construction of
10 Revenue and Taxation Code section 214, subdivision (g):
11

12 (1) "Low-income housing tax credits" means that the property owner is eligible for and
13 receives state low-income housing tax credits pursuant to Revenue and Taxation
14 Code sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5 or federal low-
15 income housing tax credits pursuant to section 42 of the Internal Revenue Code.
16

17 (2) "Government financing" means financing or financial assistance from local, state or
18 federal government used for the acquisition, rehabilitation, construction,
19 development, or operation of a low-income housing property in the form of: (1) tax-
20 exempt mortgage revenue bonds; (2) general obligation bonds; (3) local, state or
21 federal loans; (4) local, state or federal grants; (5) any loan insured, held, or
22 guaranteed by the federal government; or (6) project-based federal funding under
23 section 8 of the Housing Act of 1937. The term "government financing" does not
24 include properties that solely receive federal rental assistance through tenant rent-
25 subsidy vouchers under section 8 of the Housing Act of 1937.
26

27 (3) "Other legal document" means a document that is adopted as a resolution or statement
28 of policy by an organization's board of directors, or executed by an organization's
29 chief executive officer, provided that the board of directors has delegated this
30 authority in writing to the chief executive officer, that restricts the property's use to
31 low-income housing, such that a minimum of 90% of the units of the property are
32 made continuously available to or occupied by lower income households at rent levels
33 defined in subdivision (c) below.
34

35 (4) "Lower income households" means "lower income households" as defined by section
36 50079.5 of the Health and Safety Code.
37

38 (5) "Recorded deed restriction" means a deed recorded as an encumbrance against title to
39 the property in the official records of the county in which the property is located,
40 which specifies that all or a portion of the property's usage is restricted to rental to
41 lower income households and identifies the number of units restricted to use as low-
42 income housing.
43

44 (6) "Regulatory agreement" means an enforceable and verifiable agreement with a
45 government agency that has provided low-income housing tax credits or government
46 financing for the acquisition, rehabilitation, construction, development or operation of
47 a low-income housing property that restricts all or a portion of the property's usage
48 for rental to lower income households. The regulatory agreement shall identify the

1 number of units restricted for use as low-income housing, specify the maximum rent
2 allowed for those units, and be recorded in the county in which the property is
3 located. Until such time as the Regulatory Agreement is finalized and recorded, the
4 Preliminary Reservation Letter from the California Tax Credit Allocation Committee
5 or California Debt Limit Allocation Committee Bond Cap Allocation Letter is
6 acceptable.

7
8 **(b) QUALIFIED CLAIMANTS.** Claimants may qualify for the welfare exemption for low-
9 income housing properties provided that the requirements set forth in either (1) or (2) below
10 are met:

11
12 (1) All claimants listed under Revenue and Taxation Code section 214, subdivision (g)(1) as
13 a qualifying organization, including limited partnerships in which the managing general
14 partner is an eligible nonprofit corporation or an eligible limited liability company, may
15 qualify for the exemption for a particular property provided that:

16
17 (i) the claimant receives low-income housing tax credits or government
18 financing for the particular property; and

19
20 (ii) the property is subject to a recorded deed restriction or a regulatory agreement
21 which is recorded in the county in which the property is located.

22
23 (2) All low-income housing properties, subject to restrictions imposed by an other legal
24 document, defined in subdivision (a)(3) above, owned by claimants listed under Revenue
25 and Taxation Code section 214, subdivision (g)(1) as a qualifying organization, other
26 than limited partnerships in which the managing general partner is an eligible nonprofit
27 corporation or an eligible limited liability company, qualify for the welfare exemption
28 but the amount of the exemption shall not exceed \$20,000 in tax for a single claimant
29 with respect to a single or multiple properties as provided in Revenue and Taxation Code
30 section 214, subdivision (g)(1)(C).

31
32 **(c) LOW-INCOME HOUSING TAX CREDITS AND GOVERNMENT FINANCING.**

33 For purposes of subdivision (b)(1)(i) above, a property has low-income housing tax credits or
34 government financing, as defined in subdivisions (a)(1) and (a)(2), respectively, for the
35 period of time that a regulatory agreement or recorded deed restriction restricts the use of all
36 or any portion of the property for rental to lower income households even if the government
37 financing has been refinanced or has been paid in full, or the allocation of the low-income
38 housing tax credits has terminated or expired, provided that the government agency that is a
39 party to the regulatory agreement continues to monitor and enforce compliance with the
40 terms of the regulatory agreement.

41
42 **(d) PERCENTAGE OF UNITS AND RENT.**

43
44 (1) For claims qualifying under subdivision (b)(1) above, an exemption shall be granted
45 equal to that percentage of the value of the property, which is made continuously
46 available for rental to or occupied by lower income households at rents that do not
47 exceed those prescribed by section 50053 of the Health and Safety Code, or, to the
48 extent that the terms of the regulatory agreement or recorded deed restriction conflict

1 with section 50053, rents do not exceed those prescribed by such terms.
2

- 3 (2) The percentage of the value of the property qualifying for the exemption is based on the
4 actual use of the property for rental to lower income households for the qualifying rent,
5 and is not limited to the percentage designated for use by lower income households in
6 the regulatory agreement, recorded deed restriction, or other legal document. Units
7 reserved for the resident property manager are included in the percentage of units that
8 qualify for the exemption.
9

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 140.1 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**
4

5 **DRAFT OF PROPOSED PROPERTY TAX RULE 140.1**
6 **REQUIREMENTS FOR MANAGING GENERAL PARTNER**
7 **OF LIMITED PARTNERSHIP FOR WELFARE EXEMPTION**
8 **FOR LOW-INCOME HOUSING PROPERTIES**
9

10
11 (a) Definitions. The definitions set forth in this regulation shall govern the construction of
12 Revenue and Taxation Code section 214, subdivision (g), which provides the requirements
13 for the welfare exemption for low-income housing properties owned by a limited partnership
14 in which the managing general partner is an eligible nonprofit corporation.
15

16 (1) "General partner" means "general partner" as defined by section 15611, subdivision (n)
17 of the Corporations Code.
18

19 (2) "Limited partner" means "limited partner" as defined by section 15611, subdivision (q)
20 of the Corporations Code.
21

22 (3) "Limited partnership" means a "limited partnership" as defined by section 15611,
23 subdivision (r) of the Corporations Code, or a "foreign limited partnership" as defined by
24 section 15611, subdivision (l) of the Corporations Code.
25

26 (4) "Limited partnership agreement" means any valid written agreement of the partners as to
27 the affairs of a limited partnership and the conduct of its business, including all
28 amendments thereto.
29

30 (5) "Majority in interest of the general partners" means more than 50 percent of the interests
31 of the general partners, and does not include the interests of any of the limited partners,
32 in the current profits derived from business operations of the limited partnership.
33

34 (6) "Managing general partner" means a general partner that:
35

36 (i) is a nonprofit corporation, or an eligible limited liability company meeting the
37 requirements of Revenue and Taxation Code section 214, designated in the
38 limited partnership agreement as the "managing general partner" of the limited
39 partnership;
40

41 (ii) is authorized to receive a partnership management fee, or similar form of
42 compensation, payable in the amount and the manner set forth in the limited
43 partnership agreement or other agreement executed by all of the general
44 partners for performing its duties;
45

46 (iii) has "material participation," as defined in subdivision (a)(7) below, in the
47 control, management, and direction of the limited partnership's business; and
48

1 (iv) the officers and directors of the for-profit general partners, for-profit limited
2 partners, or any of its for-profit affiliates, do not, as individuals or
3 collectively, have a controlling vote or majority interest in the nonprofit
4 managing general partner.
5

6 (7) "Material participation" means that the limited partnership agreement or other
7 agreement executed by all of the general partners expressly provides that the
8 managing general partner:
9

10 (i) has a right to vote in all the "major decisions," defined in subdivision (a)(8)
11 below;

12
13 (ii) performs "substantial management duties," defined in subdivision (a)(10)
14 below; and

15
16 (iii) directly, or indirectly under its supervision, manages the limited partnership.
17

18 (8) "Major decisions" means those acts, if any, that require a vote of a majority in interest
19 of the general partners.
20

21 (9) "Partner" means a limited or general partner.
22

23 (10) "Substantial management duties" means that the managing general partner actually
24 performs two or more of the following partnership management duties on behalf of
25 the limited partnership:
26

27 (i) rents, maintains and repairs the low-income housing property, or if such duties
28 are delegated to a property management agent, participates in hiring and
29 overseeing the work of the property management agent;
30

31 (ii) participates in hiring and overseeing the work of all persons necessary to
32 provide services for the management and operation of the limited partnership
33 business;
34

35 (iii) executes and enforces all contracts executed by the limited partnership;
36

37 (iv) executes and delivers all partnership documents on behalf of the limited
38 partnership;
39

40 (v) prepares or causes to be prepared all reports to be provided to the partners or
41 lenders on a monthly, quarterly, or annual basis consistent with the
42 requirements of the limited partnership agreement;
43

44 (vi) coordinates all present and future development, construction, or rehabilitation
45 of low-income housing property that is the subject of the limited partnership
46 agreement;
47

- 1 (vii) monitors compliance with all government regulations and files or supervises
2 the filing of all required documents with government agencies;
- 3
- 4 (viii) acquires, holds, assigns or disposes of property or any interest in property;
- 5
- 6 (ix) borrows money on behalf of the limited partnership, encumbers limited
7 partnership assets, places title in the name of a nominee to obtain financing,
8 prepays in whole or in part, refinances, increases, modifies or extends any
9 obligation;
- 10
- 11 (x) pays organizational expenses incurred in the creation of the partnership and all
12 operational expenses; and
- 13
- 14 (xi) determines the amount and timing of distributions to partners and establish
15 and maintain all required reserves.
- 16

17 (b) The managing general partner must maintain records and documents evidencing the duties
18 performed by the managing general partner. Such records and documents may include, but
19 are not limited to:

- 20
- 21 (1) accounting books and records;
- 22 (2) tax returns;
- 23 (3) budgets and financial reports;
- 24 (4) reports required by lenders;
- 25 (5) documents related to the construction or rehabilitation of real property;
- 26 (6) legal documents such as contracts, deeds, notes, leases, and deeds of trust;
- 27 (7) documents related to complying with government regulations and filings;
- 28 (8) documents related to property inspections;
- 29 (9) documents related to charitable services or benefits provided or the information
30 provided regarding such services or benefits;
- 31 (10) reports prepared for the partners;
- 32 (11) bank account records;
- 33 (12) audited annual financial statement of the limited partnership; and
- 34 (13) property management agreement.
- 35

36 (c) Substitution of Managing General Partner. A limited partnership in which the managing
37 general partner is an eligible nonprofit corporation or an eligible limited liability company
38 that has qualified for the welfare exemption for low-income housing may allow a substitution
39 of its managing general partner by another eligible nonprofit corporation without affecting
40 the organizational qualification for the welfare exemption provided that:

- 41
- 42 (1) the limited partnership agreement authorizes the withdrawal or removal of the managing
43 general partner and the admission of a substitute managing general partner on the same
44 effective date and such admission of the substituting managing general partner into the
45 limited partnership is in compliance with the requirements of section 15641 of the
46 Corporations Code; and
- 47

1 (2) the substitute managing general partner meets all of the requirements of a managing
2 general partner set forth in subdivision (a)(6) above.

3
4 (d) Delegation of Authority Clause. If the limited partnership agreement contains a delegation of
5 authority clause, such clause must provide either that:

6
7 (1) the managing general partner may not delegate any of its substantial management duties
8 defined in (a)(10) above; or

9
10 (2) the managing general partner may delegate its substantial management duties, defined in
11 (a)(10) above, to persons who, under its supervision, may perform such duties for the
12 partnership subject to the supervision by the managing general partner. If the managing
13 general partner elects to delegate one or more of its substantial management duties, the
14 managing general partner must demonstrate that it is actually supervising the
15 performance of the delegated duties.

16
17 (e) Certification Requirements. The limited partnership must file for and receive a supplemental
18 clearance certificate from the Board as provided in Regulation 140.2.

19
20 (f) The provisions of this regulation shall apply prospectively to claims or applications for the
21 welfare exemption under Revenue and Taxation Code section 214 and supplemental
22 clearance certificates under Regulation 140.2, filed on or after the effective date of this
23 regulation. For supplemental clearance certificates issued prior to the effective date of this
24 regulation, claimants shall have until the January 1, 2007 lien date to be in compliance with
25 this regulation unless the Board has issued a written notice of noncompliance. If the Board
26 has issued such notice, claimant shall have 90 days from the date of the notice to comply
27 with this regulation. Upon written request for an extension of time prior to the expiration of
28 the 90-day period to comply, the Board shall grant a reasonable amount of time to comply
29 with this regulation.

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 140.2 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**

4
5 **DRAFT OF PROPOSED PROPERTY TAX RULE 140.2**
6 **REQUIREMENTS FOR SUPPLEMENTAL CLEARANCE CERTIFICATE**
7 **FOR LIMITED PARTNERSHIP FOR WELFARE EXEMPTION**
8 **FOR LOW-INCOME HOUSING PROPERTIES**
9

- 10 (a) A limited partnership in which the managing general partner is an eligible nonprofit
11 corporation or eligible limited liability company, meeting the requirements of Regulation
12 140.1, that owns low-income housing property for which it will claim the welfare
13 exemption shall file with the State Board of Equalization an application for a
14 Supplemental Clearance Certificate for each low-income housing property. The form of
15 the application shall be prescribed by the State Board of Equalization.
- 16
17 (b) A Supplemental Clearance Certificate may be granted only if the managing general
18 partner has already been granted an Organizational Clearance Certificate by the State
19 Board of Equalization, as required under Revenue and Taxation Code section 254.6.
- 20
21 (c) In order to qualify for a Supplemental Clearance Certificate, the general partners of the
22 limited partnership, including the managing general partner, must certify under penalty of
23 perjury under the laws of the State of California, that:
- 24
25 (1) The acquisition, construction, rehabilitation, development, or operation of the
26 property, or any combination of these factors, is financed with low-income housing
27 tax credits or government financing, as defined in Regulation 140;
- 28
29 (2) There is an enforceable and verifiable regulatory agreement or recorded deed
30 restriction, as defined in Regulation 140, that restricts all or a portion of the property's
31 usage for rental to lower income households and the units designated for use by lower
32 income households are continuously available to or occupied by lower income
33 households at rents that do not exceed those prescribed by the terms of a regulatory
34 agreement or recorded deed restriction, as defined in Regulation 140 or to the extent
35 that none are provided in the regulatory agreement or recorded deed restriction, at
36 rents that do not exceed those prescribed by section 50053 of the Health and Safety
37 Code;
- 38
39 (3) Funds that would have been necessary to pay property taxes are used to maintain the
40 affordability of, or reduce rents otherwise necessary for, the units to be occupied by
41 lower income households;
- 42
43 (4) The managing general partner meets the requirements of Regulation 140.1; and
- 44
45 (5) All of the information provided as part of the application for the Supplemental
46 Clearance Certificate, including any accompanying statements or documents, is true,
47 correct, and complete to the best of the knowledge and belief of the person(s) signing
48 the application.

1 (d) The following information and documents shall be provided with the application for a
2 Supplemental Clearance Certificate:

- 3
- 4 (1) Legal name of the limited partnership;
- 5
- 6 (2) Legal name of the managing general partner of the limited partnership, its
7 corporate identification number and mailing address, and the date that it became
8 the managing general partner of the limited partnership;
- 9
- 10 (3) Name, title, telephone number, and e-mail address of person signing the
11 application for the Supplemental Clearance Certificate;
- 12
- 13 (4) The Organizational Clearance Certificate number and the date of issuance to the
14 managing general partner. If an Organizational Clearance Certificate has not been
15 issued to the managing general partner, an application for an Organizational
16 Clearance Certificate must be filed by the managing general partner;
- 17
- 18 (5) Complete address of the property for which the limited partnership is seeking the
19 welfare exemption, including the zip code, and the date the limited partnership
20 acquired the property;
- 21
- 22 (6) Fiscal year for which the application is made;
- 23
- 24 (7) List of any additions or deletions of general partners in the limited partnership, if
25 any, after its formation;
- 26
- 27 (8) Copy of Secretary of State form LP-1, Certificate of Limited Partnership, and, if
28 applicable, Secretary of State form LP-2, Amendment to Certificate of Limited
29 Partnership;
- 30
- 31 (9) Copy of the regulatory agreement with a public agency, or a copy of a recorded
32 deed restriction which verifies or evidences the receipt of low-income housing tax
33 credits or government financing, as defined in Regulation 140; and
- 34
- 35 (10) Copy of the grant deed or if the land is not owned by the limited partnership,
36 documents evidencing the limited partnership's ownership of the improvements.
- 37

38 (e) The limited partnership shall include a copy of the Supplemental Clearance Certificate
39 with its welfare exemption claim filed with the assessor of the county in which the
40 property is located.

41

42 (f) In the event that the general partner designated in the limited partnership agreement no
43 longer meets the definition of managing general partner, as defined in Regulation 140.1,
44 or the managing general partner withdraws from the partnership, the limited partnership
45 shall report such event to the State Board of Equalization and the assessor of the county
46 in which in property is located no later than the next succeeding annual filing deadline for
47 the welfare exemption claim.

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 143 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**

4
5 **DRAFT OF PROPOSED PROPERTY TAX RULE 143**
6 **REQUIREMENTS FOR IRREVOCABLE DEDICATION CLAUSE**
7 **AND DISSOLUTION CLAUSE**
8 **FOR ORGANIZATIONAL CLEARANCE CERTIFICATE**
9 **FOR WELFARE EXEMPTION**

10
11 **(a) DEFINITIONS.** For the purposes of this regulation:

- 12
13 (1) “Dissolution clause” means a statement in the organizational documents of a
14 qualifying organization that upon the liquidation, dissolution, or abandonment of the
15 qualifying organization, the exempt property will not inure to the benefit of any private
16 person except another qualifying organization.
17
18 (2) “Irrevocable dedication clause” means a statement in the organizational documents of a
19 qualifying organization that the property is irrevocably dedicated exclusively to one or
20 more qualifying purposes.
21
22 (3) “Organizational document” means the articles of incorporation of a corporation, or the
23 bylaws, articles of association, constitution or regulations of a community chest, fund,
24 or foundation, or corporation chartered by an act of Congress.
25
26 (4) “Qualifying organization” means a community chest, fund, foundation, nonprofit
27 corporation, or eligible limited liability company, organized and operated exclusively
28 for religious, hospital, scientific, or charitable purposes. Charitable purposes include
29 educational purposes as defined in Revenue and Taxation Code section 214,
30 subdivision (j).
31
32 (5) “Qualifying purpose” means a religious, hospital, scientific or charitable purpose.
33 Charitable purposes include educational purpose as defined in Revenue and Taxation
34 Code section 214, subdivision (j).
35

36 **(b) IN GENERAL.** In order to qualify for the welfare exemption provided in Revenue and
37 Taxation Code section 214, among other requirements specified therein, the property owned by
38 a qualifying organization must be irrevocably dedicated exclusively to a qualifying purpose, and
39 upon the liquidation, dissolution, or abandonment of the qualifying organization, the property
40 will not inure to the benefit of any private person except another qualifying organization. In
41 order to satisfy these requirements, the organizational document of the qualifying organization
42 must contain both an irrevocable dedication clause, which meets the requirements set forth in
43 subdivision (c) below, and a dissolution clause, which meets the requirements set forth in
44 subdivision (d) below.
45

46 **(c) IRREVOCABLE DEDICATION CLAUSE.** Property is deemed to be irrevocably dedicated
47 exclusively to a qualifying purpose provided that a qualifying organization’s organizational

1 document contains a statement that irrevocably dedicates its property exclusively to a
2 qualifying purpose.

- 3
- 4 (1) If the organization's charitable purpose is educational purposes as defined in Revenue and
5 Taxation Code section 214, subdivision (j), the irrevocable dedication clause shall state that
6 the property is irrevocably dedicated to educational purposes as defined in section 214,
7 subdivision (j), or that the property is irrevocably dedicated to charitable and educational
8 purposes meeting the requirements of Revenue and Taxation Code section 214.
- 9
- 10 (2) If the irrevocable dedication clause states that the property is dedicated to purposes other
11 than the qualifying purposes, the property does not qualify for the welfare exemption.
- 12
- 13 (3) If the irrevocable dedication clause states that the property is irrevocably dedicated to a
14 "public" or "public benefit" purpose, the property does not qualify for the welfare
15 exemption.
- 16
- 17 (4) The following examples illustrate irrevocable dedication clauses as defined in subdivision
18 (a)(3) above:

19

20 Example No. 1: The property owned by this organization is irrevocably dedicated to
21 charitable, scientific, hospital, or religious purposes.

22

23 Example No. 2: The property owned by this organization is irrevocably dedicated to
24 charitable and educational purposes meeting the requirements of Revenue and Taxation
25 Code section 214.

26

27 Example No. 3: The property owned by this organization is irrevocably dedicated to
28 educational purposes as defined in Revenue and Taxation Code section 214, subdivision (j).

29

30 Example No. 4: The property located in California owned by this organization is irrevocably
31 dedicated to charitable, scientific, hospital, or religious purposes.

32

33 Example No. 5: The property owned by this organization is irrevocably dedicated to
34 charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

35

36 Example No. 6: The property of this corporation is irrevocably dedicated to charitable
37 purposes and no part of the net income or assets of this corporation shall ever inure to the
38 benefit of any director, officer or member thereof or to the benefit of any private person.

39

40 **(d) DISSOLUTION CLAUSE.** In order to qualify for the welfare exemption, the qualifying
41 organization's organizational document must contain a dissolution clause, which specifically
42 states that its property will be distributed to another qualifying organization entity upon its
43 liquidation, dissolution, or abandonment.

- 44
- 45 (1) If the dissolution clause in the organizational document designates a specific organization to
46 receive the distribution, it must state and the designated organization must be a qualifying
47 organization that is organized and operated for a qualifying purpose.
- 48

1 (2) The dissolution clause of the qualifying organization may provide that, upon the liquidation,
2 dissolution, or abandonment of the qualifying organization, the property will inure to the
3 benefit of a governmental entity.
4

5 (3) The following examples illustrate dissolution clauses as defined in subdivision (a)(1) above:
6

7 Example No. 1: Upon the liquidation, dissolution or abandonment of this organization, its
8 assets, remaining after payment or provision of payment of all debts and liabilities of this
9 organization, shall be distributed to an organization organized and operated for a charitable,
10 scientific, hospital, or religious purpose meeting the requirements of Revenue and Taxation
11 Code section 214.
12

13 Example No. 2: Upon the liquidation, dissolution or abandonment of this organization, the
14 proceeds or assets related to property located in California, remaining after payment or
15 provision of payment of all debts and liabilities of this organization, shall be distributed to
16 an organization organized and operated for a charitable, scientific, hospital, or religious
17 purpose meeting the requirements of Revenue and Taxation Code section 214.
18

19 Example No. 3: Upon the liquidation, dissolution or abandonment of this organization, its
20 assets, remaining after payment or provision of payment of all debts and liabilities of this
21 organization, shall be distributed to an organization organized and operated exclusively for
22 charitable and educational purposes meeting the requirements of Revenue and Taxation
23 Code section 214.
24

25 Example No. 4: Example No. 4: Upon the liquidation, dissolution or abandonment of this
26 organization, its assets, remaining after payment or provision of payment of all debts and
27 liabilities of this organization, shall be distributed to an organization organized and operated
28 exclusively for educational purposes meeting the requirements of Revenue and Taxation
29 Code section 214, subdivision (j).
30

31 Example No. 5: Upon the dissolution or winding up of the corporation, its assets remaining
32 after payment, or provision for payment, of all debts and liabilities of this corporation shall
33 be distributed to a nonprofit fund, foundation or corporation which is organized and
34 operated exclusively for charitable purposes and which has established its tax exempt status
35 under section 501(c)(3) of the Internal Revenue Code.
36

37 Example No. 6: Upon the dissolution or winding up of the organization, its assets remaining
38 after payment or provision of payment of all debts and liabilities of this organization, shall
39 be distributed to a nonprofit organization which is organized and operated exclusively for
40 charitable purposes.
41

42 **(e) FAILURE TO MEET REQUIREMENTS.**
43

44 (1) If, at the time of filing, the applicant's organizational document does not contain an
45 irrevocable dedication clause and/or a dissolution clause which meets the requirements of
46 subdivisions (c) and (d), respectively, the organization does not qualify for the
47 Organizational Clearance Certificate under Revenue and Taxation Code section 254.6.
48 However, the applicant may be issued an Organizational Clearance Certificate for the fiscal

1 year for which the Organizational Clearance Certificate is requested on its application if the
2 applicant amends its organizational documents and submits a certified copy of the
3 amendment to the State Board of Equalization by the next succeeding lien date.
4

- 5 (2) If, at the time of filing, applicant's organizational documents did not contain an irrevocable
6 dedication clause and/or a dissolution clause which meets the requirements of subdivisions
7 (c) and (d), respectively, and the applicant amends its organizational documents after the
8 next succeeding lien date, an Organizational Clearance Certificate may be issued under
9 Revenue and Taxation Code section 254.6 for the fiscal year following the lien date by
10 which the applicant amends its organizational documents and submits a certified copy of the
11 amendment to the State Board of Equalization.
12
- 13 (3) If the applicant amends its articles of incorporation, the amended articles must be filed with
14 the Secretary of State's office and an endorsed copy must be provided to the State Board of
15 Equalization.
16
- 17 (4) The county assessor may not approve a welfare exemption claim until the State Board of
18 Equalization has issued an Organizational Clearance Certificate under Revenue and
19 Taxation Code section 254.6.
20
21

**CURRENT ADMINISTRATION
MANAGING GENERAL PARTNER'S
SUBSTANTIAL MANAGEMENT DUTIES**

The managing general partner must perform two or more of the following duties:

1. execute and deliver all partnership documents on behalf of the partnership;
2. acquire, hold, assign or dispose of property or any interest in property;
3. borrow money on behalf of the partnership, encumber partnership assets, place title in the name of nominee to obtain financing;
4. prepay in whole or in part, refinance, increase, modify or extend any obligation;
5. pay organizational expenses incurred in the creation of the partnership and all operational expenses;
6. determine the amount and timing of distributions;
7. function as the federal and state tax matters partner;
8. monitor compliance with all government regulations and file or supervise the filing of all required documents with governmental entities;
9. prepare and/or supervise preparation of all reports required by the lender;
10. prepare or cause to be prepared all reports to be provided to the partners;
11. coordinate all present and future development, construction or rehabilitation of projects;
12. maintain the partnership books and records;
13. maintain the partnership bank account;
14. prepare the annual partnership budget;
15. obtain and maintain all required insurance coverage;
16. establish and maintain all required reserves;
17. enforce all contracts, including any agreements with property management firms;
18. employ at partnership expense all persons necessary for operation of the partnership business, including the property management agent, auditors, attorneys and other professionals rendering service to the partnership; and
19. manage the property, rental of units, maintenance and repair.

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GARY HAZELTON
Santa Cruz County

***Past President**

May 23, 2005

State Board of Equalization
Honorable John Chiang, Chair
450 N Street
Sacramento, CA 95814

RE: Proposed Welfare Exemption Rule 140.1

Dear Chairman Chiang:

At its executive board meeting on April 21, 2005 the California Assessors' Association (CAA) approved a position on the State Board of Equalization's draft Rule 140. Since then, after their interested parties meeting on May 11, the Board's staff has issued Draft Rule 140.1 which was not significantly different than the original draft Rule 140.

CAA continues to recommend more tightly written requirements for low income housing owned and operated by a limited partnership in which only the managing general partner is qualified for the welfare exemption. As a gift of public funds the welfare exemption for such low income housing must be administered in the same manner as any other welfare exemption – as a tax advantage that inures to the benefit of the targeted population.

For this reason we recommend that paragraph (a)(6) (iv) be reinstated and amended to read "ensures that charitable services or benefits, such as vocational training, educational programs, childcare and after school programs, cultural activities, and family counseling are provided." The rule should require the actual provision of services.

Revise the definition of "substantial management duties" in (a)(10) to require both of the following:

- (i) actively participates in the day-to-day operations and management of the low-income housing property, or if such duties are delegated to a property management agent, participates in overseeing the work of the property management agent; and
- (ii) monitors compliance with government regulations and the filing or supervision of the filing of required documents with government agencies.

If the Board elects to keep the list of duties in paragraph (a)(10) from which the managing general partner may choose which it performs, then at least make the minimum performance more than merely two. Given the current list, a managing general partner can 1) execute and deliver partnership documents and 2) monitor compliance with government regulations and that partner's work is done. Not bad for an exemption that may save the limited partnership tens or hundreds of thousands of dollars and for which it would not qualify except that the managing general partner is an eligible 501(c)(3) organization.

As chair of the Association's Welfare Exemption Ad Hoc Subcommittee I remain available to answer any questions or discuss these issues with you or your staff. You may contact me at (951) 486-7444 or by email at colt@co.riverside.ca.us.

Thank you for your consideration of our position.

Very truly yours,

Cathy Colt, Riverside County Assistant Assessor
for R. Glenn Barnes, CAA President



OFFICE OF THE ASSESSOR COUNTY OF LOS ANGELES

320 KENNETH HAHN HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012-2770
213.974.3101 / FAX 213.617.1493
<http://assessor.co.la.ca.us>

RICK AUERBACH
ASSESSOR

May 23, 2005

Mr. Dean Kinnee, Chief
Assessment Policy and Standards Division
State Board of Equalization
P.O. Box 942879, MIC 64
Sacramento, California 94279

Dear Mr. Kinnee:

I am writing to provide Los Angeles County Assessor Rick Auerbach's views on Proposed Rule 140.1 concerning the managing general partner of a low-income housing project. I am confining his remarks to this Rule, as he believes an appropriate rule in this area is the best way to curb the abuses that have occurred while not decreasing the amount of capital available for low-income housing.

The adopted rule should require that there are benefits to the residents of the property, keeping in line with charitable aspect of the "Welfare Exemption" plus ensuring that the property is managed in a manner consistent with the regulations of the governmental agencies that have provided loans, grants or tax credits.

As recommended by the California Assessors' Association, indeed more tightly written requirements for low income housing owned and operated by a limited partnership in which only the managing general partner is qualified for the welfare exemption. As a gift of public funds the welfare exemption for such low-income housing must be administered in the same manner as any other welfare exemption - as a tax advantage that inures to the benefit of the targeted population.

Paragraph (a)(6)(iv) should be reinstated and amended to read "ensures that charitable services or benefits, such as vocational training, educational programs, childcare and after school programs, cultural activities, and family counseling are provided." The rule should require the actual provision of services.

Mr. Dean Kinnee
Page 2

Also revise the definition of "substantial management duties" in (a)(10) to require both of the following:

(i) actively participates in the day-to-day operations and management of the low-income housing property, or if such duties are delegated to a property management agent, participates in overseeing the work of the property managements agent; and

(ii) monitors compliance with government regulations and the filing or supervision of the filing of required documents with government agencies.

If these changes are adopted by the Board and the Board staff exercises its power to audit the partnerships, hopefully the abuses will end and low-income housing opportunities will increase in California. Please contact me if you have any questions at 213-974-3101 or by email at gtownsen@co.la.ca.us.

Very truly yours,



GARY TOWNSEND
Chief Deputy Assessor



AEGON USA Realty Advisors, Inc.
505 Sansome Street, 17th Floor
San Francisco, CA 94111
Phone: 415-983-5420
FAX: 415-983-5558

VIA E-MAIL
VIA FACSIMILE AND U.S. MAIL

31 May 2005

Ms. Sophia Chung, Tax Counsel
California State Board of Equalization
450 N Street
PO Box 942879
Sacramento, CA 94279-0064

Re: Proposed Rules 140-143

Dear Ms. Chung:

I am writing in response to your May 16, 2005 notice, concerning the Proposed Welfare Exemption Rules. I am part of a firm that has made over \$300 Million of investments in California affordable housing partnerships, since 1988. We have had some concerns, expressed via letter and participation in the California Housing Consortium. Now I wish to focus on the "Three Remaining Issues" identified in the Staff guidance concerning Rule 140.1, in order:

1. **Charitable Services – Subdivision (a)(6)**. I agree that, as these were not in the statute, they should not be a part of the Definition of "Managing General Partner". On the other hand, the paragraph as written describes well some of the services that a Managing General Partner could well provide as part of its Duties. Therefore, I suggest that the entire former paragraph (a)(6)(iv) be moved over to become one of the **Substantial Management Duties** listed in paragraph (a)(10).
2. **Substantial Management Duties – Subdivision (a)(10)**. Several industry participants have met and discussed these duties, and the degree to which each is a sine qua non of being a Managing General Partner. Reasonable parties agree that several (not just two) of the listed duties appear essential. On the other hand, a desirable aspect of the contribution of non-profits to the development, ownership, and management of affordable housing communities is the *variety* of forms of legitimate participation, and the *diversity* of groups undertaking good work that benefits low income

Exhibit 5
Page 1 of 2

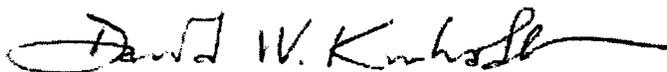
residents. To raise the standard, but also in the spirit of compromise, I recommend that (after adding paragraph (a)(6)(iv) to the list), the Board change the guidance to "4 or more", rather than just "2 or more" of the twelve duties listed that a managing general partner must perform. (See caveat, below.)

3. **Compliance Period – Subdivision (f).** All new partnerships going forward should be required to comply with the new rules, once the rules are adopted. It will be highly problematic, however, to cause existing partnerships to adjust and adopt these new rules. Projects that followed earlier rules have obtained permanent loans and equity investments from third-party lenders and investor limited partners, on the basis of the cash flow expected with compliance with earlier welfare exemption rules. Some of those partnerships have very slim margins, and little or no cash flow above debt service. To change the rules on those partnerships is to spell doom for the financing structures in place. I urge the Board to adopt guidance that "grandfathers" partnerships in place prior to the adoption of the new rules.

Caveat: If the Board is not able to protect partnerships already in place, then the rule concerning the number of "substantial management duties" of non-profit MGPs should be adopted *unchanged*, with just two of twelve duties required, so as to not do harm to those already created and operating.

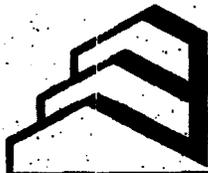
Thank you for this opportunity to comment.

Sincerely,



David W. Kunhardt
Senior Vice President—Community Investments
415-983-5418

cc: Mr. Dean R. Kinnee, Chief
Ms. Ladcena Ford, Senior Property Appraiser



CALIFORNIA
HOUSING
PARTNERSHIP
CORPORATION

VIA FACSIMILE
916-323-8765

May 23, 2005

Dean R. Kinnee, Chief
Assessment Policy and Standards Division
State Board of Equalization
450 N Street/P.O. Box 942879
Sacramento, CA 94279-0064

Re: **Proposed Property Tax Rule 140.1, and 140.2
Implementing Revenue and Taxation Code 214(g)**

Dear Mr. Kinnee:

The California Housing Partnership Corporation was created by the state in 1988 to play a leadership role in affordable housing resource issues. CHPC is unique in combining transaction-based technical expertise with deep experience in affordable housing policy work. To date, CHPC has helped preserve and create more than 7,000 units of affordable rental housing and has contributed to numerous state, local and federal housing policies.

The welfare exemption plays a critical role in the financial feasibility all of the housing developments we have worked on and, when properly used, enables owners to serve people at deeper affordability levels for longer periods of time. We are aware, however, of a number of cases in which we believe the exemption is being used in ways that are not consistent with the intent of Revenue and Taxation Code Section 214(g) governing the use of the exemption by limited partnerships with a nonprofit managing general partner. We have also heard the Assessors from Los Angeles, Riverside and Santa Clara Counties provide compelling testimony at the BOE interested party meetings regarding what they believe to be abuses of 214(g). Specifically, the structuring of transactions so that the nonprofit general partner has no control, is not "managing" the partnership as required by the law, and is paid only a nominal sum simply for obtaining the exemption.

Despite widespread agreement in the industry that this rule-making process should focus on curbing these abuses, the proposed rules to be watered down to the point where, according to these assessors, they are worse than no rules at all because their weakness provides a cover for behavior inconsistent with 214(g) and will actually make it harder to prosecute abuses. For example, under the current draft of 140.1, a managing general partner may have no control over the partnership's decisions and can be paid \$1.00 per year for performing two of the eleven substantial management duties

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Exhibit

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specified in (a)(10), which may include tasks that require no actual knowledge of the property or of its significant operations.

In your May 16 memo you assert that interested parties disagreeing with the staff position must provide alternative language in order to have our positions considered by the Board at its June 30 meeting. While we believe that this requirement is unnecessarily onerous and not consistent with the administrative rule-making process in California, we nonetheless provide the following alternative language for the Board's consideration:

Rule 140.1(a)(5)

(1) **Proposed alternative language:** *"Majority in interest of the general partners" means more than 50% of the interests of the general partners in the current ownership interest, profits, losses, gain, and cash distributions derived from the business operations of the limited partnership, and does not include the interest of any limited partners.*

(2) **Specific reasons for alternative language:** The current proposed language will result in the managing general partner having more than 50% interest in profit, but not in voting shares or cash distribution. Profit does not reflect ownership, cash distributions, gain, or voting rights. The alternative language above will make the nonprofit managing general partner a meaningful participant in the ownership entity as was intended by the law and consistent with earlier BOE staff drafts of the rule.

Rule 140.1(a)(6)(ii) - Definition of Managing General Partner

(1) **Proposed alternative language:** *is authorized to receive a partnership management fee commensurate with its role as managing general partner and consistent with industry norms in California.*

(2) **Specific reasons for alternative language:** As the assessors have pointed out, the current proposed language is meaningless since it allows the partnership to pay the managing general partner as little as \$1 per year, calling into question whether in fact the managing general partner is managing the partnership at all since there is no other required minimum compensation.

Rule 140.1(a)(6)(iii)(New) - Definition of Managing General Partner

(1) **Proposed alternative language:** *"receives the Right of First Refusal as defined in IRC Section 42."*

(2) **Specific reasons for alternative language:** Requiring that the nonprofit receive the right of first refusal to buy out the partnership at the end of the compliance period insures that the benefit of the tax exemption, which is generally capitalized by obtaining a larger mortgage than would have otherwise been possible, may be preserved beyond the 15-year tax credit compliance period. This is consistent with the intent of 214(g) that the benefits of the exemption be used to maintain or increase affordability.



Rule 140.1(a)(6)(iv)(New) – Definition of Managing General Partner

(1) Proposed alternative language: *“to the extent there is any cash flow available after payment of all project expenses, debt service, reserves, deferred developer fee and partnership management fee, receives an incentive management fee consistent with industry norms in California and in no event less than 25% of the remaining cash flow.”*

(2) Specific reasons for alternative language: Incentive management fees are critical to providing motivation to the managing general partner to insure that the project operates as efficiently as possible. In the abusive situations that CHPC is aware of, the nonprofit managing general partner is typically not given any significant share of the cash flow and therefore has no real stake in managing the operations of the property, which is the partnership’s sole asset.

Rule 140.1(a)(6)(v)(New) – Definition of Managing General Partner

(1) Proposed alternative language: *“employs personnel qualified and in a number reasonably sufficient to perform the required substantial management duties for all of the properties under its supervision.”*

(2) Specific reasons for alternative language: This addition is intended to address the situation noted by Los Angeles County Assessor Rick Auerbach in the March 16th interested party meeting where a nonprofit with a staff of two people is serving as the managing general partner of more than 150 limited partnerships controlling approximately 8,400 apartments.

Rule 140.1(a)(7)(i) – Material Participation

(1) Proposed alternative language: *“has a majority vote in all “major decisions,” defined in subdivision (a)(8) below;”*

(2) Specific reasons for alternative language: The current proposed language is again meaningless and inconsistent with the Legislature’s intent in requiring that the nonprofit general partner be the managing general partner. BOE staff recognized this in an earlier draft by requiring that the managing general partner have a majority vote. BOE should return to the earlier, stronger version.

Rule 140.1(a)(10)

(1) Proposed alternative language: *“Substantial management duties” means that the managing general partner actually performs eight or more of the following partnership management duties on behalf of the limited partnership:”*

(2) Specific reasons for alternative language: The proposal to define substantial management duties as only requiring two of the eleven listed criteria is woefully inadequate in that it would effectively allow a nonprofit to meet the criteria by doing nothing more than executing and delivering partnership documents (iii) which it is



already required to execute by law, and "cause to be prepared reports (iv)." In a prior draft that was available at the March 16 meeting, BOE staff had effectively proposed that all of the listed criteria be required. CHPC urges BOE to return to the spirit of this recommendation by requiring that at least eight of the duties be performed to qualify as managing.

In addition to the above comments, CHPC urges BOE to insure that the certification required by proposed Rule 140.2(c)(3) that the benefit of the tax exemption is being use "to maintain the affordability of, or reduce the rents otherwise necessary for, the units to be occupied by lower income households" is reasonably interpreted in a way that is quantifiable and therefore enforceable.

While CHPC works primarily with nonprofit and government housing agencies, we support the important role that for-profit developers play in producing much needed affordable housing in California. And we would be supportive of efforts to enable for-profit developers to gain direct access to the property tax exemption if they are able to demonstrate that the benefit of the exemption is going to maintain or increase affordability to low income households.

But we cannot support the position of some influential BOE staff as reflected in the current proposed rule, that it is better to water down the proposed rules to the point that they make a mockery of the intent of 214(g) than to risk interfering with the status quo and the abusive "business models" that assessors have reported are in use for the sole purpose of obtaining the benefit of tax payer subsidies. For any rule-making process that so perverts the intent of an important law in this way, risks incurring the wrath of the public and the possibility that the exemption may be rescinded, which would be a tragedy for the low income people of California.

Thank you for considering our comments.

Sincerely,

Matt Schwartz
Executive Director

cc: Board of Equalization

**Community
Economics**

a nonprofit corporation

May 23, 2005

Dean R. Kinnee, Chief
Assessment Policy and Standards Division
State Board of Equalization
450 N Street/P.O. Box 942879
Sacramento, CA 94279-0064
Facsimile: 916-323-8765

Re: Proposed Property Tax Rule 140.1, and 140.2

Dear Mr. Kinnee,

Community Economics, Inc. is a 501(c)(3) organization that provides technical assistance to nonprofit and public agency affordable rental housing developers. We have provided financial and organizational consulting services on approximately 350 tax credit transactions.

The proposed rules clarify a number of areas and revise a number of sections which will make complying much more straight-forward than with the earlier drafts. However, the draft fails to address the widespread belief that there is abuse in the current system.

Under the current draft of 140.1 (a)(10), a managing general partner can have a contract to provide partnership services and receive only \$1 per year for these services. In addition, the managing general partner needs to perform only two of the specified functions. I propose the following language:

"Substantial management duties" means that the managing general partner actually performs all of the following partnership management duties on behalf of the limited partnership:

Section 140.1 (a)(5) should be written so that the managing general partner has a controlling interest since "profit" does not reflect ownership, cash distributions, voting rights or control. This can be accomplished by using the following language:

"Majority in interest of the general partners" means more than 50 percent of the ownership interest, profits, losses, gain, and cash distribution of the general partners, and does not include the interests of any of the limited partners, in the ownership interest, profits, losses, gain and cash distributions derived from the business operations of the limited partnership.

Section 140.2(c)(3) specifies that the benefit of the exemption goes to the tenants. It is important that BOE assure that this section be implemented and followed by all project owners.

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Thank you for your efforts with regard to this important issue.

Sincerely,



Joel Rubenzahl

cc: Ms. Ladeena Ford - State Board of Equalization

County of Santa Clara

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May 23, 2005

Via E-mail and US Mail

Dean R. Kinnee, Chief
Assessment Policy and Standards Division
State Board of Equalization
450 N Street
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Dear Dean,

I write to express my strong opposition to proposed Rule 140, including the May 16 revisions. The proposed rule does not require the managing general partner (MGP) to perform any "substantial management duties" which Assessors believe are essential for a developer to receive the property tax exemption.

By allowing a nonprofit managing general partner to perform only two of eleven management duties, the proposed rule will institutionalize the increasing number of "sham" transactions in which the MGP is merely a "shell" for the partnership. It would be possible for a nonprofit MGP to meet the provisions of the rule and never visit the property or receive any compensation. In exchange, the for-profit affordable housing developer would receive a substantial tax benefit in the form of a property tax exemption.

Basically, the proposed rule seeks to drop the standard for managing general partners so low as to be almost nonexistent. The staff has proposed a rule in which the MGP's only substantive contribution to the property is to secure the property tax exemption. The Assessor's Handbook states, "A managing general partner of a limited partnership would have all the statutory powers authorized to a general partner of a general partnership..." The proposed rule doesn't come close to meeting that standard.

It is obvious that more and more for-profit developers of affordable housing are using nonprofits as little more than "fronts" to earn the valuable property tax exemption. Last year the value exempted for nonprofit affordable housing jumped 25% to almost \$2 billion in Santa Clara County. The real losers are not only the legitimate nonprofit organizations that provide needed affordable housing, but the schools, cities, and other public agencies that rely on property tax revenue.

The proposed rule is a "sham" rule designed to legitimize "sham" transactions. Rather than go through the charade of implementing this proposed rule, I would urge the Board to either drop the rule entirely and allow the status quo to remain, or push for a constitutional amendment to allow nonprofit organizations that partner with for-profit developers to receive the property tax exemption, regardless of their level of management responsibility.

Sincerely,

/s/ Lawrence E. Stone

Lawrence E. Stone
Assessor

Exhibit 8
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**ORGANIZATIONS WHO PROVIDED COMMENTS
IN SUPPORT OF STAFF'S DRAFT OF PROPOSED WELFARE RULES**

1. AOF/Pacific Affordable Housing Corp.
2. ARCS Commercial Mortgage
3. Brackenhoff Management Group, Inc.
4. Bridge Property Management
5. Community Housing Assistance Program, Inc.
6. Coastal Rim Properties
7. The Core Companies
8. Cox, Castel & Nicholson, LLP
9. Eagle Real Estate Group, LLC
10. Foundation for Social Resources
11. JSM Enterprises
12. Klein Financial Corp.
13. Law Offices of Patrick R. Sabelhaus
14. Meta Housing
15. MMA Financial
16. Related Capital
17. Resch Polster Albert & Berger LLP
18. RHC Communities
19. Silver Oak Land Company
20. Steadfast Companies
21. Suarez Accountancy Corporation

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