STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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January 27, 2005

LTA NO. 2006/006

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

PROPOSED TO ADOPTION RULES 140, 140.1, 140.2, AND 143

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 of the Government Code, proposes to adopt Rule 140, Welfare Exemption Requirements for Low-Income Housing Properties; Rule 140.1, Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties; Rule 140.2, Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties; Rule 143, Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on March 28, 2006. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by March 28, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Board of Equalization proposes to adopt Rules 140, 140.1 and 140.2 to interpret and make specific terms used in Revenue and Taxation Code [1]section 214, subdivision (g) which sets forth the requirements for qualifying for the welfare exemption for low-income housing properties. Proposed Rule 140 will define and make specific the terms "regulatory agreement," "deed restriction," "federal low income tax credits," "government financing," "lower income households," and "other legal document." Proposed Rule 140.1 will define the

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

term "managing general partner" of a limited partnership, and make specific the requirements the managing general partner 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 will clarify how it is to be determined that the limited partnership, in which the managing general partner is a qualifying nonprofit organization, meets all of the requirements of Revenue and Taxation Code section 214, subdivision (g), by requiring a supplemental clearance certificate, and setting forth the requirements for that certificate.

The State Board of Equalization proposes to adopt Rule 143 to clarify the irrevocable dedication clause and dissolution clause required to be in organizational documents in order to qualify for the welfare exemption under Revenue and Taxation Code section 214.

The express terms of the proposed action, written in plain English, are available from the agency contact person named in this notice.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that proposed Rules 140, 140.1, 140.2 and 143 do not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rules will not result in direct or indirect costs or savings to any state agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5, subdivision (a)(8), the Board of Equalization makes an initial determination that the adoption of Rules 140, 140.1, 140.2 and 143 will not have a significant statewide adverse economic impact directly affecting business because the proposed rules merely interpret and clarify existing statutory provisions.

The rules will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The adoption of the rules will not be detrimental to California businesses in competing with businesses in other states.

The rules will not affect small business because the new rules only interpret and clarify property tax exemption law statutory provisions and do not impose any additional compliance or reporting requirements on taxpayers.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

There will be no adverse economic impact on private businesses or persons because the adoption of the rules interpret and make specific existing statutory law and do not impose any additional compliance or reporting requirements on private persons or businesses.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Rules 140, 140.1, 140.2 and 143 have no comparable federal regulations.

AUTHORITY

Government Code section 15606 (a).

REFERENCE

Revenue and Taxation Code sections 214, 214.01 and 254.6.

CONTACT

Questions regarding the substance of the proposed rule should be directed to: Ms. Nancy Vedera, Senior Tax Counsel, at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 322-3829; FAX (916) 323-3387.

Written comments for the Board's consideration, requests to present testimony, bring witnesses to the public hearing and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, and P.O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the rules. Those documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public

inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulations (rules) are available on the Internet at the Board's website http://www.boe.ca.gov.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's website following its public hearing of the adoption of the rules. It is also available for public inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the rules if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of the modified rule will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule for fifteen days after the date on which the modified rule is made available to the public.

Sincerely,

Deborah Pellegrini, Chief
Board Proceedings Division

INITIAL STATEMENT OF REASONS
NON-CONTROLLING SUMMARY

Property Tax Rules 140, 140.1, 140.2, and 143
Welfare Exemption

Specific Purpose

The purpose of the proposed rules is to implement and make specific the requirements for: (1) low-income housing properties to qualify for the welfare exemption; (2) the managing general partner of a limited partnership for the limited partnership to qualify for a supplemental clearance certificate for the purpose of claiming the welfare exemption for property used for low-income housing; and (3) the irrevocable dedication clause and dissolution clause set forth in organizational documents to qualify for the welfare exemption.

Factual Basis

Revenue and Taxation Code[1] section 214 is the primary statute implementing the authority granted to the Legislature under sections 4, subdivision (b), and 5 of article XIII of the California Constitution to exempt from property taxation property held by specified organizations and used exclusively for religious, hospital, scientific or charitable purposes. This exemption from property taxation is known as the welfare exemption.

Rules 140, 140.1 and 140.2

Subdivision (g) of section 214 sets forth the requirements which must be met in order to qualify 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 funds, 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 statewide

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

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.

The Board of Equalization proposes the adoption of Rules 140, 140.1 and 140.2 to implement and make specific the requirements to qualify for the welfare exemption under section 214, subdivision (g).

Rule 143

Section 254.5 provides that a county assessor may not approve a welfare exemption claim unless the claimant has been issued an organizational clearance certificate by the Board as provided in section 254.6. Among other requirements, in order to qualify for an organizational clearance certificate from the Board, the claimant's formation documents, such as the articles of incorporation, must contain both an irrevocable dedication clause and a dissolution clause. 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 specifically provides that the nonprofit organization's formation documents must contain an irrevocable dedication clause.

The Board of Equalization proposes the adoption of Rule 143 to clarify and make specific the requirements for a qualifying irrevocable dedication clause and dissolution clause.

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

Proposed Rule 140 will define and make specific the terms "regulatory agreement," "deed restriction," "federal low income tax credits," "government financing," "lower income households," and "other legal document" as used in Revenue and Taxation Code section 214, subdivision (g) providing for the welfare exemption 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 140.1 will define the term "managing general partner" of a limited partnership and implement and make specific the requirements that the managing general partner 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

Proposed Rule 140.2 will implement and make specific the requirements for a supplemental clearance certificate that the limited partnership, in which the managing general partner is a qualifying nonprofit organization, must meet for each low–income housing property for which it intends to claim the welfare exemption under section 214, subdivision (g).

Proposed Rule 143 Requirement for Irrevocable Dedication Clause for Organizational Clearance Certificate for Welfare Exemption

Rule 143 is proposed to clarify and make specific the requirement under the welfare exemption, generally, that the property is irrevocably dedicated to religious, charitable, scientific or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes. Proposed Rule 143 will define the terms: "dissolution clause," "irrevocable dedication clause," "organizational document," "qualifying organization," and "qualifying purpose." Proposed Rule 143 will also provide examples of acceptable irrevocable dedication clauses, and examples of acceptable dissolution clauses.

RULE 140

WELFARE EXEMPTION REQUIREMENTS FOR LOW-INCOME HOUSING PROPERTIES

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

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

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

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

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

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

(6) "Regulatory agreement" means an enforceable and verifiable agreement with a government agency that has provided low-income housing tax credits or government financing for the acquisition, rehabilitation, construction, development or operation of a low-income housing property that restricts all or a portion of the property's usage for rental to lower income households. The regulatory agreement shall identify the number of units restricted for use as low-income housing, specify the maximum rent allowed for those units, and be recorded in the county in which the property is

located. Until such time as the Regulatory Agreement is finalized and recorded, the Preliminary Reservation Letter from the California Tax Credit Allocation Committee or California Debt Limit Allocation Committee Bond Cap Allocation Letter is acceptable.

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

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

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

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

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

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

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

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

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

Authority: Section 15606, Government Code.

Reference: Section 214, Revenue and Taxation Code.

Rules/140/Rule 140

RULE 140.1

REQUIREMENTS FOR MANAGING GENERAL PARTNER OF LIMITED PARTNERSHIP FOR WELFARE EXEMPTION FOR LOW-INCOME HOUSING PROPERTIES

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

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

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

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

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

(5) "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.

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

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

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

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

(iv) the officers and directors of the for-profit general partners, for-profit limited partners, or any of its for-profit affiliates, do not, as individuals or

collectively, have a controlling vote or majority interest in the nonprofit managing general partner.

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

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

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

(iii) directly, or indirectly under its supervision, manages the limited partnership;

(iv) annually conducts a physical inspection of the low-income housing property to ensure that the property is being used as low-income housing and meets all of the requirements set forth in Regulation 140; and

(v) annually submits a certification to the county assessor for the county in which the property is located that the low-income housing property meets all of the requirements set forth in Regulation 140.

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

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

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

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

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

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

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

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

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

(vii) monitors compliance with all government regulations and files or supervises the filing of all required documents with government agencies;

(viii) acquires, holds, assigns or disposes of property or any interest in property;

(ix) borrows money on behalf of the limited partnership, encumbers limited partnership assets, places title in the name of a nominee to obtain financing, prepays in whole or in part, refinances, increases, modifies or extends any obligation;

(x) pays organizational expenses incurred in the creation of the partnership and all operational expenses;

(xi) determines the amount and timing of distributions to partners and establish and maintain all required reserves; and

(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.

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

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

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

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

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

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

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

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

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

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

Authority: Section 15606, Government Code.

Reference: Section 214, Revenue and Taxation Code.

RULE 140.2
REQUIREMENTS FOR SUPPLEMENTAL CLEARANCE CERTIFICATE FOR LIMITED PARTNERSHIP FOR WELFARE EXEMPTION FOR LOW-INCOME HOUSING PROPERTIES

(a) A limited partnership in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company, meeting the requirements of Regulation 140.1, that owns low-income housing property for which it will claim the welfare exemption shall file with the State Board of Equalization an application for a Supplemental Clearance Certificate for each low-income housing property. The form of the application shall be prescribed by the State Board of Equalization.

(b) A Supplemental Clearance Certificate may be granted only if the managing general partner has already been granted an Organizational Clearance Certificate by the State Board of Equalization, as required under Revenue and Taxation Code section 254.6.

(c) In order to qualify for a Supplemental Clearance Certificate, the general partners of the limited partnership, including the managing general partner, must certify under penalty of perjury under the laws of the State of California, that:

(1) The acquisition, construction, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with low-income housing tax credits or government financing, as defined in Regulation 140;

(2) There is an enforceable and verifiable regulatory agreement or recorded deed restriction, as defined in Regulation 140, that restricts all or a portion of the property's usage for rental to lower income households and the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by the terms of a regulatory agreement or recorded deed restriction, as defined in Regulation 140 or to the extent that none are provided in the regulatory agreement or recorded deed restriction, at rents that do not exceed those prescribed by section 50053 of the Health and Safety Code;

(3) 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 to be occupied by lower income households;

(4) The managing general partner meets the requirements of Regulation 140.1; and

(5) All of the information provided as part of the application for the Supplemental Clearance Certificate, including any accompanying statements or documents, is true, correct, and complete to the best of the knowledge and belief of the person(s) signing the application.

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

(1) Legal name of the limited partnership;

(2) Legal name of the managing general partner of the limited partnership, its corporate identification number and mailing address, and the date that it became the managing general partner of the limited partnership;

(3) Name, title, telephone number, and e-mail address of person signing the application for the Supplemental Clearance Certificate;

(4) The Organizational Clearance Certificate number and the date of issuance to the managing general partner. If an Organizational Clearance Certificate has not been issued to the managing general partner, an application for an Organizational Clearance Certificate must be filed by the managing general partner;

(5) Complete address of the property for which the limited partnership is seeking the welfare exemption, including the zip code, and the date the limited partnership acquired the property;

(6) Fiscal year for which the application is made;

(7) List of any additions or deletions of general partners in the limited partnership, if any, after its formation;

(8) Copy of Secretary of State form LP-1, Certificate of Limited Partnership, and, if applicable, Secretary of State form LP-2, Amendment to Certificate of Limited Partnership;

(9) Copy of the regulatory agreement with a public agency, or a copy of a recorded deed restriction which verifies or evidences the receipt of low-income housing tax credits or government financing, as defined in Regulation 140; and

(10) Copy of the grant deed or if the land is not owned by the limited partnership, documents evidencing the limited partnership's ownership of the improvements.

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

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

Authority: Section 15606, Government Code.

Reference: Sections 214, 214.01, 254.5, and 254.6, Revenue and Taxation Code.

RULE 143
REQUIREMENTS FOR IRREVOCABLE DEDICATION CLAUSE AND DISSOLUTION CLAUSE FOR ORGANIZATIONAL CLEARANCE CERTIFICATE FOR WELFARE EXEMPTION

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

(1) "Dissolution clause" means a statement in the organizational documents of a qualifying organization that upon the liquidation, dissolution, or abandonment of the qualifying organization, the exempt property will not inure to the benefit of any private person except another qualifying organization.

(2) "Irrevocable dedication clause" means a statement in the organizational documents of a qualifying organization that the property is irrevocably dedicated exclusively to one or more qualifying purposes.

(3) "Organizational document" means the articles of incorporation of a corporation, or the bylaws, articles of association, constitution or regulations of a community chest, fund, or foundation, or corporation chartered by an act of Congress.

(4) "Qualifying organization" means a community chest, fund, foundation, nonprofit corporation, or eligible limited liability company, organized and operated exclusively for religious, hospital, scientific, or charitable purposes. Charitable purposes include educational purposes as defined in Revenue and Taxation Code section 214, subdivision (j).

(5) "Qualifying purpose" means a religious, hospital, scientific or charitable purpose. Charitable purposes include educational purpose as defined in Revenue and Taxation Code section 214, subdivision (j).

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

(c) IRREVOCABLE DEDICATION CLAUSE. Property is deemed to be irrevocably dedicated exclusively to a qualifying purpose provided that a qualifying organization's organizational document contains a statement that irrevocably dedicates its property exclusively to a qualifying purpose.

(1) If the organization's charitable purpose is educational purposes as defined in Revenue and Taxation Code section 214, subdivision (j), the irrevocable dedication clause shall state that the property is irrevocably dedicated to educational purposes as defined in section 214, subdivision (j), or that the property is irrevocably dedicated to charitable and educational purposes meeting the requirements of Revenue and Taxation Code section 214.

(2) If the irrevocable dedication clause states that the property is dedicated to purposes other than the qualifying purposes, the property does not qualify for the welfare exemption.

(3) If the irrevocable dedication clause states that the property is irrevocably dedicated to a "public" or "public benefit" purpose, the property does not qualify for the welfare exemption.

(4) The following examples illustrate irrevocable dedication clauses as defined in subdivision (a)(2) above:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) FAILURE TO MEET REQUIREMENTS.

(1) If, at the time of filing, the applicant's organizational document does not contain an irrevocable dedication clause and/or a dissolution clause which meets the requirements of subdivisions (c) and (d), respectively, the organization does not qualify for the Organizational Clearance Certificate under Revenue and Taxation Code section 254.6. However, the applicant may be issued an Organizational Clearance Certificate for the fiscal year for which the Organizational Clearance Certificate is requested on its application if the applicant amends its organizational documents and submits a certified copy of the amendment to the State Board of Equalization by the next succeeding lien date.

(2) If, at the time of filing, applicant's organizational documents did not contain an irrevocable dedication clause and/or a dissolution clause which meets the requirements of subdivisions (c) and (d), respectively, and the applicant amends its organizational documents after the next succeeding lien date, an Organizational Clearance Certificate may be issued under Revenue and Taxation Code section 254.6 for the fiscal year following the lien date by which the applicant amends its organizational documents and submits a certified copy of the amendment to the State Board of Equalization.

(3) If the applicant amends its articles of incorporation, the amended articles must be filed with the Secretary of State's office and an endorsed copy must be provided to the State Board of Equalization.

(4) The county assessor may not approve a welfare exemption claim until the State Board of Equalization has issued an Organizational Clearance Certificate under Revenue and Taxation Code section 254.6.

Authority: Section 15606, Government Code

Reference: Sections 214, 214.01, 254.5, and 254.6, Revenue and Taxation Code.

Rules/143/Rule 143

REGULATION HISTORY

TYPE OF REGULATION:	Property Tax
REGULATIONS:	140, 140.1, 140.2, and 143
TITLE:	*Welfare Exemption*
PREPARATION:	Sherrie Kinkle
LEGAL CONTACT:	Sophia Chung

Rules 140, Welfare Exemption Requirements for Low-Income Housing Properties; 140.1, Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties and 140.2, Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties clarify the requirements under Revenue and Taxation Code section 214, subdivision (g) to qualify for the welfare exemption for low-income properties. Rule 143, Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption clarifies the requirements for the irrevocable dedication and dissolution clause for nonprofit organizations claiming the welfare exemption under Revenue and Taxation Code section 214.

CURRENT REGULATIONS HISTORY

March 28, 2006:	Public hearing.
March 13, 2006:	45-Day public comment period ends.
January 27, 2006:	45-Day public comment period begins.
January 27, 2006:	Notice of public hearing published in California Regulatory Notice Register, Register 2006, No. 4-Z, e-mailed and US mail to interested parties.
December 13, 2005:	Chief Counsel Matters, Board authorized publication. (Vote 5-0)
June 30, 2005:	Chief Counsel Matters, Board deferred consideration of the matter (Vote 4-1)
May 11, 2005:	2nd Interested Parties Meeting
March 16, 2005:	1st Interested Parties Meeting

Sponsor:	Board Staff
Support:	None
Oppose:	None