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No. 2001/073

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

UPDATE OF ASSESSORS' HANDBOOK SECTION 267,
WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS

The Board has initiated an update of Assessors' Handbook Section 267 (AH 267), *Welfare, Church, and Religious Exemptions*. Enclosed are Board staff's proposed changes, which reflect recent statutory changes. In addition to the proposed revisions due to changes in law, other updates are intended to clarify existing text. All proposed revisions, including minor nonsubstantive changes, are listed on the enclosed matrix, with page references to the current handbook. Some of the text that is proposed for revision includes:

- Revised and rearranged portions of the section on Housing for Lower-Income Households to incorporate legislative changes to section 214(g)(1) and (g)(2) and to improve clarity
- Revised language to clarify the meaning of the phrase, "delays in construction"
- Revised wording to clarify that unrelated business taxable income must be considered only if the property has been found eligible for the welfare exemption
- Revised wording to clarify the requirements for claiming the welfare exemption for properties of qualified nonprofit organizations used for employee housing under Rule 137
- Revised wording stating dates that exemption claim forms are to be forwarded to the board to emphasize this legal requirement
- Added appendix containing examples of documents that meet the requirements of section 214(g) for an *Other Legal Document* and a *Statement by Chief Executive Officer*
- Added language to clarify when a Chamber of Commerce or similar organization may qualify for the welfare exemption
- Added section to provide guidance regarding the exempt status of property owned by federal instrumentalities
- Added section to clarify the requirements for a museum gift shop to qualify for the welfare exemption

Interested parties may submit proposed revisions to the text presented in the matrix until December 17, 2001. The proposed revisions should be submitted as alternative text and should reference an item number on the enclosed matrix. Proposed changes to the handbook section other than those identified on this matrix will only be considered if they are supported by statutory changes, regulatory changes, court decisions, or changes to Board publications subsequent to the Board's August 2000 adoption of the current AH 267. Staff will review the suggested changes submitted and incorporate into the draft those that are deemed appropriate.

After reviewing comments received from interested parties, the project will proceed as follows:

- January 23, 2002: Staff will distribute an agenda matrix summarizing proposed changes to text presented in the attached matrix.
- February 8, 2002: Staff will meet with interested parties. The meeting is scheduled to begin at 9:30 a.m. in Room 122, Board of Equalization, 450 N Street, Sacramento.
- Staff will submit an issue paper and other required material for the Property Tax Committee (PTC) meeting. The material will be due 14 days prior to the PTC meeting date.
- Early 2002: Board's Property Tax Committee will hear discussion of any unresolved language issues. (The specific date for the Property Tax Committee meeting will be available upon approval of the 2002 Property Tax Committee work plan.)

If you have any questions regarding the enclosed matrix or the update of this handbook section, please contact Gordon Ferguson at (916) 322-3815 or by email at gordon.ferguson@boe.ca.gov. The current handbook section is available on the Board's Web site (www.boe.ca.gov) or may be purchased from the Property Taxes Department by calling (916) 445-4982. Additionally, this letter and all future letters regarding this project will be posted on the Board's Web site and can be accessed by way of the following links: 1) Property Taxes, 2) Property Tax Committee Work Plans, and 3) Other Projects in Process 2001.

Sincerely,

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ:gf
Enclosure

**ASSESSORS' HANDBOOK SECTION 267
WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS
STAFF'S PROPOSED REVISIONS**

ITEM	AUGUST 2000 REFERENCE	PROPOSED LANGUAGE	COMMENTS
1.	Part I, page 6	<p>Revise section as follows:</p> <p>ORGANIZATIONS GENERALLY NOT WITHIN CHARITABLE PURPOSES</p> <p>Chambers of commerce or other business leagues, literary societies, scientific societies, college fraternities and sororities, lodges or mutual benefit societies are not generally do not <u>qualify for the welfare exemption under the charitable purposes aspect of section 214.</u> Such groups, <u>although formed as nonprofit corporations exempt from state and/or federal income tax,^(FN) are usually not usually organized and operated exclusively for charitable purposes, nor are their properties used exclusively for charitable activities. As such, the properties of these organizations generally do not qualify entitled to for the welfare exemption.</u> This does not mean that the classification of an organization in one of these groups should result in automatic denial of the exemption <u>since the merits of each claim are determined on a case by case basis.</u> <u>However, to qualify for the exemption, the organization must not only be organized and operated exclusively for charitable purposes, but it must also meet all other requirements for the welfare exemption. The operation of the organization for exempt purposes is determined by its activities and use of its property. Thus, if such an organization must be able to can demonstrate that it was-is organized and operated primarily for charitable purposes, and its property is used exclusively for such purposes, meaning it is only incidentally used for the usual functions of organizations of its type, its property only incidentally used for the usual functions of organizations of its type and is carrying on activities pursuant to its exempt purpose, in order to it would qualify as being organized and operated for charitable purposes.^(FN) For example:</u></p> <ul style="list-style-type: none"> ● American Legion meeting halls and bars are taxable, but offices used for veterans' records and/or counseling and facilities used for scout troop equipment storage may be exempt. ● Kiwanis meeting places are taxable, but youth camps may be exempt. 	<p>Added to clarify that Chambers of Commerce, etc., usually do not qualify for the welfare exemption because they do not meet the charitable purpose test. However, if they do meet the charitable purpose test, they must also meet all of the other requirements for the welfare exemption to qualify for the exemption.</p>

ITEM	AUGUST 2000 REFERENCE	PROPOSED LANGUAGE	COMMENTS
		<ul style="list-style-type: none"> Lions Club meeting places are taxable, but clinics and dispensaries may be exempt. <p>^(FN) Section 23701(d), (f) or (w) of the Revenue and Taxation Code; section 501(c)(3) or (4) of the Internal Revenue Code.</p> <p>^(FN) Section 214(a)(5).</p>	
2.	Part I, page 11	<p>Add the following section after end of 1st paragraph:</p> <p><u>Property Owned by Federal Instrumentalities</u></p> <p><u>Property owned by the United States is exempt from property taxation.^(FN) Property owned by federal instrumentalities is similarly exempt from property taxation unless Congress has consented to such taxation.^(FN) An organization may, however, be a federal instrumentality for one purpose but not for other purposes. Thus, it must be determined on a case-by-case basis whether corporate bodies created by Congress are federal instrumentalities and exempt from property taxation as such.</u></p> <p><u>The test for determining whether an entity is a federal instrumentality for purposes of immunity from state or local taxation is very broad: it is whether the entity performs an important governmental function.^(FN) The American National Red Cross is a federal instrumentality; thus, property it owns is exempt from property taxation.^(FN)</u></p> <p><u>Certain Marketing Committees established by the United States Department of Agriculture are instrumentalities of the United States government and, therefore, their properties are exempt from local property taxation.^(FN)</u></p> <p><u>The Civil Air Patrol also is an instrumentality of the United States government, which makes its property exempt from property taxation. In addition, the legislature specifically provided in section 213.6 that personal property of the Civil Air Patrol used exclusively for civil air patrol purposes is exempt from property taxation, provided that the organization qualifies for exemption under section 501(c)(3) of the Internal Revenue Code.</u></p> <p><u>Property owned by the above named organizations, being instrumentalities of the United</u></p>	<p>Added this section to clarify that the properties of certain federal instrumentalities are exempt from property taxes because they are government properties, and it is not necessary to apply for the welfare exemption for these properties.</p>

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		<p><u>States, is exempt from property taxation, the same as property owned by the federal government, irrespective of the welfare exemption and the requirements therefor. Accordingly, these organizations are not subject to the filing requirements for the welfare exemption under section 254.5 of the Revenue and Taxation Code because their immunity from property taxation does not result from any grant of exemption by the state, but rather, it is a function of their status as instrumentalities of the federal government.</u></p> <p>^(FN) <u>Article XIII, section 1 of the California Constitution.</u> ^(FN) <u>Ehrman and Flavin, <i>Taxing California Property</i> (3d. ed. 1999)</u> ^(FN) <u><i>Louis v. United States</i>, (1982) 680 Fed. 2d 1239, 1241.</u> ^(FN) <u><i>Department of Employment v. United States</i> (1966) 385 US 355.</u></p>	
3.	Part I, page 27, after 1 st paragraph	<p>Revise this section as follows:</p> <p>Property in Course of Construction (Add the following paragraph after the final existing paragraph of this section ending in "..of a building prior to the lien date.")</p> <p><u>Construction or rehabilitation, having been commenced and not yet finished, unless abandoned, shall establish that a building or improvement is under construction. Thus, a property undergoing construction or rehabilitation for an extended period of time would continue to be eligible for exemption.</u></p> <p style="text-align: center;">Exemption for Property in Course of Construction Applicable to Other Exemptions</p> <p>Section 214.1 applies to free museum facilities in the course of construction on the lien date for which the welfare exemption is claimed, even though the free museum exemption^{FN} does not apply to buildings under construction. Under certain circumstances, the museum exemption and the welfare exemption can overlap since (1) the property intended to be used as a free museum is also intended to be used exclusively for charitable purposes and (2) the welfare exemption is in addition to any other exemption allowed by law.^(FN)</p> <p><i>Delays in Construction</i></p>	Language added to clarify that property undergoing construction for an extended time period continues to qualify for exemption. Language revised to clarify the meaning of delays in construction.

ITEM	AUGUST 2000 REFERENCE	PROPOSED LANGUAGE	COMMENTS
		<p>If construction delays are due to reasonable causes and circumstances beyond the assessee's control, <u>such as adverse weather conditions or material shortages</u>, that occur notwithstanding the exercise of ordinary care and the absence of willful neglect, then construction shall not be considered "abandoned." Delays due to a lack of funds by the claimant would not be considered reasonable. <u>If construction has been abandoned, the property is no longer eligible for exemption. Unless abandoned, a property undergoing normal construction or rehabilitation activity for an extended period of time would be exempt.</u></p> <p>^(FN) Section 202 of the Revenue and Taxation Code; section 3(d) of article XIII of the California Constitution. ^(FN) Section 214(a)(7).</p>	
4.	Part I, page 53	<p>Add this section after section titled <i>Factors Used in Determining Whether Activity is Commercial</i>.</p> <p><u>Museum Gift Shops</u></p> <p><u>Museum gift shops may qualify for the welfare exemption as property related to the primary charitable purpose of the museum and reasonably necessary and incidental to that purpose. The following factors are considered by Board staff when determining whether a museum gift shop qualifies for the exemption:</u></p> <p><u>1. The gift shop location</u></p> <ul style="list-style-type: none"> • <u>within the museum and accessible only to museum patrons who enter through the museum (factor in favor of granting the exemption)</u> • <u>within the museum, but also has a separate entrance to the street that allows for access from the general public without entering the museum (factor against granting the exemption)</u> <p><u>2. Hours of operation of the gift shop</u></p> <ul style="list-style-type: none"> • <u>operates the same hours as the museum (factor in favor of granting the exemption)</u> 	This section added to clarify the criteria that museum gift shops must meet to qualify for the welfare exemption.

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		<ul style="list-style-type: none"> • <u>separate hours of operation; operates the hours that the museum is open, and additional hours when the museum is closed (factor against granting the exemption)</u> <p>3. <u>Kind of merchandise sold in the gift shop</u></p> <ul style="list-style-type: none"> • <u>substantially all the merchandise is related to the museum's exempt purpose and activity (factor in favor of granting the exemption)</u> • <u>substantial amounts of the merchandise are unrelated to the museum's exempt purpose and activity (factor against granting the exemption)</u> <p>4. <u>Advertising of the gift shop in a commercial manner with intent to attract the general public to the gift shop, typically through the media, website, or yellow pages (factor against granting the exemption)</u></p> <p><u>If the gift shop is located within the museum, without street access, and selling related merchandise, typically, it is found eligible for exemption as a facility related to the primary charitable purpose of the museum and reasonably necessary and incidental to that purpose. However, if the gift shop has street access, factors two through four are applied to determine if the gift shop is a commercial enterprise in competition with taxpaying businesses. A gift shop determined to be in competition with taxpaying businesses is considered commercial rather than charitable and is, therefore, not eligible for the exemption.</u>^(FN)</p> <p>^(FN)<u>YMCA v. County of Los Angeles (1950) 35 Cal.2d 760; 1988 Board Decision regarding Monterey Bay Aquarium Foundation.</u></p>	
5.	Part I, page 53	<p>Revise section as follows:</p> <p style="text-align: center;">Exemption of Property Used to Generate Unrelated Business Taxable Income</p> <p>The topic of unrelated business taxable income was discussed briefly earlier in this chapter under the discussion of occasional fundraising. That discussion was to inform that activities that generate UBTI are not within the scope of the statutory provisions that allow organizations to fundraise occasionally without jeopardizing the exemption for their</p>	<p>Minor rewording to clarify that Unrelated Business Taxable Income (UBTI) is applicable to determine the amount of a partial exemption for properties used to generate UBTI only if the property has been found eligible for the welfare exemption.</p>

ITEM	AUGUST 2000 REFERENCE	PROPOSED LANGUAGE	COMMENTS
		<p>properties.^(FN) This discussion explains how to determine the partial exemption pursuant to section 214.05 for properties <u>which have been found eligible for the exemption, but are used for activities that generate unrelated business taxable income. The provisions of section 214.05 only apply to determine the amount of a partial exemption for property used to generate UBTI if the property has been granted the welfare exemption. As such, the property is deemed to be used exclusively for the organization's exempt purposes.</u></p> <p><u>For example, if the museum is exempt under the charitable purpose aspect of section 214, and the museum gift shop is exempt as a facility related to the primary charitable purpose of the museum and reasonably necessary and incidental to those purposes, but the gift shop generates UBTI, the provisions of section 214.05 apply to determine the amount of a partial exemption for the gift shop.</u></p> <p>An unrelated trade or business is defined as (1) any trade or business that is regularly carried on for the production of income from the sale of goods or performance of services to produce income, whether or not profit results,^(FN) (2) the conduct of which is not substantially related to the exercise or performance of its exempt purpose or function.^(FN) The term does not include any trade or business which is carried on, in the case of an organization described in 501(c)(3), by the organization primarily for the conveniences of its members, patients, officers or employees.</p> <p>An organization exempt from income tax under section 501(c)(3) of the Internal Revenue Code is taxed on income generated from unrelated business activity.^(FN) <i>Unrelated business taxable income</i> is defined in section 512 of the Internal Revenue Code as the gross income derived from any unrelated trade or business, less directly connected allowable deductions, with certain exceptions, additions and limitations as specified by the Code. Property receiving the welfare exemption that is used to generate that income may be subject to property taxes.^(FN) If the property of an organization is granted an exemption pursuant to section 214, that property is deemed to be used exclusively for the organization's exempt purposes.^(FN) However, the organization's use of the property <u>to generate</u> for unrelated business taxable income (UBTI) triggers the application of section 214.05, which contains</p>	

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		<p>three sets of circumstances for determining the amount of exemption allowable for property that has qualified for the welfare exemption.</p> <p>^(FN) Section 214(a)(1)(A) and (B). ^(FN) IRC, section 513(c). ^(FN) IRC, section 513(a). ^(FN) IRC, sections 511 and 512. ^(FN) Section 214.05. ^(FN) <u>The application of the welfare exemption is not expanded if section 214.05 is applied only to properties that first are found eligible under section 214, consistent with subdivision (e) of section 214.05, which provides that the statute is not intended to enlarge [the scope of] the welfare exemption.</u></p>	
6.	Part I, page 65	<p>Revise section on <i>Requirements for Exemption</i></p> <p style="text-align: center;">Requirements for Exemption</p> <p><u>Rule 137 specified a single statewide standard for exemption for property used for housing and related facilities. Previously more than one standard had been considered by some in administering the exemption, resulting in confusion and inconsistency in administration. The most important principle in the single statewide standard, a principle that was not universally recognized in the past, is that it is the use of the property by the organization owning the property that is the determining factor, not the use by the occupants of the housing. If the use by the organization is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization, the property is exempt.</u></p> <p><u>The recognition by Rule 137 of this principle had some important implications, which changed how some had administered the exemption in the past. For example, the use of the property by the owner organization solely for a residence for a member of the clergy to provide respite is an exempt purpose where that use is in furtherance of the religious purposes of the organization as set forth in the organization's tenets. Recognition of this principle also eliminated the past practice of exempting portions of the living space used for consultation and meetings with parishioners, and assessing the private living quarters of the clergy. The entire property can be exempt where the organization's purposes include both residential and communal use.</u></p> <p>The assessor and/or the Board can require a claimant to submit documentation in support of</p>	This section revised to clarify the requirements for the properties of qualified nonprofit organizations used to house employees and/or volunteers to qualify for the welfare exemption.

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		<p>its claim for exemption. <u>Accordingly, all nonprofit organizations may be required to submit documentation that establishes why the organization's use of the property is incidental to and reasonably necessary for the exempt purposes of the organization.</u> This Required documentation may be in the form of could include: (1) a <u>copy of statement in the organization's tenets, canons or other written policy confirming that the organization has the established practice or obligation, or is obligated to provide housing to certain employees and/or volunteers who are required to live at the residence to carry out the exempt purpose of the organization;</u> or (2) <u>a statement explaining how the use of the property for housing and related facilities is a use that is incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization;</u> or (3) <u>a statement or other information confirming that the property is used for housing, and if other uses are also made of the property, the nature of those uses.</u> a statement with information about the organization's policies and practices for the purpose of establishing whether the organization's use of the property is incidental to and reasonably necessary for its exempt purposes. Accordingly, all nonprofit organizations may be required to submit evidence that establishes why the organization's use of the property is incidental to and reasonably necessary for the exempt purposes of the organization. The documentation should include (1) the identity of the occupant of the residential property; (2) the occupant's position or role in the organization; and, (3) information about exempt activities for the purpose of establishing that the use of the property is incidental to and reasonably necessary for the accomplishment of the exempt purpose of the organization.</p>	
7.	Part I, pages 65-68	See Attachment A for text of revisions to portions of Chapter 5, <i>Housing for Lower-Income Households</i> .	Wording revised and rearranged to incorporate changes to section 214 (g)(1) and (g)(2) and to improve clarity.
8.	Part I, page 90	<p>Revise section as follows:</p> <p style="text-align: center;">Forwarding Claims to the Board</p> <p>Once the assessor's staff has reviewed the claim <u>(BOE 267), and attached legal documents for the first-time filer, (BOE 267) and attached documents,</u> conducted a field inspection, and</p>	This wording was modified to clarify the requirement that claims be processed by the Assessor and forwarded to the Board by April 1.

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		<p>made a recommendation for approval, or-partial <u>approval</u> or total-denial of the exemption claim, all forms, reports and documents are forwarded to the Board. The <u>assessor is required by law to submit all timely exemption claims and documents to the current deadline for Board by submittal to</u> April 1, unless the assessor has obtained an extension <u>from the Board</u> by written request.^(FN)</p> <p>For claimants who have filed an annual claim (BOE 267-A), the assessor will indicate a <u>recommendation of approval, or</u>-partial <u>approval</u>, or total-denial in the space provided at the bottom of the claim form. The April 1 deadline is the same, unless an extension is received.</p> <p>^(FN) Section 254.5, subdivision (a).</p>	
9.	Appendix	<p>Add Appendix G, Example of <i>Other Legal Document</i>.</p> <p>(See Attachment B for text.)</p>	<p>Added to provide sample wording for claimants who must meet this requirement.</p>
10.	Appendix	<p>Add Appendix H, Example of <i>Statement by Chief Executive Officer</i>.</p> <p>(See Attachment C for text.)</p>	<p>Added to provide sample wording for claimants who must meet this requirement.</p>

Attachment A
AH 267 Proposed Revisions-Matrix Item 7

HOUSING FOR LOWER-INCOME HOUSEHOLDS

Subdivision (g) of section 214 extends the welfare exemption to property owned and operated by qualifying organizations and used exclusively for rental housing which is occupied by lower-income households.¹ Qualifying organizations include limited partnerships in which the managing general partner is a qualified nonprofit corporation meeting the requirements of section 214, as well as religious, hospital, scientific, or charitable funds, foundations or corporations. Section 214(g) provides a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower-income households represents of the total property.

CRITERIA FOR THE PROPERTY TO QUALIFY FOR EXEMPTION

The ~~1999–2000~~ amendments to section 214, subdivisions (g)(1) and (g)(2), revised the requirements for low-income housing properties ~~and apply to all projects for which exemption is claimed for the year 2000–2001 fiscal year.~~²

~~The amendment to section 214(g)(1)(A) deletes the language allowing qualified organizations to qualify their low income housing projects for exemption if twenty percent or more of the occupants are lower income households and the rents do not exceed those prescribed by section 50053 of the Health and Safety Code. Thus, a low income housing project can qualify for exemption under this criteria only for 1999 and years prior. Starting with the year 2000, low income housing properties must meet one of the following criteria to be eligible for exemption:~~³

Low-income housing properties owned by eligible nonprofit corporations or limited partnerships in which the managing general partner is an eligible nonprofit corporation may qualify for exemption pursuant to one of the following criteria:

1. The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower-income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance;⁴ or

¹ Section 237, effective January 1, 2000, provides exemption for certain low-income housing properties of federally recognized Indian tribes. This section is not within the welfare exemption, thus, it is administered solely by the county assessor.

² Chapter 601, Statutes of 2000 (AB 659)

³ Section 1, Stats. 1999, Ch. 927, effective October 10, 1999.

⁴ Section 214(g)(1)(A).

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2. The owner of the property is eligible for and receives low-income housing tax credits pursuant to section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.⁵
3. Low income housing properties owned by eligible nonprofit corporations may also qualify for exemption under an additional criteria added by the 2000 amendments if 90 percent or more of the occupants of the property are low-income households within the prescribed rent levels of section 50053 of the Health and Safety Code.⁶
 - The total exemption amount may not exceed \$20,000 of tax for any fiscal year allowed for a single property or multiple properties owned by nonprofit corporations that are not financed by government loans, as specified in section 214 (g)(1)(A), or do not receive low income housing tax credits as provided in section 214 (g)(1)(B).⁷ (This limitation does not apply to properties owned by a limited partnership in which the managing general partner is a nonprofit corporation.)
 - Additional reporting is required. Claimants with properties qualifying for exemption under section 214(g)(1)(C) must list all the counties in which such properties are located. The \$20,000 may be applied to one property or may be allocated among several properties.

The Assessors' offices must provide to the Board a listing of all properties to which all or a portion of the \$20,000 tax exemption cap has been applied, and the tax dollar amount applied to each property. Specific instructions from the Board will be forthcoming regarding the frequency, specific information and format of this listing. The Board will run a statewide match by corporate name and identification number to verify and ensure that the \$20,000 tax exemption cap has not been exceeded statewide, and provide the matching process results to the assessors' offices for any further action if needed.

~~Thus, properties that previously qualified on the basis that twenty percent or more of the occupants are lower income households at the prescribed rent levels, will not be eligible for exemption as of January 1, 2000, if they cannot meet one of the two remaining criteria indicated above.~~

(The following paragraphs shown in strikeout were relocated to the end of this section under a new heading "Interpretation of Multiple Regulatory Agreements.")

⁵ Section 214(g)(1)(B).

⁶ Section 214(g)(1)(C).

⁷ Additional reporting is required, see Part E of BOE-267-L. Claimants with properties qualifying for exemption under section 214(g)(1)(C) must list all the counties in which such properties are located and the dollar amount of tax exemption, up to the \$20,000 exemption cap to be applied for each property.

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~~Some of the low income housing properties have received financing from several governmental agencies. It is common for each agency to have a regulatory agreement restricting rent levels and a portion of the property to occupancy by low income households. Typically, the agreements are inconsistent and overlapping. In this situation where there are multiple regulatory agreements, the agreements should be reviewed to determine the following:~~

- ~~• Where an agreement states that it is exclusive, it controls.~~
- ~~• If any of the agreements do not specifically state that they are exclusive, meaning that it controls over all other such agreements, the agreement with the most restrictive income and rent limits should be used to determine eligibility for the exemption.~~
- ~~• Agreements that specify that they are subordinate or subject to other financing programs are subject to the latter's income and rent restrictions.~~

~~The following example illustrates how to interpret two agreements restricting tenant occupancy and rent levels:~~

~~Project A has received tax credits from the California Tax Credit Allocation Committee ("TCAC"), based on a commitment that 100% of the units will be rented to tenants whose income does not exceed 60% of the median. The project has also qualified for local community-sponsored tax exempt bond issue administered by that city's housing department. The bonds are subject to a commitment that at least 20% of the units be occupied by tenants with income not exceeding 50% of median. In order to comply with both agreements, the owner must maintain 20% or more of the units with tenants not exceeding 50% of median, and the balance of the units not exceeding 60% of the median income. Neither agreement states that it is exclusive or controlling. Accordingly, the project (if it meets all other qualifications) would be eligible for 100% exemption. It is irrelevant which of the two agreements was executed first or second, as both must be given effect.~~

RESTRICTIONS ON THE USE OF THE PROPERTY

Owners of low income housing properties that are limited partnerships in which the managing general partner is a qualified nonprofit corporation must certify and ensure that there is either (1) an enforceable and verifiable agreement with a public agency; or (2) a recorded deed restriction that restricts the project's usage, as specified. (Section 214(g)(2)(A)(i))

The 2000 amendments to section 214(g)(2)(A)(i) allow nonprofit organizations that own and operate low income housing properties to also qualify through the use of an "other legal document" to restrict the property for rental to lower income households.

Pursuant to the Board's authority in sections 254 and 254.5, the Board requires that the claimant provide a copy of the regulatory agreement, deed restriction or other legal document. The document should be filed with the assessor of the county where the property is located with the annual claim (BOE-267-A) or first filing (BOE-267), supplemental affidavit(s), and any other relevant documents.

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Requirements for Owner of Property

The amendments to section 214(g)(2) also deleted former statutory language requiring an owner to certify and ensure "a deed restriction, agreement or other legal document" that restricts the project's usage and substituted the requirement that an owner must certify and ensure that there is either (1) "an enforceable and verifiable agreement with a public agency;" or, (2) a recorded deed restriction that restricts the project's usage, as described.

Enforceable and verifiable agreement with a public agency

The term *agreement* references a regulatory agreement with a government agency that has financed the acquisition, rehabilitation, development or operation of a low-income housing project. Such agreements generally contain the restriction that the property must be used for qualified low-income tenants for an extended period of time and are recorded with the county recorder in which the property is located.

Owners of properties awarded federal and/or state low income housing tax credits that are claiming exemption for the first time may submit a Preliminary Reservation Letter issued by the California Tax Credit Allocation Committee to satisfy the requirement of providing a regulatory agreement, which is not available until later. The regulatory agreement generally is not recorded as a deed restriction until three to six months after completion of construction of the low income housing property.

Recorded Deed Restriction Requirement

A recorded deed restriction meeting the requirements of section 214(g)(2)(A)(i), must state that the property's usage is restricted to lower-income housing, ~~and, that the units designated for use by lower income households are continuously available to or occupied by such households at rents within the prescribed limits. The deed restriction must indicate that the rents shall not exceed those prescribed by Health and Safety Code section 50053, or in the case of a conflict between the statutorily prescribed rent levels and the terms of government financing, the deed must state that the rents shall not exceed those prescribed by the terms of the financing.~~ Not all owners of low-income housing properties will be able to meet the requirement of a recorded deed restriction contemplated by the legislative revision to section 214(g)(2)(A). A deed restriction is a limitation on the use of property, typically imposed by a grantor in the deed used to convey the property to the new owner [grantee]. Thus, under California law, a deed restriction requires two persons, a grantor and a grantee, or two property owners, in order for a restriction on the use of property to be enforceable. Accordingly, an owner of a low-income housing project such as a nonprofit charitable and/or religious corporation, would not be able to meet the "recorded deed restriction" requirement by recording a new deed in which it unilaterally imposed the restriction on its property required under section 214(g)(2)(A).

The recorded deed requirement may be met by low-income housing properties operated by two entities, a limited partnership and a nonprofit [corporation] managing general partner. These entities may enter into a personal covenant or contract and record it in the county where the low-income housing property is located. Thus, if one entity failed to comply with the restriction on

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the use of the property for low-income housing, the other entity would have a cause of action based on contract law principles. (See example of deed restriction in Appendix D.)

Other Legal Document

Nonprofit organizations that own and operate low income housing properties may also use an "other legal document" to restrict the property for rental to lower income households.

- A document submitted as an "other legal document" must be adopted as a resolution or statement of policy by the organization's board of directors, or executed by the organization's chief executive officer, provided that the board of directors has delegated this authority in writing to the chief executive officer.
- The document should restrict the entire property or a percentage of the property to use for low income housing, utilizing the language in section 214(g)(2)(A)(i). (See Appendices G and H, for examples of "other legal document" and a "Statement by Chief Executive Officer that would satisfy these requirements.)

Thus, nonprofit corporations that own and operate low income housing properties may meet the requirement that the property be restricted to use for low income housing by through the use of one of the following documents:

- A copy of a regulatory agreement with a public agency,
- A copy of a recorded deed restriction, or
- A copy of an other legal document.

Additional Requirements

Another requirement is that the owner must also certify that property tax savings are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower-income households.⁸ The certification requirements are met by the property owner completing and signing Form AH267L, Welfare Exemption Supplemental Affidavit—Lower-Income Households. The certifications are under penalty of perjury on the Supplemental Affidavit, which must be completed and submitted with the Welfare Exemption Claim (Form BOE 267). (See Chapter 6, Welfare Exemption Claim Process, for filing requirements.)

Interpretation of Multiple Regulatory Agreements

(The following text was relocated from earlier in this section.)

Some of the low-income housing properties have received financing from several governmental agencies. It is common for each agency to have a regulatory agreement restricting rent levels and a portion of the property to occupancy by low-income households. Typically, the

⁸ Section 214(g)(2)(B) and (g)(3). In general, Board staff and the Assessor may require supporting documentation.

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agreements are inconsistent and overlapping. In this situation where there are multiple regulatory agreements, the agreements should be reviewed to determine the following:

- Where an agreement states that it is exclusive, it controls.
- If any of the agreements do not specifically state that they are exclusive, meaning that it controls over all other such agreements, the agreement with the most restrictive income and rent limits should be used to determine eligibility for the exemption.
- Agreements that specify that they are subordinate or subject to other financing programs are subject to the latter's income and rent restrictions.

The following example illustrates how to interpret two agreements restricting tenant occupancy and rent levels:

Project A has received tax credits from the California Tax Credit Allocation Committee ("TCAC"), based on a commitment that 100% of the units will be rented to tenants whose income does not exceed 60% of the median. The project has also qualified for local community-sponsored tax exempt bond issue administered by that city's housing department. The bonds are subject to a commitment that at least 20% of the units be occupied by tenants with income not exceeding 50% of median. In order to comply with both agreements, the owner must maintain 20% or more of the units with tenants not exceeding 50% of median, and the balance of the units not exceeding 60% of the median income. Neither agreement states that it is exclusive or controlling. Accordingly, the project (if it meets all other qualifications) would be eligible for 100% exemption. It is irrelevant which of the two agreements was executed first or second, as both must be given effect.

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EXAMPLE

OTHER LEGAL DOCUMENT

Resolution of the Board of Directors of (corporation)

Whereas, the (corporation) owns property (a housing project) located at (Street Address) (Assessor's Parcel No. _____) in the City of _____ in _____ County, in the State of California; and,

Whereas, (the corporation) is claiming an exemption from property taxation for the property (project) pursuant to subdivision (g) of section 214 of the California Revenue and Taxation Code and,

Whereas, to meet the requirements for exemption, there must be a legal document restricting the property's (project's) usage for lower-income households as set forth in subdivision (g)(2)(A)(i) of section 214; and,

Whereas, (the corporation) intends to adopt this resolution to meet the aforesaid requirements;

Now, therefore, be it resolved By the Board of Directors of (the corporation) the use of the property (project) (the entire complex or a minimum of 90% of the rental units) is restricted to rental to qualified low-income households at or below income limits set forth in section 50093 of the Health & Safety Code. The units restricted to use by lower-income households shall be continuously available to or occupied by low-income households at rents that do not exceed those prescribed by section 50053 of the Health and Safety Code.

* The restriction to use the units solely for qualified low-income tenants at the prescribed rents shall be in effect for the duration of (the corporation's) ownership of this property (project).

Adopted this _____ day of _____ in the year _____

Attest:

Corporate Seal

Corporate Secretary

**If the terms of government financing or financial assistance conflict with section 50053, the next-to-last sentence may be modified to read: The units restricted to use by lower-income*

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households shall be continuously available to or occupied by low-income households at rents that do not exceed those prescribed by the terms of the financing or financial assistance.

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APPENDIX H

EXAMPLE

STATEMENT BY CHIEF EXECUTIVE OFFICER

I, _____ do hereby certify and ensure that:

I am the chief executive officer of ___(corporation)___;

(The corporation) owns property (a housing project) located at
(Street Address)

(Assessor's Parcel No. _____) in the City of _____ in _____
County, in the State of California;

I have filed on behalf of (the corporation) a claim for exemption
from property taxation for the property (project) pursuant to
subdivision (g) of section 214 of the California Revenue and
Taxation Code and,

To meet the requirements for exemption, there must be a legal
document restricting the property's (project's) usage for lower-
income households as set forth in subdivision (g)(2)(A)(i) of
section 214;

I have been authorized in writing by the Board of Directors of
(the corporation) to execute this document restricting the use of
the property (project) (the entire complex or a minimum of 90% of
the rental units) for rental to qualified low-income households
at or below income limits set forth in section 50093 of the
Health & Safety Code. The units restricted to use by lower-income
households shall be continuously available to or occupied by low-
income households at rents that do not exceed those prescribed by
section 50053 of the Health and Safety Code.* The restriction to
use the units solely for qualified low-income tenants at the
prescribed rents shall be in effect for the duration of (the
corporation's) ownership of this property (project).

Signed at _____, California this _____ day of
_____, _____

_____.

**If the terms of government financing or financial assistance
conflict with section 50053, the next-to-last sentence may be
modified to read: The units restricted to use by lower-income
households shall be continuously available to or occupied by low-*

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income households at rents that do not exceed those prescribed by the terms of the financing or financial assistance.