



STATE BOARD OF EQUALIZATION

PROPERTY TAX DEPARTMENT

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No. 2023/054

December 15, 2023

TO COUNTY ASSESSORS:

HOUSING AUTHORITIES: PROPERTY TAXATION

Effective January 1, 2024, [Assembly Bill \(AB\) 1528](#) (Stats. 2023, ch. 766) amended Health and Safety Code (HSC) section 34400 to clarify that the exemption from taxation for property owned by a public housing authority extends to property owned by a nonprofit public benefit corporation that is controlled by the public housing authority.

Section 3 of article XIII of the California Constitution generally exempts from taxation property owned by the State or local government. The Housing Authorities Law (HSC sections 34200 – 34380) creates public housing authorities in each county, city, and city and county¹ as public bodies exercising public and essential governmental functions.² The Corporations Code provides for nonprofit public benefit corporations under the management of a board of directors.³ Courts have held that public benefit corporations are not public entities because they are not owned or operated by the government and do not possess any of the traditional incidents of sovereign authority such as the power to tax or to condemn property.⁴ Thus, when public agencies have transferred ownership of property into different entities, such as public benefit corporations, a question has arisen of whether the government-owned property tax exemption applies.

The BOE has previously opined that because nonprofit public benefit corporations are legally separate entities from the State and local governments, government entities do not pass on their exemptions to such corporations.⁵ The primary issue is control; when a public benefit corporation has operational independence outside government supervision, its property is not eligible for the exemption as government-owned property, even if a public agency owns all the corporation's shares. Revenue and Taxation Code (RTC) sections 201.1, 201.3, and 201.4 specifically exempt properties owned by certain nonprofit corporations solely owned by local governments, however, those statutes are entity-specific.

AB 1528 amends HSC section 34400 to clarify that property held by a nonprofit public benefit corporation which is controlled by a public housing authority shall be included in the exemption for local government entities if both of the following criteria are met:

¹ HSC 34240.

² HSC 34310.

³ Corporations Code 5210.

⁴ See, e.g. *Los Angeles Leadership Academy, Inc. v. Prang* (2020) 46 Cal.App.5th 270 at 281.

⁵ December 18, 2009 Back up letter to Annotation 490.001, Annotation 490.0065.

- The nonprofit public benefit corporation is organized for purposes pursuant to the Housing Authorities Law and is solely directed and managed by directors, officers, or employees of the housing authority.
- The organizational documents of the nonprofit public benefit corporation contain provisions that in the event of the liquidation, dissolution, or winding up of the nonprofit public benefit corporation, all assets of the nonprofit public benefit corporation revert to ownership by the housing authority.

AB 1528 also amends HSC 34400 to specifically state that these changes are declaratory of existing law and require any outstanding ad valorem tax, interest, or penalty that was levied on the property of a nonprofit public benefit corporation that is controlled by a housing authority be canceled and any tax, interest, or penalty so levied that was paid prior to January 1, 2024, be refunded.

Under these circumstances, an Assessor is authorized to correct the base year value pursuant to RTC section 51.5(a) and to correct the last four assessment rolls pursuant to RTC section 4831(a)(1). Refunds are issued by the County Auditor pursuant to RTC section 5096. Claim filing information may be found in RTC section 5097.

A copy of amended HSC section 34400, with changes noted in ~~strikeout~~/*italic* format, is enclosed. If you have any questions regarding these provisions, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:mo
Enclosure

SECTION 1. Section 34400 is amended to read:

34400. ~~It has been found and declared~~ (a) *The Legislature has found and declared all of the following in the Housing Authorities Law (Chapter 1 (commencing with Section 34200)) and the Housing Cooperation Law (a) that there (Chapter 2 (commencing with Section 34500)):*

(1) *There exist in the state housing conditions which constitute a menace to the health, safety, morals, and welfare of the residents of the State; (b) that these state.*

(2) *These conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident prevention, and other public services and facilities; (c) that the and facilities.*

(3) *The public interest requires the remedying of these conditions by the creation of housing authorities to undertake projects for slum clearance and for providing safe and sanitary dwelling accommodations for persons who lack sufficient income to enable them to live in decent, safe, and sanitary dwellings without overcrowding; and (d) that such housing overcrowding.*

(4) *These housing projects are for public uses and purposes and are governmental functions of state concern. As*

(b) (1) *As a matter of legislative determination, it is hereby found and declared that the property and bonds of a housing authority are of such character as shall be exempt from taxation.*

(2) *Property held by a nonprofit public benefit corporation that is controlled by a housing authority shall be included in the exemption from taxation described in paragraph (1).*

(c) *For purposes of this section, a nonprofit public benefit corporation shall be deemed to be controlled by a housing authority if both of the following conditions are met:*

(1) *The nonprofit public benefit corporation is organized for purposes pursuant to the Housing Authorities Law and is solely directed and managed by directors, officers, or employees of the housing authority.*

(2) *The organizational documents of the nonprofit public benefit corporation contain provisions that in the event of the liquidation, dissolution, or winding up of the nonprofit public benefit corporation, all assets of the nonprofit public benefit corporation revert to ownership by the housing authority.*

(d) (1) *It is the intent and purpose of this section to clarify subdivisions (a) and (b) of Section 3 of Article XIII of the California Constitution and, therefore, the changes made by this bill to this section do not constitute a change in, but are declaratory of, the existing law.*

(2) *Any outstanding ad valorem tax, interest, or penalty that was levied on the property of a housing authority that meets the requirements of this section shall be canceled, and any tax, interest, or penalty, as so levied, that was paid prior to January 1, 2024, shall be refunded.*

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 3. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC.4. The Legislature hereby finds and declares that the refund authorized by Section 34400 of the Health and Safety Code, as amended by this act, serves the public purpose of providing safe and sanitary dwelling accommodations in the state and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.