



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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No. 92/54

August 31, 1992

TO COUNTY ASSESSORS:

EXEMPTION OF LEASED PROPERTY USED EXCLUSIVELY FOR LOW INCOME HOUSING:
NEW FORMS AH 236 AND AH 236A

Chapter 1296, Statutes of 1988, added Section 236 to the Revenue and Taxation Code. Section 236 states:

"Property leased for a term of 35 years or more or any transfer of property leased with a remaining term of 35 years or more where the lessor is not otherwise qualified for a tax exemption pursuant to Section 214, which is used exclusively and solely for rental housing and related facilities for tenants who are persons of low income (as defined in Section 50093 of the Health and Safety Code), and is leased and operated by religious, hospital, scientific, or charitable funds, foundations or corporations, public housing authorities, public agencies, or limited partnerships in which the managing general partner has received a determination that it is a charitable organization under Section 501(c)(3) of the Internal Revenue Code and is operating the property in accordance with its exempt purpose is exempt from taxation on the possessory interest and the fee interest in the property throughout the term of the lease.

"Low- and moderate-income has the same meaning as the term 'persons and families of low- and moderate-income' as defined by Section 50093 of the Health and Safety Code."

Section 2 of Chapter 1296 provides that notwithstanding Section 2229 of the Revenue and Taxation Code, the requirements of that section relating to any exemption of property for more than five years or for more than 75 percent of the value thereof shall not apply to the exemption made by this act. Section 3 provides that this act shall be applicable to property taxes levied for the 1989-90 fiscal year and fiscal years thereafter.

In assessor's letter 89/22 we advised you that such property was eligible for exemption under the provisions of the welfare exemption. Upon closer reading of the statute, our legal staff has advised us that Section 236 is a separate and distinct exemption and, with one exception, is independent of the welfare exemption. Accordingly, as required by Revenue and Taxation Code Section 251,

the Board on June 18, 1992 adopted the following two new forms to carry into effect the exemption:

AH 236, Exemption of Leased Property Used Exclusively For Low Income Housing

AH 236A, Supplemental Affidavit For AH 236, Housing - Lower-Income Households

Copies of these new forms are enclosed. The forms are designed for filing by either the lessor or the lessee. At present the law does not address a time frame for filing the forms. Therefore, a claimant can file for the exemption at any time within four years after the making of the assessment. We intend to propose legislation to establish an annual filing period for the exemption.

This exemption is to be administered at the county level; thus, the claim form and affidavit should not be sent to our office for processing. However, as required by Revenue and Taxation Code Section 251, we suggest the following procedures for processing exemption claims filed under the provisions of Section 236.

The claim form, AH 236, is relatively basic and self-explanatory with the provisions of Section 236 expressed in questions 6, 7 and 8. Particular attention must be given to question 8 which categorizes lessees into three types of organizations and determines what supporting documents, if any, are required for proper processing of the exemption.

1. If question 8, box a. is checked, the lessee must file and qualify for the welfare exemption. The welfare exemption claim should be processed as usual and forwarded to the Board, along with the required supporting documents (articles, tax letters, financial and operating statements, etc.) including the income affidavit AH 236A. The claim form, AH 236, whether filed by the lessor or lessee, should not be forwarded to the Board but retained by the assessor. The assessor's field inspection report accompanying the welfare exemption claim must indicate that the land (and buildings, if owned by the lessor) are subject to Section 236 of the Revenue and Taxation Code.
2. If question 8, box b. is checked, only the claim form and income affidavit need be filed by either the lessor or the lessee.
3. If question 8, box c. is checked, the additional supporting documents listed in 8c must be filed along with the claim form and income affidavit.

The managing general partner must have an ownership interest in the limited partnership, an interest in the limited partnership's capital. The amount of such interest is immaterial. The limited partnership agreement usually clearly states the amount of each partner's capital interest, which is not necessarily the same as the amount of each partner's interest in partnership

August 31, 1992

profits and losses. Do not assume a capital interest based upon profit or loss interests or distributions.

In reviewing the limited partnership agreement and Certificate of Limited Partnership (LP-1) issued by the Secretary of State, keep in mind the Secretary of State's LP-1 endorsement date is controlling as the result of Corporations Code Section 15621(b), not the date the documents were signed. Section 15621(b) states in this regard that a limited partnership is formed at the time of filing the LP-1 in the office of the Secretary of State. Welfare exemption claims have been denied where the documents were signed prior to the lien date but the LP-1 was filed and/or endorsed afterwards.

An amended limited partnership agreement or an amended limited partnership agreement and an amended Certificate of Limited Partnership (LP-2) may indicate added, deleted, or changed partnership members. In such a case, as the result of Corporations Code Sections 15622 et seq., it is the date of the amended limited partnership agreement (as distinguished from the date of the Secretary of State's endorsement) which adds, deletes, or changes partnership members. That date is determinative in establishing whether a qualifying managing general partner in receipt of a determination that it was a charitable organization under Section 501(c)(3) of the Internal Revenue Code existed on the March 1 lien date.

The household income affidavit, AH 236A is a modification of the AH 267L income affidavit used as a supplement to the welfare exemption. The income limits (sent to you annually) and the calculation of percentage of exempt value in the case of a partial exemption, are the same for both forms. The form numbers and the references to the two exemptions are the primary differences. Thus, with caution, the forms are interchangeable.

Our prior approval of these forms is not necessary if you use prototype copies of the forms. If you use rearranged versions of the forms, two draft copies of the forms must be submitted to the State Board of Equalization for approval.

If you have any questions, please contact our Exemption Unit staff at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:csj
Enclosures
AL-37-0016N