

[Assembly Bill 1193](#) (Gloria)

Date: 05/16/17

Program: Property Taxes

Sponsor: California Council for Affordable Housing

Non-Profit Housing Association of Northern California

Revenue and Taxation Code Section 214

Effective January 1, 2018, operative only if annual budget appropriation provided.

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Summary: Extends the low-income housing property tax exemption to a rent-restricted unit occupied by an over-income tenant (over 80% of Area Median Income (AMI)) who was income-qualified at first occupancy.

Summary of Amendments: The amendments since the previous analysis make the provisions operative only if the state budget appropriates money for implementation and limit the provisions to fiscal years 2018-19 to 2027-28.

Purpose: To allow the property owner to keep claiming the exemption on over-income occupied units while rent-restrictions remain in force.

Fiscal Impact Summary: Indeterminable, but could exempt up to 14,200 units of unknown assessed value per unit.

Existing Law: Existing law allows property used for lower income rental housing that is owned and operated by a qualifying nonprofit organization to be exempt from property tax under the welfare exemption, provided various conditions and requirements are met. Lower income rental housing owned by a limited partnership in which a nonprofit organization serves as the managing general partner may also qualify for exemption. Generally, to qualify for the exemption, the law requires that the rental housing be financed with specified tax exempt bonds, government loans or grants, or that the property's owner receives low-income housing tax credits (LIHTC) pursuant to Section 42 of the Internal Revenue Code.¹

Lower Income Household Definition. Property tax law defines lower income households by cross-reference to the Health and Safety Code.² This law generally provides that lower income households are those households with incomes at 80% of the Area Median Income (AMI) adjusted for family size and geographic areas of the state. The law requires California's Housing and Community Development (HCD) to [annually publish](#) these income limits based on federal Housing and Urban Development (HUD) data.

Proportional Exemption. Relevant to this bill, the property tax exemption extends to "units serving lower income households" and to qualify a unit must be occupied by a lower income household (max income 80% AMI).³ The law allows these rental-housing properties a partial exemption equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower income households represents of the total number of residential units.⁴

Federal Law: Low-Income Housing Tax Credit Eligibility. The Internal Revenue Code provides that a low-income unit will continue to be treated as a low-income unit if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Federal law further provides, as

¹ Revenue and Taxation Code (RTC) [Section 214\(g\)\(1\)\(A\)](#) and [214\(g\)\(1\)\(B\)](#). Rental housing without government assistance in the form of low-income housing tax credits or government financing can also qualify, but the exemption is capped to the first \$10 million in assessed value and it must be 90% low income occupied. [§214\(g\)\(1\)\(C\)](#)

² Health and Safety Code [Section 50079.5](#). Additionally, the BOE [annually reports](#) the household income limits to assessors for use in administering the low income housing exemption.

³ RTC Section 214(g)(3)(C).

⁴ RTC Section 214(g)(1).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

specified, that if the occupant's income exceeds 140% of federal law income limitations⁵ then the next available unit in the property of a comparable or smaller size must be rented to a low income tenant. If not, the unit occupied by the household with over 140% income threshold ceases to be treated as a low-income unit.

Existing California property tax law has no equivalent provision deeming a unit to be treated as a "low-income" unit when the occupant's household income exceeds the property tax-related income limit of 80% of AMI after move-in.

Proposed Law: This bill allows owners of low-income rental housing properties receiving federal low-income housing tax credits to continue to claim the property tax exemption on units occupied by individuals whose incomes increase after move-in to a level above the property tax related limit (80% of AMI) provided the unit remains rent-restricted.

These provisions are operative for fiscal years 2018-19 to 2027-28, but only if a specific budget appropriation for implementation costs is provided.

In General: Government Financing or Tax Credits: Proportional Exemption. When a nonprofit organization owns and operates a low-income rental housing property that receives government financing or low-income housing tax credits, all of the properties may be exempt from property tax. Generally, a low-income housing property, including a single family home, may qualify for the welfare exemption provided:

- **Government Assistance.** The nonprofit organization owner receives low-income housing tax credits or government financing on the property.⁶ *§214(g)(1)(A) and (B)*
- **Use Restriction.** The property is subject to a recorded deed restriction, regulatory agreement, or other legal document⁷ restricting its use for low-income housing purposes at specified rents. *§214(g)(2)(A)(i) and Property Tax Rule 140*
- **Rents Charged.** The rents charged to lower income household occupants do not exceed the rent prescribed by the deed restrictions or regulatory agreement. *§214(g)(1)(A) and §214(g)(2)(A)(i)*
- **Property Tax Savings.** The owner certifies that the funds otherwise spent to pay taxes are instead used to maintain affordability of, or reduce rents of units occupied by, the lower income households. *§214(g)(2)(B)*
- **Occupancy.** While there is no minimum percentage of units that must be occupied by lower-income households, the exemption only extends to the units serving lower-income households. *§214(g)(1)*
- **Limited Partnership: Special Requirements.** In the case of housing owned by a limited partnership in which the managing general partner is an eligible nonprofit organization or an eligible [limited liability company](#), use and rent restrictions must be contained in an enforceable and verifiable agreement with a public agency or in a recorded deed restriction. *§214(g)(2)(A)(ii)*

The law requires property owners to annually file a [claim](#) to receive the exemption. The claim must state the number of units serving low-income households, which includes vacant units, and requires an attachment that lists qualified households. To qualify, the property owner must obtain a [signed statement](#) for each household certifying that the family household income did not exceed the income limits for that year.

⁵ [Section 42\(g\)\(2\)\(D\)](#) of the Internal Revenue Code.

⁶ The exemption continues to apply if the government financing has been refinanced or paid in full or if the allocation of the low-income housing tax credits has terminated or expired, during the period of restricted use and rent levels provided that the government agency that is a party to the regulatory agreement continues to monitor and enforce compliance with the regulatory agreement. Property Tax Rule 140(c).

⁷ An "other legal document" is not permissible if a limited partnership owns the property with a managing general partner that is a nonprofit organization. RTC §214(g)(2)(A)(ii).

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Commentary:

1. **The effect of this bill.** This bill extends the welfare exemption to units occupied by households with incomes over 80% of AMI in properties owned by a person eligible for and receiving low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code if, generally, the occupants initially met the income limitation and the unit continues to be rent restricted. *§214(g)(1)(B)*
2. **The May 16, 2017 amendments** make this bill contingent upon a specific annual budget appropriation. The amendments are unclear as to what moneys are to be appropriated related to “implementing” the bill, as noted in Comment 3. The amendments also limit the provisions to fiscal years 2018-19 to 2027-28.
3. **Money to be appropriated is unclear.** The operative date of this bill depends on an appropriation for implementation. Is the money in the budget for local county assessors to administer the changes, to backfill schools related to Proposition 98 minimum funding guarantees, or something else? Who determines the amount of funds necessary? Would assessors have a duty to separately track and report to the Department of Finance the revenue loss associated with these provisions?

The appropriation-contingent operative provisions would be problematic for assessors and claimants. Exemption claims are due February 15, a time when the necessary appropriation is uncertain. This would require units occupied by over-income tenants to be reported separately. These amendments are confusing and will complicate welfare exemption administration.
4. **Property tax hardship.** Proponents state that deed or regulatory restrictions generally prohibit the owner of these properties from evicting tenants for being over-income or increasing the over-income tenant's rent. The resulting property tax “savings” become a loss on these units and present a financial hardship to the property owners, since rents remain restricted, but property taxes increase.
5. **The amendments are confusing.** The inserted references to IRC Section 42(g)(2)(D) are located in sentences that discuss rent limits, not occupant income limits. BOE staff is working with the author to address this. A direct statement about which units can be counted as exemption-eligible when calculating the percentage of qualified units to total units would be helpful in the practical administration of this law change.
6. **Does this bill exempt a unit occupied by a household with an income above 140% of AMI?** Under federal law a unit continues to be treated as a low-income unit so long as the occupants initially met the income threshold requirement and the unit remains rent restricted. Revocation of the "low-income unit" designation appears predicated on the next available unit in the property being rented to a non-income qualified person. If all units that turn over are rented to income-qualified persons, such as in a 100% affordable housing project, then does the unit occupied by a household with income above 140% of AMI remain property tax exempt? Existing law establishes a clear bright-line test at 80% of AMI. Does this bill intend to establish a 140% of AMI bright-line in the case of tax credit-related properties?
7. **Other low-income housing property owners.** Will non-LIHTC rental housing property owners similarly situated seek the exemption extension to units occupied by over-income tenants? For instance, properties financed with tax-exempt bonds and government financing may seek similar changes.

Costs: The BOE would incur absorbable costs to update claim forms (BOE-267-L), Property Tax Rule 140, and the Assessors' Handbook, as well as address ongoing implementation issues.

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Revenue Impact: This bill's revenue impact depends on how many more units will qualify for the welfare exemption and the assessed value of each of those units. At the basic 1% tax rate, each \$100,000 in assessed value exempted from the property tax results in a revenue loss of \$1,000.

The California Tax Credit Allocation Committee (TCAC) has developed a [map](#) displaying the location of all existing multifamily housing projects developed using LIHTC in California with detailed information about each project. TCAC data indicates there are about 284,000 LIHTC units in California. Based on reported tenant income data collected by TCAC, we assume 5% of these units are occupied by over-income tenants. Under this assumption, up to 14,200 units would additionally qualify for the welfare exemption.

However, the assessed value of any unit is variable and depends on the facts of each property on a case-by-case basis. The BOE does not have this data available and the total revenue impact is indeterminable.