STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**05/12/10**	Bill No:	**SB 996**
Tax:	**Property**	Author:	**Lowenthal**
Related Bills:			

BILL SUMMARY

This bill would refund, as specified, ad valorem property taxes paid on specified low-income rental housing properties that had been historically exempt from tax through a succession of owners, from Caltrans to various nonprofit organizations.

SUMMARY OF AMENDMENTS

Since the previous analysis, the bill was amended to expressly provide that the refunds are limited to the ad valorem property tax. The amendments also detail how to calculate the refund and apply any refund owing to any outstanding special assessment, fee, or other charge.

CURRENT LAW

Revenue and Taxation Code Section 214(g)(1)(D) provides that the welfare exemption is applicable to property used exclusively for low-income rental housing that was previously purchased and owned by the Department of Transportation (Caltrans) pursuant to a consent decree requiring housing mitigation measures relating to the construction of a freeway and is now solely owned by an organization that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

These special provisions for "consent decree" rental housing projects were added in 2008 to restore the welfare exemption on 12 developments that had become ineligible after they were sold from one nonprofit organization to another. Basically the projects became ineligible because of changes in law relating to financing sources. Since January 1, 2000, low-income housing projects must either be financed with government funds or qualify for specified income tax credits to be eligible for the welfare exemption. Otherwise, the owner of the projects is subject to an exemption cap limiting the exemption on projects to the first $20,000 of tax.

Revenue and Taxation Code Section 214.16 provides that any outstanding tax, interest, or penalty levied or imposed on these consent decree rental housing projects between January 1, 2002 and January 1, 2009 be cancelled provided that the owner of the property certifies that certain conditions were met at the time the taxes were levied.

PROPOSED LAW

This bill would amend Section 214.16 to additionally provide for the **refund,** as specified, of any ad valorem property tax, interest, or penalty levied and paid on consent decree properties between January 1, 2002 and January 1, 2009. Section 214.16 was originally limited to **cancellations** of outstanding property tax because at that time it was understood that no taxes had been paid on the properties while the issue of welfare exemption eligibility was being pursued. Apparently, this was not the case, and some property tax payments had been made by financiers of the projects on behalf of the nonprofit organization owner to avoid the sale of the projects for property tax delinquency.

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 Board's formal position

The bill makes legislative findings and declarations stating that the refunds provided by this bill serve a statewide public purpose. Those findings and declarations are that:

- It maintains the affordability of lower income housing that fulfills the legal commitment entered into by Caltrans in a consent decree to replace affordable housing stock lost as a result of the construction of the Century Freeway.
- It addresses California's serious shortage of affordable decent, safe, and sanitary housing for persons and families of low or moderate income, including the elderly and handicapped, by providing necessary property tax relief for certain tax exempt organizations so that these tax exempt organizations can provide this affordable housing for persons and families of low or moderate income.

IN GENERAL

The Consent Decree. In 1972 a lawsuit was filed in the United States District Court, *Keith v. Volpe*, related to the then planned construction of the Century Freeway (I-105) in Los Angles County which was completed and opened to traffic in 1993. The lawsuit was eventually settled and a consent decree was issued in 1979 that, in part, required affordable housing be created to replace the housing that would need to be demolished to build the freeway. Caltrans was a party to the consent decree. The "Century Freeway Housing Program" was a state run program under the Department of Housing and Community Development (HCD) until 1995 when it was privatized and its assets transferred to the non-profit Century Housing Corporation.

Consent Decree Properties. The provisions for "consent decree" properties were created to eliminate a requirement that the exempt organization receive low-income housing tax credits or government financing on the property. This, in turn, effectively removed an otherwise $20,000 exemption cap for a nonprofit organization that owns consent decree properties in its portfolio of projects.

A "consent decree" low-income housing property qualifies for the welfare exemption provided that:

- **Property History.** It was once owned by Caltrans and was related to the *Keith v. Volpe* consent decree and the Century Freeway Housing Program and its successors.
- **Use Restriction.** The property is subject to a recorded deed restriction, regulatory agreement, or other legal document. *§214(g)(2)(A)(i) and Property Tax Rule 140*
- **Property Tax Savings.** Funds not used to pay property taxes are used to maintain affordability of, or reduce rents of, units occupied by the lower income households. *§214(g)(2)(B)*
- **Sole Ownership.** The property is solely owned by the nonprofit organization. *§214(g)(1)(D)(ii)*

BACKGROUND

Historical Qualifications. Prior to January 1, 2000, there were three possible ways to qualify for a property tax exemption on a low-income rental housing project owned by a nonprofit organization via the welfare exemption. These were:

1. At least 20% of the occupants were persons with low income.
2. The project was financed with tax-exempt bonds, government loans or grants.

3. The nonprofit organization was eligible for and received low-income housing income tax credits.

More Stringent Qualifications. Assembly Bill 1559 (Stats. 1999, Ch. 927, Wiggins), operative January 1, 2000, deleted mere "occupancy" by persons with low income as a qualifying condition for the welfare exemption. As a result, to receive a property tax exemption, the low-income housing project must either be financed with government funds or qualify for income tax credits.

The goal of the changes made by AB 1559 was to revoke the property tax exemption from owners of substandard housing properties that were benefiting from this property tax benefit. The bill was sponsored by the Los Angeles Housing Project, which had, in the course of investigating various substandard housing projects, discovered that some properties were receiving a property tax exemption under a provision which permits the property to qualify solely on the basis that the rents were low and the residents were low-income households. Presumably, the rationale for limiting the exemption to properties that had been financed with tax-exempt bonds, government loans or grants was that such properties would be subject to some level of government overview, and thus, ensure quality housing for the tenants.

Exemption Cap. However, the changes made by AB 1559 also revoked the exemption from some owners that provided quality housing projects because they did not have government financing or tax credits. Consequently Assembly Bill 659 (Stats. 2000, Ch. 601, Wiggins) was enacted the following year to reinstate the exemption based on "occupancy" but with three changes:

1. The 20% occupancy threshold was raised to 90%.
2. An exemption cap of $20,000 of "tax" was created.
3. The property must be solely owned by a nonprofit organization -- limited partnerships in which the managing general partner is an eligible nonprofit corporation were specifically excluded.

Since the exemption cap was instituted in 2000, few nonprofit organizations that own low-income rental housing have exceeded the cap. Most projects use government financing or tax credits and thus are not impacted by the cap. The purpose of making public financing a key condition of receiving a property tax exemption was to prevent the owners of substandard projects from partnering with a nonprofit organization in a limited partnership as a ruse to obtain the welfare exemption or by creating a non-profit organization itself. The purpose of imposing a cap when public financing was not obtained was to ensure that if such owners were still able to qualify for the exemption by creating a nonprofit organization, the extent of the exemption would be limited to no more than $20,000 in tax.

Consent Decree Property Exception. One organization affected by the $20,000 exemption cap included Long Beach Affordable Housing Coalition (LBAHC). LBAHC purchased 12 developments that had been historically exempt from property tax under the welfare exemption. However, due to the fact that LBAHC was able to purchase them from another nonprofit organization without the use government financing or tax credits and LBAHC was impacted by the cap and only the first $20,000 in tax was exempt.

SB 1284 (Lowenthal, Stats. 2008, Ch. 524) was enacted to ensure that the welfare exemption continued to apply to this portfolio of projects. It also provided a one time cancellation of outstanding taxes, including any related interest or penalties.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the Long Beach Affordable Housing Coalition (LBAHC) as clean up legislation to 2008's SB 1284. The author notes that because these properties should have always been exempt from tax in the first place, it is appropriate to refund the amounts that were paid while the unique situation related to these consent decree properties was resolved.

2. **Amendments.** The **May 12, 2010**, amendments expressly provide that cancellations and refunds on these properties are limited to the ad valorem property tax and specify how the refund amount is to be calculated and applied. The **March 25, 2010**, amendments added the legislative findings and declarations.

3. **Continuous Exemption**. This bill ensures the seamless exemption of these properties under the welfare exemption from the period of initial acquisition by Caltrans through the subsequent transfer of ownership to various nonprofit organizations.

4. **The 2008 legislation effectively made the exemption retroactive to the date the properties were purchased by LBAHC, but it only provided for the cancellation of outstanding taxes.** This bill additionally provides for the *refund* of any taxes, interest, or penalties levied and paid on consent decree properties between January 1, 2002 and January 1, 2009. Section 214.16 was originally limited to cancellations of outstanding tax because at that time it was understood that no taxes had been paid on the properties while the issue of welfare exemption eligibility was being pursued. Apparently, this was not the case. After the bill was enacted it was learned that LBACH's lender had made some property tax payments on its behalf to avoid the sale of the projects for property tax delinquency. Thus, the essential purpose of SB 1284 was not fully achieved.

5. **LBACH's lender is now demanding repayment of the property taxes it paid** during the period of time before the properties were retroactively made eligible for the welfare exemption. This bill would provide those refunds.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE

According to Los Angeles County Tax Collector, the property tax refunds resulting from this bill would total $550,000.

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