

PROPOSED WELFARE EXEMPTION RULES
INTERESTED PARTIES THAT PROVIDED COMMENTS AFTER 2nd LIST POSTED

MARCH 21, 2005

AEGON USA Realty Advisors, Inc., March 11, 2005

AOF/Pacific Affordable Housing Corp., March 4, 2005

Bridge Housing, March 16, 2005

Castle Argyle, March 2, 2005

City of Sacramento, March 9, 2005

Las Palmas Foundation, March 14, 2005

MMA Financial, LLC, March 14, 2005

Patrick R. Sabelhaus, Law Offices of, March 11, 2005

WNC & Associates, Inc., March 16, 2005



AEGON USA Realty Advisors, Inc.
505 Sansome Street, 17th Floor
San Francisco, CA 94111
Phone: 415-983-5420
FAX: 415-983-5558

March 11, 2005

California State Board of Equalization
Property and Special Taxes Department
450 N Street
P.O. Box 942879
Sacramento, California 94279

Attn: Mrs. Ladeena Ford

Re: Comments to Proposed Welfare Exemption Rules

Dear Mrs Ford, and Board Members:

AEGON has invested over \$1.25 Billion in affordable housing nationwide. In California, AEGON has invested over \$220 Million directly in 35 affordable properties, creating 3,559 affordable homes for Californians.

The Board of Equalization's system for administering the property tax exemption under California Revenue and Taxation Code, Section 214(g) for partnerships in which a nonprofit corporation serves as the managing general partner is a system that works in favor of affordable housing.

The welfare exemption assists in affordable housing development feasibility, and operating success. The BOE has refined the administration of the welfare exemption system, to a point of reliability and efficiency, and it is working. The present clarification of rules and reliance primarily on the Regulatory Agreements specifying levels of affordability compliance is helpful and workable.

More radical surgery is not needed, and stands to place existing, feasible and complying affordable properties at risk of non-compliance, loss of net income, and loan default.

To the extent that further clarification is needed, we are ready to help in that effort.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Kunhardt". The signature is fluid and cursive, with a large loop at the beginning.

David W. Kunhardt

Senior Vice President

AOF / PACIFIC AFFORDABLE HOUSING CORP.,

7777 CENTER AVE., SUITE # 240,
HUNTINGTON BEACH, CA.92647-3007.

Telephone 714-799-1339 - Fax 714-891-2098

Email: raynayar@yahoo.com

RECEIVED

March 4, 2005

MAR 15 2005

California State Board of Equalization
Property and Special Taxes Department
450 N Street
P.O. Box 942879
Sacramento, California 94279
Attn: Mrs. Ladeena Ford

Assessment Policy & Standards Division
State Board of Equalization

Re: Comments to Proposed Welfare Exemption Rules

Dear Madam/Sir:

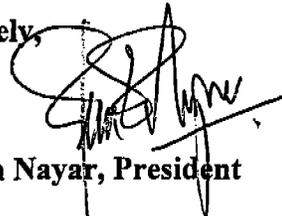
I am writing to voice my support for the Board of Equalization's present system for administering the property tax exemption under California Revenue and Taxation Code, Section 214(g) for partnerships in which a nonprofit corporation serves as the managing general partner.

The welfare exemption is critical to the development of affordable housing in California. Over the years, the BOE has successfully developed a system for reliably and efficiently administering the welfare exemption. The present system is working. If anything, California needs to make it easier to finance and develop affordable housing, not harder.

I oppose the self-interested efforts of those industry critics who are urging the BOE to make the welfare exemption more difficult to administer and less predictable to project. I strongly urge the BOE to carefully consider the potential effect of changing the present rules.

I am enclosing for your review Cox, Castle and Nicholson LLP's policy paper on the proposed welfare exemption rules. I endorse CCN's reasoning and conclusions.

Sincerely,



Raman Nayar, President



POLICY PAPER:
CALIFORNIA STATE BOARD OF EQUALIZATION
PROPOSED WELFARE EXEMPTION RULES
March 4, 2005

This policy paper addresses a major affordable housing issue identified in the California State Board of Equalization's (the "BOE's") January 14, 2005 letter concerning proposed new "welfare exemption" rules. Issue #7 identified in the BOE's January 14 letter relates to what authorities and duties should be required of a qualifying "managing general partner" under California Revenue and Taxation Code ("R&T") Section 214(g)(1). This paper addresses the managing general partner concept and, at a more general level, discusses the BOE's current regime for administering R&T Section 214(g) ("Section 214(g)").

Specifically, this paper:

- Describes how affordable housing developments are financed today in California.
- Reviews the history and purpose of 214(g).
- Analyzes some of the more radical suggestions for change and points out the dangers of such radical reform.
- Concludes that the current BOE-administered system is achieving the California legislature's goal of increasing the state's affordable housing stock and supports the BOE's current administrative regime for managing the 214(g) welfare exemption.

EXECUTIVE SUMMARY

The BOE has developed a sound administrative process for implementing the welfare exemption granted under 214(g) to partnerships in which a nonprofit corporation serves as the managing general partner. The BOE's self-certification system – whereby a managing general partner of a project-owning partnership must certify, under penalty of perjury, that it has certain enumerated, substantial management authority and duties befitting a "managing" general partner – is true to the text of, and the legislative intent behind, 214(g). It strikes the proper balance between encouraging development of affordable housing in California, on the one hand, and regulating the use of the welfare exemption, on the other hand.

Contrary to the suggestions of certain critics of the BOE's compliance regime, there is no evidence that for-profit developers regularly manipulate nonprofits to abuse the welfare exemption. Even if there was an indication of individual instances of such abuse, the BOE and the county assessors (who jointly administer the welfare exemption system) already have the authority to audit suspected offenders and deny or revoke welfare exemptions.

The welfare exemption is a vital element in sustaining the financial viability of virtually every affordable housing development in California. The financial institutions that provide the vast majority of the equity and debt financing for these projects are willing to size their investments based on the expectation that a properly structured and managed project will qualify for a welfare exemption. These financial institutions now rely on the BOE system and appreciate the fact that it is predictably, consistently and efficiently managed by the BOE staff. The BOE should carefully consider any proposal for reforming the present system. Any change to the present system risks creating uncertainty in the financial community, which may result in a direct loss of affordable housing.

ANALYSIS

How Privately-Owned Affordable Housing Developments are Financed Today; How Lenders and Investors Police Welfare Exemption Compliance

(1) Overview of the System

California has a housing crisis. The evidence for this crisis is compelling and overwhelming. As the California Department of Housing and Community Development ("HCD") reported in its May, 2000 study entitled "Raising the Roof: California Housing Development Projections and Constraints, 1997 – 2020":

"California will need an unprecedented amount of new housing construction—more than 200,000 units per year through 2020—if it is to accommodate projected population and household growth and still be reasonably affordable. It will need more suburban housing, more infill housing, more ownership housing, more rental housing, more affordable housing, more senior housing, and more family housing."

This paper focuses on the manner in which developers (for profit and nonprofit), lenders and investors have responded to the affordable housing portion of the California housing crisis. While there are larger social factors that have contributed to the affordable housing crisis, much of it is attributable to market factors that make it extremely difficult for affordable housing developers to compete with market rate developers for suitable multi-residential properties. In response, affordable housing development has become increasingly reliant upon a complex financial structure that leverages tax exempt bond financing, publicly subsidized financing, low income housing tax credits, and the welfare exemption.

A unique attribute of affordable housing finance is the involvement of large financial institutions in all aspects of affordable housing development. Some of the nation's largest and most reputable financial institutions are actively involved as lenders and/or equity investors in affordable housing in California. The participation by these institutions offers unique assurances that affordable housing programs, including the welfare exemption, are properly monitored and utilized. At the same time, these financial institutions require predictability and efficiency as to the availability of housing incentives such as the welfare exemption, if they are to underwrite such programs into the financing structure.

In practice, the welfare exemption is absolutely essential in maintaining affordability. The welfare exemption decreases the expenses associated with the ownership and operation of an affordable housing development, and therefore increases the size of the loans that lenders are willing to offer to project owners. Indeed, it is difficult for lenders to underwrite their loans for affordable housing projects without the property tax exemption. The Senate Revenue & Taxation Committee, in its July 15, 1987 hearing to consider the bill that was later codified as Section 214(g), recognized this financial reality, acknowledging that "some prospective low income projects may not 'pencil out' without the property tax exemption" (emphasis added).

(2) Tax Credits

In order to take full advantage of the low income housing tax credit authorized by Internal Revenue Code Section 42, the overwhelming majority of for-profit and non-profit developers in California utilize a limited partnership structure to own and operate affordable housing developments. A well-established, institutional tax credit investor (often a Fortune 500 company) or a syndicated fund of such investors make an equity investment in the limited partnership in exchange for virtually all the low income housing tax credits generated by a project. The tax credit investor utilizes the tax credits to offset federal taxes on a dollar-for-dollar basis over a 10-year period, and, therefore, is willing to make capital contributions to the project-owning partnership for these credits.

(3) Tax-Exempt Bond Financing

An affordable housing project developer often uses debt financed the issuance of low-interest, tax-exempt bonds, usually in addition to tax credits. Typically, a California state or local governmental entity issues private-activity multifamily housing revenue bonds under the state's bond volume cap, and loans the proceeds of those bonds to the project-owning partnership, receiving a deed of trust on the property as security. Tax-exempt multifamily housing revenue bonds are either publicly-offered or privately-placed.

Where such bonds are publicly-offered, investors with no firsthand knowledge of the project or the project-owning partnership purchase the bonds. Such distribution is handled by an investment banking firm with mandated obligations to utilize due diligence in any distribution of securities. Such investment bankers focus on the ability of the affordable housing project to service the repayment obligations on the bonds. Thus, these investment bankers are uniquely

focused on the underwriting standards for expenses, including the availability of the welfare exemption.

At the same time, in order to keep the interest rate on such bonds low, a credit-enhancer (typically a major national bank or financial institution) offers a letter of credit or other form of guaranty that the bonds will be repaid, even if the affordable housing project underperforms expectations and the project-owning partnership fails to repay the loaned bond proceeds. The credit enhancer thus plays the role of the real estate lender, taking all of the real estate-related risk, and conducting due diligence (including review of the availability of the welfare exemption) similar to the investment bankers' review.

Where such bonds are privately-placed, a well-established lender (typically a major national commercial bank or national financial institution) will purchase all of the bonds and loan the proceeds directly to the project-owning partnership. These lenders conduct extensive underwriting due diligence, including review of the availability of the welfare exemption.

(4) Conventional Financing and/or Loans from Governmental Agencies

Some developers choose not to obtain tax-exempt bond loans, and instead utilize conventional real estate loans (typically from a major national or regional bank) or loans from federal, state or local agencies. Sometimes a developer will obtain both a conventional loan and one or more loans from government agencies. These loans go through the same underwriting (including review of welfare exemption availability) and due diligence scrutiny as discussed above for tax-exempt bond loans.

(5) Conclusion: How Lenders and Investors Police the Property Tax Exemption

As discussed above, the tax credit equity investors, tax-exempt bond credit enhancers/lenders and conventional lenders that provide the lion's share of affordable housing project financing are some of the largest and most sophisticated financial institutions in the world. These investors and lenders subject affordable housing projects to intense underwriting scrutiny at the outset, and intense compliance oversight on an ongoing basis.

Without a predictable welfare exemption, obtainable in a timely manner, lenders would not include welfare exemption savings into their underwriting, making affordable housing projects next to impossible to finance. Moreover, in order to ensure that project-owning partnerships can afford to cover the debt service on loans underwritten to include welfare exemption savings, these lenders provide ongoing welfare exemption compliance oversight, thus providing a backstop to the BOE's and assessors' roles in policing against welfare exemption fraud.

Moreover, the BOE's managing general partner regime requires tax credit equity investors to cede a certain amount of power to nonprofits. These Fortune 500 financial institutions require strict statutory compliance by their partners (including the managing general partner), as a necessary element in protecting their equity investments in affordable housing projects. Contrary to the insinuations of the current regime's critics, these institutional tax credit

investors would not enter into a written agreement granting substantial management powers to a nonprofit, and then blithely ignore that agreement in practice.

History and Purpose of R&T 214(g)

Section 214 was enacted in 1945 to implement Section 4(b) of Article XII of the California Constitution, which provides that the California legislature may exempt from taxation “property used exclusively for religious, hospital or charitable purposes and owned or held in trust by corporations or other entities.” The original policy rationale for enacting Section 214’s “welfare exemption” was to treat certain privately owned property, which was used to provide a charitable activity, in the same manner as publicly owned property which would otherwise be used by government to perform that same charitable function.

(1) Managing General Partner

(a) General Discussion.

In furtherance of the spirit of the exemption, Section 214 was amended in 1987 to add subsection (g), which provides that:

“[p]roperty used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, *including limited partnerships in which the managing general partner is an eligible nonprofit corporation . . .*”

shall be entitled to a full or partial property tax exemption, subject to the conditions set forth in Section 214(g) (emphasis added).

The participation of an eligible nonprofit corporation, either as the owner of the property or as the managing general partner of a limited partnership that owns the property, is constitutionally necessary. Without the participation of a nonprofit corporation, the welfare exemption granted by Section 214(g) would not comply with the tax exemption requirement set forth in California Constitution Section 4(b) of Article XII of the California Constitution.

In adopting 214(g), the California Legislature did not focus its attention on the attributes of a “managing general partner.” Indeed, the highlighted language quoted two paragraphs above was inserted into the proposed text of Section 214(g) a mere twenty-one days before Governor George Deukmejian signed it into law.

The legislative history shows no debate accompanying the addition of the managing general partner concept. Rather, the legislative history reveals a debate focused almost exclusively on the benefit of increasing California’s stock of affordable housing, on the one hand, versus the cost associated with the loss of property tax revenues, on the other hand. The addition of the managing general partner concept into 214(g) appears to have been an

extension of the economic reasoning behind the bill, summarized succinctly by the Senate Revenue & Taxation Committee in its July 15, 1987 hearing on 214(g):

“The justification for the exemption would be that the funds which are currently paid in property taxes could better be used in furtherance of the goals of providing low income housing. Also, it may be that some prospective low income projects may not ‘pencil out’ without the property tax exemption.”

(b) What is a “Managing” General Partner?

Notably, the legislature chose the phrase “managing general partner” rather than “general partner.” The California Revised Limited Partnership Act contains extensive provisions setting forth the obligations of a “general partner,” but makes no mention of a “managing” general partner. By choosing to use the term “managing” general partner, the legislature clearly indicated its understanding that property-owning partnerships could have other, for-profit general partners, so long as the nonprofit general partner was the “managing” general partner.

Certain affordable housing developers have suggested to the BOE that “managing general partners” should be required to provide an expanded array of operational assistance at low income housing projects. These developers have further indicated that this assistance can only be provide by nonprofit organization who are well-capitalized and have extensive staffs. If this recommendation were to be implemented, it would limit the number of qualified organizations to a very few developers and clearly undercut the intent of 214(g).

This suggestion also denigrates the many well-established and well-qualified nonprofits who are small organizations but have demonstrated the capability to develop and operate from one to a multiplicity of affordable housing projects. These organizations have accomplished this by hiring a few staff and retaining experienced property management companies and consultants. If the BOE were to impose a “litmus test” that defined a “managing general partner” according to an organization’s balance sheet and/or staffing level, it would seriously undercut, if not destroy, the ability of these nonprofits to contribute to the development of affordable housing in California.

The legislative history also demonstrates a governmental sensitivity to the need to support continued participation by underfunded nonprofit organizations in affordable housing development, and a recognition that the welfare exemption would provide that support. In its Enrolled Bill Report, submitted in late September, 1987, the HCD recognized that nonprofit organizations suffer from “limited budgetary conditions.” The HCD report goes on to state that the final proposed text of 214(g) would address “the Governor[’s] expressed interest in . . . preserving affordable housing and assuring a continued role for nonprofits in affordable housing.”

Nonprofit participation in affordable housing is as important today as it was in 1987, and therefore the BOE should resist pressure from an exclusive group of nonprofits calling

for rule changes that would increase the expense of nonprofit participation in affordable housing projects.

(2) **Use of Property Tax Savings**

Under Section 214(g), the owner of the property must:

“[c]ertify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.”

On August 18, 1987, the State Assembly amended the bill that was later codified as Section 214(g) to provide that property owners should only be required to *certify*, rather than affirmatively *demonstrate*, that the property tax savings are actually helping to maintain affordability or reduce rents. In its August 26, 1987 bill analysis, the BOE emphasized the expense of administering a requirement that a property owner affirmatively demonstrate compliance, and explained that “[i]t is not clear how the owner of the property could demonstrate that this requirement is satisfied.”

By adopting a “certification” standard rather than the earlier-proposed “demonstration” standard, the Legislature moved away from requiring property owners to file financial information. Such a system would have imposed a nearly impossible burden on owners to track – perhaps on a dollar-for-dollar basis – how property tax savings are applied.

Moreover, 214(g) allows owners to certify that the property tax savings are used to maintain affordability *or* reduce rents. This standard, together with the self-certification regime, evidences the Legislature’s desire to steer clear of managing exactly how affordable housing projects are run and exactly how property tax savings are applied. Instead, the Legislature focused on the broader goal of providing financial assistance for purposes of maintaining and increasing California’s stock of affordable rental housing.

In practice, the welfare exemption is absolutely essential in maintaining affordability. As discussed above, the welfare exemption decreases the expenses associated with the ownership and operation of an affordable housing development, and therefore increases the size of the loans that lenders are willing to offer to project owners. Indeed, it is difficult for lenders to underwrite construction and permanent loans for affordable housing projects without the property tax exemption.

Radical Reforms Are Ill-Advised

Since the BOE’s reform proposal was announced in January, 2005, a very small but vocal element has suggested that there is systemic and widespread abuse of the welfare exemption. While this is a dramatic proposition, there is simply no evidence whatsoever of such abuse. Indeed the only “evidence” to date consists of anecdotal, third-hand statements by a few

members of the public regarding singular examples of perceived abuse. While the BOE should certainly take accusations of fraud seriously, it would be rash to suggest that a few such allegations warrant wholesale changes to the present system.

Another theme running through some of the vocal criticism of the present system is the implicit suggestion that some nonprofits are less worthy than others. This criticism is essentially a "straw man" argument. It diverts attention from the real public policy issue at hand, namely meeting the legislature's mandate for the production of more affordable housing, and tries to focus attention on the perceived qualities of certain nonprofits. This is an entirely subjective and relative matter. There is no litmus test for what is a nonprofit, nor should one be imposed. Moreover, such a consideration is outside of the mission of the BOE and would unnecessarily burden the BOE's already overused resources. The Internal Revenue Service ("IRS") and California's Franchise Tax Board ("FTB") are the appropriate authorities for such determinations, and these agencies already vet prospective nonprofits at the outset, before such entities can even consider becoming involved in the welfare exemption process. Indeed, the BOE's proposed Rule 140 requirements regarding BOE review of a nonprofit's "charitable" purposes, as presented at the BOE public meeting on March 2, 2005, are wholly duplicative of IRS and FTB responsibilities and, therefore, are unnecessary.

A final suggestion proffered by a few critics is that only nonprofits involved in the physical operation of an affordable housing project merit the welfare exemption. Presumably, only nonprofits with their own management companies or construction companies could ever meet a stringent application of this test. That proposed standard is entirely inappropriate. The welfare exemption has never been construed to require such ground level involvement, as discussed in the legislative history section above. Rather, essential management and oversight, as required by the BOE's present system, is the critical test. Requiring a nonprofit to have extensive assets and capital is antithetical to the legislative history, which noted that nonprofits suffer from "limited budgetary conditions."

The Current BOE-Administered System is Achieving the Goals of 214(g)

The current BOE-administered system for assuring compliance with 214(g), as set forth in the BOE's Assessor's Handbook Section *Welfare, Church and Religious Exemptions*, is achieving the original purpose of 214(g): namely, to increase California's stock of affordable rental housing. The BOE's proposed Rule 140, as presented at the March 2 public meeting, would amend the present system by adding additional requirements that are, at heart, substantially similar to the present requirements. The BOE should carefully consider the cost associated with making changes to the present system. Unless change is urgently needed (and this paper has argued that it is not needed), and unless the proposed changes would fundamentally reform the present system (and this paper has argued that the changes proposed by Rule 140 do not), then the BOE should carefully consider the administrative cost of tinkering with a system that already predictably and efficiently achieves the legislature's goals.

With respect to "managing general partner" duties, the BOE's self-certification standard – whereby a managing general partner of a project-owning partnership must certify, under

penalty of perjury, that it has certain enumerated management authority and the substantial duties befitting a “managing general partner” – is in keeping with the legislative intent behind 214(g). As discussed above, the legislature consciously chose to adopt a “certification” system rather than a “demonstration” system for assuring compliance with 214(g)’s requirement that property tax savings be applied towards reducing rents or maintaining affordability. The BOE’s managing general partner self-certification standard stays true to the original legislative intent behind 214(g): increasing California’s affordable housing stock, rather than imposing governmental control over exactly how affordable housing projects are run.

Further, since 214(g) does not discuss a managing general partner’s duties or attributes, there is no clear legislative authorization for the BOE to expand the reasonable list of duties that managing general partners are required presently to attest to on forms BOE 267-L1 and BOE 277-L1. Indeed, the suggestion from a few critics of the current self-certification regime that it allows “nonprofit shells” to obtain property tax exemptions on behalf of for-profit developers is not only factually incorrect – it also runs counter to the very purpose of 214(g).

However, should either the BOE or a county assessor suspect that a particular managing general partner is failing to exercise the managerial control that it is certifying to on forms BOE 267-L1 or BOE 277-L1, both the BOE and the county assessor have the right to audit the potentially offending parties. Forms BOE 267-L1 and BOE 277 L-1 both clearly alert a filing non-profit of this fact, stating in bold letters: **“Welfare Exemption claims and supporting documents are subject to audit by the Board of Equalization and by the Assessor.”** Therefore, in response to any suggestion from critics that some fraudulent managing general partners are abusing the welfare exemption system, the BOE and the county assessors can and should emphasize that they have the power to audit any and all limited partnerships that obtain a welfare exemption, and the power to revoke improperly obtained welfare exemptions.

Also, from an economic efficiency standpoint, if the property tax exemption is to be accounted for in a lender’s initial underwriting, it must be knowable, predictable, and timely obtained. In an era where tax credit investors, credit enhancers and conventional lenders make long-term financial commitments to each affordable housing project that they finance, the predictability of the BOE’s bright-line certification process provides a necessary source of predictability. Without that predictability, financial institutions would not count on the availability of property tax savings, and would reduce the amount of money that they would be willing to lend and/or invest in affordable housing projects. Any decrease in available financing would only worsen the ability of developers to try to meet California ever-increasing need for affordable rental housing.

The BOE’s certification system (supported by the BOE’s and the county assessors’ audit rights), when coupled with the strict, ongoing oversight provided by tax credit investors, credit enhancers and conventional lenders, assures that managing general partners will continue to wield essential management authority, rather than operating as a “nonprofit shell” for the purposes of obtaining the property tax exemption.

Lastly, the authors of this policy paper would like to support the BOE staff’s positions outlined in the BOE’s February 24 follow-up letter signed by Dean R. Kinnee. The authors of

this paper support the BOE's ongoing efforts to add predictability to all remaining unsettled areas of 214(g) administration and practice.

Stephen C. Ryan, Chair
Affordable Housing Practice Group
Cox, Castle & Nicholson
555 Montgomery Street, 15th Floor
San Francisco, California 94111



BUILDING • SUSTAINING • LEADING

BRIDGE HOUSING CORPORATION

BRIDGE PROPERTY MANAGEMENT COMPANY

BAY AREA SENIOR SERVICES, INC.

BRIDGE ECONOMIC DEVELOPMENT CORPORATION

16 March 2004

Mr. Dean R. Kinnee
Chief, Assessment Policy Standards Division
State Board of Equalization
Property and Special Taxes Department
P.O. Box 942879
Sacramento, CA 942879
Via Fax: 916-323-8765

Re: Welfare Exemption Rule Project

Dear Mr. Kinnee:

We have followed with interest the announcements made by your organization regarding new proposed rules 140, 141, 142, and 143 in conjunction with the Welfare Exemption Rule Project. While there seems to be widespread support for the Department's positions on 7 of the 8 issues it outlined in its February 24th memorandum, Issue #7 has elicited a wide variety of responses and proposals.

BRIDGE Housing Corporation is one of the largest affordable housing developers in the state, producing 1000 new homes every year in both Northern and Southern California. We are a non-profit organization and have developed both on our own and in a very wide variety of partnership structures with both for profit and non-profit organizations.

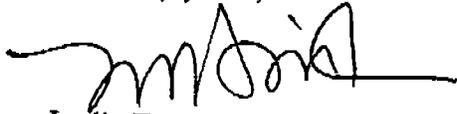
Most of the controversy around Issue #7 stems from the shift from Section 214g requiring full ownership of a property by a non-profit to allowing a partnership structure as well, thereby resulting in a perceived or real erosion of the non-profit's ability to control the business of the partnership and the property as if it were wholly owned. The basis of BRIDGE's position on this issue is therefore based on the idea that any reform should be considered with this history in mind, and should result in a partnership structure that has the effect of non-profit control of the property but allow ultimate flexibility on all other points.

We have prepared a position paper on this topic, which was for internal use. However, as we understand the BOE to potentially be taking action over the next several months on potential reform, we now share it with you in the hope that it will help you and your staff as you grapple with this issue.

16 March 2004
Mr. Dean R. Kinnee
Page 2 of 2

We appreciate this opportunity to provide input on the topic. Please don't hesitate to call me or Carol Galante, President, at 415-989-1111 if you have any questions or would like further input on BRIDGE's position.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Lydia Tan', written over a horizontal line.

Lydia Tan
Executive Vice President

Position on Welfare Exemption Discussion
 BRIDGE Housing Corporation
 Final 3/16/05

Background: The State Board of Equalization has opened a discussion about the application of Section 214g of the State of California Revenue and Taxation Code, which outlines the conditions under which a rental residential property would be eligible for exemption from paying ad valorem property taxes. Specifically, several questions about the applicability of the exemption under certain financing, regulatory and ownership structures is explored (BOE issues #1 through #6); the level of control and authority a non-profit managing general partner has (BOE issue #7); and a question of rent levels required under Section 214g (issue #8).

Summary of BRIDGE Position: BRIDGE is in concurrence with the logic and conclusions BOE has reached on issues #1 through 6 and #8. BRIDGE is also supportive in general of the position BOE has taken on issue #7. However, an improvement on existing rules would be to require the managing general partner to be responsible for 4 of the 19 possible duties outlined in Section 11(A)2 of form BOE-267-L1, instead of the 2 duties currently required. Also, BOE may want to consider requiring the Managing General Partner to have a right to continue to own the property after dissolution of a partnership with a for profit partner.

Analysis:

1. **Issues #1 – 6 and #8:** BOE's position on these issues is that a regulatory agreement must be in place for a property to be eligible for an exemption. BOE further relies on the regulatory agreement to regulate rent levels. It also allows multiple regulatory agreements to be used side by side (1 agreement could cover 49% of the units, while another agreement could cover a different 49% of the units). The existence of a regulatory agreement is referenced in the law and therefore should not be subject to a different interpretation. Allowance of side by side regulatory agreements gives a property owner more flexibility.
2. **Issue #7:**
 - a. ***History:*** Our understanding is that Section 214g originally applied to properties that were properly regulated and that were owned by non profit organizations. We further understand that Section 214g was revised to allow non profit organizations to be able to take advantage of the property tax exemption when also utilizing Low Income Housing Tax Credits, which requires a Limited Partnership ownership arrangement. Many in the industry claim that this revision has brought with it abuse by for-profit partners, in which non profit managing general partners do not in reality control the business of the property. These proponents for reform have made proposals in the following general categories:

- **Compensation:** Proposals suggest that the Managing General Partner should have a substantial participation in all fees generated by the property, including developer fees, asset management fees, incentive fees, etc. While none of the proposals directly related compensation proposals to level of duty, one could infer that because a high level of participation is also being advocated, that a significant participation in all fees is warranted.
- **Level of Day to Day Duties/Participation:** Proposals in general would require Managing General Partners to take an extremely active role on the day to day management of both the property and the partnership. While there has been some acknowledgement that smaller, newer non profits should have the ability to contract out for such activities, this position could potentially have the effect of shutting out many non profits that do not have management, development and related capacity in house. Emphasis has been placed in having adequate qualified staff in place.
- **Control of Property at Dissolution of Partnership:** Proposals advocate for an iron-clad ability for the Managing General Partner to control ownership of the property at dissolution of the partnership.

b. *BRIDGE's Position on Issue #7*

- **General:** Most of the controversy around this issue #7 stems from the shift from Section 214g requiring full ownership of a property by a non-profit to allowing a partnership structure as well, thereby resulting in a perceived or real erosion of the non-profit's ability to control the business of the partnership and the property as if it were wholly owned. The basis of BRIDGE's position is therefore based on the idea that any reform should be considered with this history in mind, and should result in a partnership structure that has the effect of non-profit control of the property but allow ultimate flexibility on all other points.
- **Decision Making:** While not explicitly discussed in most of the proposals that advocate for reform, we believe that decision making authority is the single most important aspect of demonstrating "control" over the property. Therefore, we believe that the Managing General Partner should have approval rights over all major decisions affecting the property. BOE has already issued guidance that this must be in place, and therefore BRIDGE does not have any proposals to change current BOE practice on this issue.
- **Compensation:** Because control can be exercised in many different ways, we do not believe that compensation should be regulated by the BOE. Compensation should be flexible and represent fair payment that is commensurate with the level of work, risk and responsibility that each partner has.

- **Level of Day to Day Participation/Duties:** Similar to our previous arguments, we do not believe that level of participation on a day to day basis in the operations of a property necessarily ties back to control over the partnership and major decision making. The 19 potential duties listed in BOE-267-L1 fully encompass the kinds of things that a Managing General Partner could be involved in. Some of these items are more labor intensive than others. We believe that maximum flexibility over designation of required duties is a priority, so that non-profits of different shapes and sizes can qualify for the welfare exemption. We therefore are in support of having 4 of the 19 duties to be required as a threshold for establishing the Managing General Partner's control over the partnership (2 of 19 is currently required by BOE).

As an alternative to a slight revision the existing rules, we would also be in support of a more comprehensive reform of the guidelines so that the required responsibilities of a non-profit Managing General Partner more accurately reflect what we interpret to be the more important duties, which are less about carrying out physical activities and more over control of the property and it's future, as outlined above. However, our main concern over moving in this direction is that the BOE not be so prescriptive that only a few kinds of non-profit organizations are able to meet the new rules. It is our greatest hope that the BOE continue to provide maximum flexibility for a variety of partnership structures, and keep in mind the core goal of the program, which in our opinion is to have a development that is owned in a partnership structure reflect as much as possible the same results as if it were wholly owned by a non-profit.

Castle Argyle

1919 N. ARGYLE AVENUE · LOS ANGELES, CALIFORNIA 90068
(323) 465-2082 / FAX (323) 465-1543
WWW.SCPHS.COM

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MAR 15 2005

March 2, 2005

Assessment Policy & Standards Division
State Board of Equalization

Mrs. Ladeena Ford
State Board of Equalization
Property and special Taxes Department
P.O. Box 94279-0064
Sacramento, CA 942879-0064

RE: March 16th meeting on welfare Exemption Rules

Dear Mrs. Ford:

My name is Hermineh Davoodian; I am the Housing Administrator of Castle Argyle, a 98 unit affordable housing community located in Los Angeles, California. Castle Argyle is owned and operated by Southern California Presbyterian Homes (SCPH), a non-profit corporation that has been in business for fifty years. Castle Argyle was built in 1920 and SCPH took over the building in year 1996. The primary income for Castle Argyle Residents is Social Security or Supplement Security income. There is currently 500 applicants waiting to become residents at this beautiful building and the waiting time is 3-5 years.

The BOE's proposal to disqualify affordable housing projects financed with federally insured loans from eligibility for property tax exemptions will have a devastating impact on this property. Under our regulatory agreement, we cannot charge monthly rents greater than 30 percent of the resident's monthly income. Operating under a tight budget, there is little room to shift obligations around in the budget and begin paying property taxes. To do so, we would have to take money away from repairs and upkeep to the property, as well as services we have been able to offer residents to help keep them independent and in the community. If we were unable to absorb the additional costs, we would be in danger of violating our regulatory agreements and loan commitments.

If the BOE's proposal to disqualify projects financed by federally insured loans were the law in 1970, I don't think SCPH would ever have developed affordable housing communities. Affordable housing projects are fragile, risky deals because the financing is so difficult to secure. Requiring such projects to pay property taxes would most likely render the deal financially untenable.

SCPH
SOUTHERN CALIFORNIA
PRESBYTERIAN HOMES

SPONSORED AND MANAGED BY SOUTHERN CALIFORNIA PRESBYTERIAN HOMES



I believe that the type of subsidy used to finance affordable housing not be the focus of whether an exemption applies or not. The test should be whether a property is required by contracts or regulatory agreements to keep rents restricted to an affordable level. I respectfully urge the BOE to maintain the current interpretations of who qualifies for exemption from property taxes.

Thank you for this opportunity to state my views.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Davoodian", with a stylized flourish at the end.

Hermineh Davoodian
Housing Administrator

cc: John Chiang, Fourth District County of Los Angeles
Claude Parrish, Vice-Chairman, Third District Counties of Imperial, Orange,
Riverside, San Diego, a portion of Los Angeles, and a portion of San Bernardino



OFFICE OF THE
CITY COUNCIL

LAUREN R. HAMMOND

COUNCILMEMBER
DISTRICT FIVE

CITY OF SACRAMENTO
CALIFORNIA

March 9, 2005

Mr. Dean R. Kinnee, Chief
Assessment Policy and Standard Division
State Board of Equalization
450 "N" Street
P.O. Box 942879
Sacramento, CA 94279

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Assessment Policy & Standards Division
State Board of Equalization

RE: Proposed Rules, Welfare Exemption, Low Income Housing (R&T § 214(g))

Dear Mr. Kinnee:

On behalf of the City of Sacramento, I am expressing the concerns of the City of Sacramento regarding proposed rules relating to the welfare exemption for low-income housing. On March 1, 2005, the Law and Legislation Committee of the City adopted a position to oppose rules that reduce the ability to maintain existing and finance new affordable housing in the City of Sacramento.

At a time in Sacramento and California where we are facing increasing rent and home prices and therefore reduction in the affordability of housing, we need all the resources available to assist in the development of new affordable housing. The welfare exemption is used as a significant part of the financing of new affordable rental developments and without this resource the City would need to find other resources, which are very limited, to assist in the development. Due to the limited resources available fewer affordable units would be produced. This would result in significantly fewer affordable units being built due to the higher direct local subsidy necessary due to the loss of private investment that the welfare exemption provides for. The City of Sacramento has taken great steps to provide for affordable housing, as this is a vital part of a healthy community, by having an inclusionary housing ordinance and housing trust fund, which was recently increased by 81 percent.

730 I STREET, ROOM 321 • SACRAMENTO, CA 95814-2608

Mailing Address: 915 I STREET, ROOM 205 • SACRAMENTO, CA 95814-2608

PH 916-808-7005 • FAX 916-264-7680 • lhammond@cityofsacramento.org

Mr. Dean R. Kinnee, Chief
Assessment Policy and Standard Division
State Board of Equalization

March 9, 2005

Page 2

Additionally, any change in the welfare exemption rules that effect properties currently receiving the exemption would cause most projects to be financially infeasible and result in the loss of current affordable housing.

In this regard, the City would urge you not to adopt any new or changes to existing rules that would jeopardize the welfare exemption for low-income housing. Thank you for your serious consideration of our request.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Hammond". The signature is written in black ink and is positioned above the printed name.

LAUREN HAMMOND, Chair
Law and Legislation Committee



LAS PALMAS FOUNDATION

531 Encinitas Blvd.
Suite 206
Encinitas, CA 92024
tel: 760-944-9050
fax: 760-944-9908

March 14, 2005

Via Fax

Ms. Ladeena Ford
STATE BOARD OF EQUALIZATION
Property and Special Taxes Department
P.O. Box 942879
Sacramento, CA 94279
Fax: 916-323-8765 & 916-323-3387

RE: MARCH 16, 2005 – BOE MEETING ON WELFARE EXEMPTION ISSUES

Dear Ms. Ford:

This letter is written in response to the interested parties meeting that is scheduled on March 16, 2005, to discuss key issues that pertain to the Welfare Exemption.

We are in agreement with the BOE staff report, which addresses the eight issues pertaining to the requirements for the welfare exemption for low income housing properties with the exception of Issue #4.

Regarding Issue #4 – Amount of Exemption Allowed Per Property. We are aware of several properties that were built utilizing tax exempt bonds that have a greater number of low income residents that qualify for the welfare exemption than the number stimulated in the regulatory agreement. If the BOE restricts the welfare exemption to the percentage stated in the regulatory agreement, it is our view that many low income residents will be displaced. The new rule will force owners, both for-profit and nonprofit, to raise rental rates to cover the increase in property taxes; therefore, low-income residents will sustain the greatest loss.

With reference to Issue #7 – Requirements for Nonprofit Managing General Partner. It is our belief that non-profit general partners should play a significant role in the for-profit nonprofit joint venture. This program has enabled the state of California to address an enormous housing problem that only seems to get worse every year. We are active participants in our projects, providing development and construction management, as well as critical services to our residents. Based upon our experience, most nonprofit housing corporations do play a valuable role in the production and management of affordable housing.

Therefore, I respectfully urge the BOE to continue to provide the welfare exemption to qualified nonprofit housing corporations who joint venture with for-profits entities.

We appreciate the opportunity to express our views on this matter.

Sincerely,


Joseph M. Michaels
President



MMA Financial, LLC
Catherine Talbot
44 Montgomery Street, Suite 1710
San Francisco, California 94104
T 415. 352. 2442 F 415. 677. 5125
www.MMAfin.com

A MuniMae Company

March 14, 2005

California State Board of Equalization
Property and Special Taxes Department
450 N Street
PO Box 942879
Sacramento, CA 94279
Attn: Mrs. Ladeena Ford

RE: Comments to Proposed Welfare Exemption Rules

Dear Madam/Sir:

MMA Financial and its subsidiaries provide equity and debt financing for affordable housing properties nationwide. As of September 30, 2004, we had approximately \$9.3 billion of assets secured by 2,217 properties containing 249,850 units in 49 states. In California alone, we have invested in over 250 properties making us one of the largest debt and equity providers in the United States as well as in the State of California.

We are writing to support the current system used by the Board of Equalization to administer the property tax exemption under California Revenue and Taxation Code, Section 214(g) for partnerships where a non-profit corporation serves as the managing general partner. The investment community is now comfortable (after years of work on our part) with the tax exemption guidelines provided in Section 214(g) and as a result, are comfortable with our current underwriting standards. Making any changes to a system that has proven to be efficient and predictable will only disrupt future investment in affordable housing in the State of California. In addition, the proposed changes could have a huge retroactive affect on our entire portfolio threatening their viability and the ability to house low-income individuals.

We strongly urge you to maintain the status quo. The welfare tax exemption has been a critical source of "soft financing" for years and has helped developers in the State build apartments for lower-income households. In light of recent construction cost increases, difficulty with paying prevailing wage and struggle to find available land to build apartments, we shou'd not add one more burden to an industry that is already challenged finding deals that pencil out and serve the goals of the State and the local communities.

Sincerely,

Catherine L. Talbot
Managing Director

Cc: Mike Gladstone, MMA
Greg Judge, MMA

Law Offices
Of
Patrick R. Sabelhaus

Patrick R. Sabelhaus
Joel A. Rice

1001 Sixth Street, Suite 501
Sacramento, California 95814

(916) 444-0286
Fax (916) 444-3408

March 11, 2005

Mr. Dean R. Kinnee, Chief
Assessment Policy and Standards Division
State Board of Equalization
450 N. Street,
P.O. Box 942879
Sacramento, California 994279

Ms. Mary Ann Alonso, Esq.
State Board of Equalization
450 N. Street, MIC 82
Sacramento, California 95814

Ms. Ladeena Ford
State Board of Equalization
450 N. Street,
P.O. Box 942879
Sacramento, California 994279

Re: March 16, 2005 Meeting Proposed Rules
Welfare Exemption, Low Income Housing

Re: Letter From Mr. Lawrence E. Stone To
Mr. Douglas R. Bigley dated February 24, 2005.

Dear Ladies and Gentleman:

We would like to take this opportunity to respond to the above-mentioned letter from Lawrence E. Stone, County Assessor of Santa Clara County to Douglas R. Bigley, (which letter was copied to SBOE by Mr. Stone).

Our office specializes in assisting developers with the planning, funding and development of low-to-moderate income housing developments through low income housing tax credits pursuant to Section 42 of the Internal Revenue Code and non-recourse bond funding, 4% tax credits associated with the bonds, tax increment funding from various redevelopment agencies, and (AHP, HOME, HELP) as well as more conventional private funding. We have the collective experience of participating along with our

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State Board of Equalization

developer clients in some 400 plus developments across the State of California and a smattering of other low –income projects in other states such as Nevada, Arizona, Colorado, Nebraska and Tennessee. Although we have no reason to keep a complete affordable unit count of all apartments we have contributed to constructing, it is safe to say the number is over ten times that mentioned in Mr. Stone’s letter. ¹

In the past eighteen years, the property tax exemption for low income housing developers has become a key and irreplaceable component in the financing of affordable housing, due in part to increased land costs, city fees, construction costs, utility costs and insurance costs among many others. Thus the exemption from property taxes is more important than ever in helping low income housing developers to:

“(B) Certify that the funds which would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.” [Rev. & Tax § 214(g)(3)(B), circa September 30, 1988]

Currently, there is a growing debate over revisions to rules or changes in practice by the State Board of Equalization with regard to the “Welfare Exemption” for qualified low- income housing developers and projects.

Our purpose here is to correct what we believe are inaccuracies portrayed in Mr. Stone’s letter and to set the record straight as to what the Revenue and Taxation Code § 214(g) exemption from property taxes is and what it is not.

First, we take issue with the following statement by Mr. Stone:

“As you know, current law encourages for-profit developers of affordable housing to partner with qualifying non-profit organizations to manage affordable housing projects.” [emphasis present in original Feb. 24, 2005 Stone letter, pg. 1, ¶ 5]

Since this is a public debate, we certainly acknowledge each interested party’s right to his, her or its own viewpoint. However, in the above passage, Mr. Stone goes beyond opinion and purports to explain to Mr. Bigley the import of existing *law*. Accordingly, we challenge Mr. Stone to point to any portion of the existing *law* mandating that a non-profit organization is to “manage [an] affordable housing project.” This statement patently evinces a fundamental misunderstanding of the plain wording of the statute.

” Revenue & Taxation Code Section 214 (g) (1): Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations, including *limited partnerships in which the*

¹ Mr. Stone’s February 24, 2005 letter mentions that he has personally developed over 500 affordable housing units in San Francisco and San Jose.

managing general partner or eligible limited liability company, ***is an eligible nonprofit corporation***, meeting all of the requirements of this section, ..."
[emphasis added]

It is apparent from the clear and unambiguous wording of the statute itself,² that the "managing general partner" is not required to be the "***project*** manager", but the "***partnership*** manager", which is quite another matter. In other words, Mr. Stone's spin on the role of the managing general partner is an attempted incorrect expansion of the clear language of the statute, which deals only with the managing general partner's role within the management of the ***partnership***, not the "project".

Board staff has recently circulated several letters concerning a March 16, 2005 meeting in Sacramento and issues to be considered at that meeting.³ In response to correspondence already received by February 24, 2005, Mr. Dean R. Kinnee, Chief of the Assessment Policy and Standards Division of the State Board of Equalization wrote in pertinent part:

"Issue 7: Whether the requirements with respect to the management authority and duties of a managing general partner should be strengthened beyond those currently required and identified on claim form BOE 267-:1 and BOE 277-L-1.

Staff Position: Although section 214, subd. (g) ***does not define a "qualifying managing general partner"*** for purposes of the exemption, the Board's position is published in the Assessor's Handbook Section *Welfare, Church and Religious Exemptions*, pp. 75-80. Briefly stated, the nonprofit managing general partner must have management authority that it actually exercises and ***a minimum of two operational duties*** that it performs related to the partnership operations, rather than merely functioning as the "nonprofit shell" for the purpose of obtaining the property tax exemption." [Letter from Mr. Dean R. Kinnee, Chief Assessment Policy and Standards Division, State Board of Equalization, February 24, 2005]

Thus, in addition to conceding that the statute itself does not define what a "qualifying managing general partner" is, Mr. Kinnee expresses the Board staff's agreement with our position, which is that the State Board of Equalization has made it increasingly more clear over the past ten (10) years exactly what duties and functions it expects a managing general partner would undertake vis a vis the partnership to qualify for

² "[i]f the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (Ibid.) When the statutory language is unambiguous, " 'we presume the Legislature meant what it said and the plain meaning of the statute governs.' " (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047.)

³ See, for example, Mr. Kinnee's January 14, 2005 letter.

the property tax exemption. [e.g., see BOE Form 267-L-1, which lists nineteen separate duties of which a managing general partner only has to certify to compliance with two (2) or more of.]

In view of Mr. Stone's position, it is worthy of note that one of the nineteen duties from which the managing general partner may select is in fact "(xix) manage the property, rental of units, maintenance and repair;" However, almost immediately above potential duty number (xix) [19] on BOE Form 267 L-1, is potential duty number (xvii) "enforce all contracts *including any agreements with property management firms;*" So the best that can be said is that the SBOE staff has enumerated one potential duty of the managing general partner as actually being the management company for the "project", but has just as clearly indicated that one of the other permissible duties is to "enforce contracts" with an outside management company. Thus it is clear that the SBOE after much consideration did not see fit to attempt a mandate that the managing general partner actually be the management company for each low income project.

Our next area of disagreement with Mr. Stone's letter is his alleged knowledge of wrongdoing within the low-income housing industry. Mr. Stone's peppers his letter with pejorative phrases such as "legimate non-profit" (implying that he is somehow aware of "illegitimate" non-profits) ⁴, "go through the motions", "payoff", "shell", "front", "sham".

Then he speaks of having "transcripts" of conversations with for-profit developers. First, we object to the phrase "transcript", as used in Mr. Stone's letter, as a transcript is a word of art intimating an actual verbatim transcription of the testimony of a witness under oath or an official written record of a recorded proceeding. We seriously doubt Mr. Stone is in the habit of recording his conversations with developers. If he is, he should be aware that such recording may be in violation of state law. Assuming this is not what Mr. Stone means, what he is probably saying is "this is how I remember a conversation I had with a developer". There are several problems with SBOE even considering the entertainment of this irrelevant material as "evidence". (1) the witnesses are not identified, (2) this is probably not a "transcription", but a one-sided recollection, (3) because the witnesses are not present, the statements attributed to them are hearsay, and the reason this hearsay is particularly unreliable here is that the witnesses are unavailable for cross-examination as to not only their specific words, but their tone, demeanor and meaning in allegedly uttering these words.

If on the other hand, Mr. Stone legitimately feels he is in possession of probative credible evidence of wrongdoing, there are numerous sources for reporting such wrongdoing as to any particular individuals or companies involved. As Mr. Stone points

⁴ Mr. Stone's "illegitimate" non-profit argument brings up another interesting point, which is the right of review of the proposed managing general partner's qualification by SBOE staff. If staff determines after a review of a non-profit's qualifying documents that it is somehow "illegitimate" as Mr. Stone would put it, SBOE can simply refuse to issue an "Organizational Clearance Certificate" and / or a "Supplemental Clearance Certificate" to the individual project. [see SBOE form #'s 277 & 277-L-1]

out, he has other legal authority in place to "identify these unlawful arrangements and levy escape assessments when property taxes were improperly avoided." What we object to is Mr. Stone's implication that since he is purportedly aware of "several" "sham" transactions, (although he only mentions two alleged conversations), there must be numerous others and this alleged pattern of behavior must be widespread in the industry. This type of syllogistic logic is the worst form of innuendo and propaganda.

"It is obvious that more and more for-profit developers of affordable housing are using non-profits as little more than "fronts" to earn the valuable property tax exemption." [pg. 3, ¶ 2 of Stone letter]

If we could return to the real focus of SBOE's review and proposals concerning the Revenue and Taxation Code Section 214 (g) property tax exemption, the public policy behind the Filante Bill and the change in 1988 allowing limited partnerships with qualifying nonprofit, public benefit managing general partner to be exempt from property taxes was to allow the largest number of dwelling units possible to be produced with the assistance of the funds which would otherwise be utilized for payment of the property taxes. It was clear that the drafters desired to benefit and promote the construction, financing and tax exemption of more rather than less low income units, so any reasonable construction of the statute which favors more rather than less is consistent with the Legislative intent.

On December 19, 2002, SBOE approved two new forms, the Supplemental Affidavit, (BOE-267-L-1) and (BOE-267-L-2). The intent of these forms was to "streamline" the filing and review process of exemption claims for lower income housing." [letter from Mary Ann Alonso, Senior Tax Counsel, February 11, 2003, pg. 1, ¶ 3] These forms were developed after SBOE staff found it had been inundated with partnership agreements to review, as it had established as criteria for granting the property tax exemptions that there had to be a "dual review" of each application and each partnership agreement (one review by the county assessor and another by SBOE staff).

This 2002 change in procedure by the SBOE staff was in fact a "streamlining" of the process. Board staff didn't have to review all of the partnership agreements any longer, and the Managing General Partner of each partnership certified in writing to the SBOE and the county assessor that the partnership agreement met the tests set forth in the "laundry list" of possible duties listed on the BOE-267-L-1 and BOE-267-L-2 forms.

Later in November of 2002 SBOE introduced the BOE -277 form (the Organizational Clearance Certificate form) and still a little later, its companion form, the BOE-277-L-1 (Supplemental Clearance Certificate) the latter of which further clarifies the role of the managing general partner and asks the managing general partner to again certify that the operable limited partnership agreement

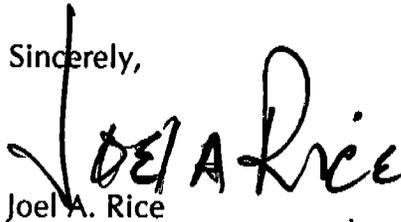
contains the appropriate language which adequately outlines the duties and responsibilities of the managing general partner per SBOE's guidelines.

The existing forms (along with the duty of the managing general partner in each affected partnership to annually report the qualifying tenant information) and the right of SBOE to audit each project and each managing general partner to ensure compliance with the applicable statutes, guidelines and forms created by SBOE staff provide adequate assurances that compliance with the law can be maintained.

In his summary, Mr. Stone urges Mr. Bigley to "find solutions within the parameters of existing statutes". We agree and as mentioned above, would posit the solutions are already in place in the form of the existing SBOE forms and review process.

We urge the SBOE to disregard the majority of Mr. Stone's comments with respect to abuse of the system as over-blown hyperbole, unsupported by any credible admissible evidence and to concentrate on the literal wording of the statute at hand and the reasonable interpretation which it has already been given after much consideration by active members of the industry, the Board and the assessors.

Sincerely,

A handwritten signature in black ink that reads "JOEL A. RICE". The signature is written in a cursive style with a large, prominent initial "J".

Joel A. Rice

cc: Douglas Bigley

WNC & ASSOCIATES, INC.

March 16, 2005

California State Board of Equalization
Property and Special Taxes Department
450 N Street
P.O. Box 942879
Attention: Mrs. Ladeena Ford

RE: Comments to Proposed Welfare Exemption Rules

Dear Mrs. Ford:

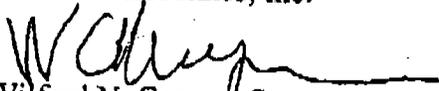
WNC & Associates, Inc. and its subsidiaries provide equity and debt financing for affordable housing properties nationwide. As of September 30, 2004 we had approximately \$2.2 billion of assets secured by over 810 properties containing approximately 34,300 units in 40 states. Approximately twenty-three percent of our business is in central and southern California.

We are writing to support the current system used by the Board of Equalization to administer the property tax exemption under California Revenue and Taxation Code, Section 214(g) for partnerships where a non-profit corporation serves as the managing general partner. The investment community is now comfortable (after years of work on our part) with the tax exemption guidelines provided in Section 214(g) and as a result, are comfortable with our current underwriting standards. Making any changes to a system that has proven to be efficient and predictable will only disrupt future investment in affordable housing in the state of California. In addition, the proposed changes could have a huge retroactive affect on our entire portfolio threatening their viability and the ability to house low-income individuals.

We strongly urge you to maintain the status quo. The welfare tax exemption has been a critical source of "soft financing" for years and has helped developers in the State build apartments for lower-income households. In light of recent construction cost increases, difficulty with paying prevailing wage and struggle to find available land to build apartments, we should not add one more burden to an industry that is already challenged finding deals that pencil out and serve the goals of the State and the local communities.

Sincerely,

WNC & Associates, Inc.


Wilfred N. Cooper, Sr.
Chairman of the Board

