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February 24, 2005

TO INTERESTED PARTIES:

### FOLLOW UP ON PROPOSED WELFARE EXEMPTION RULES

On January 14, 2005, a letter was distributed to interested parties, announcing a meeting on March 16, 2005 to discuss the welfare exemption rules project. The letter set forth the issues to be discussed pertaining to lower-income housing with regard to the proposed rules.<sup>1</sup> We have received numerous inquires and comments requesting staff to identify its position on each of the discussion items in advance of the March 16 meeting at the BOE headquarters in Sacramento at 9:30 am, and in advance of an informational meeting being hosted by Board Chairman John Chiang in the BOE Culver City office on March 2, 2005 at 10:30 am. The following summary represents the Board staff's current opinion and/or the Board's published position on each issue identified in the January 14 letter, based on interpretation of the statutory requirements.

**Issue 1:** Whether properties without government financing that are awarded federal low-income housing tax credits and operating under regulatory agreements that restrict a portion of the property for rental to lower-income housing continue to be eligible for exemption after the period in which the property received tax credits has expired.

**Staff Position:** It is staff's position that properties that receive federal and/or state low-income housing tax credits are eligible for exemption for the duration of the regulatory agreement. For example, if the 10-year term of the owner's receipt of tax credits has expired, but the property is subject to a regulatory agreement with a 50-year term that restricts a portion of the property for rental to lower-income households, the property will be eligible for exemption for 50 years.

**Issue 2:** Whether lower-income housing properties without tax credits that previously had government loans continue to be eligible for exemption after the loans have been refinanced or paid in full when all or a portion of the property continues to be restricted for rental to lower-income households under a regulatory agreement.

**Staff Position:** Staff is currently researching this issue, but will likely recommend that the properties remain eligible for exemption if the properties remain subject to a regulatory agreement that restricts all or a portion of the property for rental to lower-income households.

<sup>1</sup> Proposed Rule 140, Managing General Partner as a Qualifying Organization for the Welfare Exemption; Proposed Rule 141, Welfare Exemption Requirements for Lower Income Housing Properties of Limited Partnerships with a Nonprofit Organization as a Managing General Partner; Proposed Rule 142, Welfare Exemption Requirements for Low-Income Properties; and, Proposed Rule 143, Irrevocable Dedication Clause and Dissolution Clause Requirements for the Welfare Exemption.

**Issue 3:** Whether federally-insured or federally-guaranteed loans on lower-income housing properties constitute government financing under section 214, subd. (g)(1)(A).

**Staff Position:** It is staff's position that properties with certain federally-insured loans satisfy the "government financing" criteria under section 214, subd. (g)(1)(A), provided that the regulatory agreement issued for the loan meets the statutory requirement that either a deed restriction or a regulatory agreement must restrict all or a portion of the property for rental to lower-income households. (Section 214, subd. (g)(2)(A)(ii))

**Issue 4:** Whether the exemption on lower-income housing properties should be limited to the stated percentage specified in the regulatory agreement(s) that the owner is legally required to restrict for rental to lower-income households.

**Staff Position:** Staff has consistently advised that under section 214, subd.(g), the percentage of units specified in the regulatory agreement that are restricted for rental to lower-income households are the units eligible for exemption.

**Issue 5:** Whether multiple regulatory agreements for a single lower-income housing project may be combined to determine the total number of dwelling units eligible for exemption.

**Staff Position:** Staff has issued opinions and the Board explained in Assessors' Section 267, *Welfare, Church and Religious Exemptions*, p.72, that where there are multiple regulatory agreements for a single project, the agreements may be combined to determine the percentage of units eligible for exemption. Thus, if a single project is restricted by two agreements, it may receive exemption on 100 percent of the dwelling units if one agreement restricts 40% of the units for rental to lower-income households, and the second agreement restricts 60% of the units for lower-income housing rental.

**Issue 6:** Whether Section 8 HUD (tenant vouchers or project-based) rental assistance constitutes government financing under section 214, subd. (g)(1)(A).

**Staff Position:** Staff has advised that properties without either tax credits or government financing are *not* qualified for exemption solely on the basis that some units are rented to lower-income households with Section 8 HUD tenant vouchers. The "tenant vouchers" are a federal government rent subsidy for the lower-income tenant, and as such, do not satisfy the requirement that the property have government financing. (Section 214, subd. (g)(1)(B)).

Staff is researching the issue of whether properties without either tax credits or government financing, but with "project-based" Section 8 funding may satisfy the government financing criteria in section 214, subd.(g)(1)(A). Staff may recommend that project-based Section 8 properties are eligible for exemption *if* the properties remain subject to a regulatory agreement that restricts all or a portion of the property for rental to lower-income households.

**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-L1 and BOE 277-L1.

**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 Assessors' 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.

**Issue 8:** Whether section 214, subd. (g)(2)(B) requires owners to charge lower rents than those prescribed by statute (Health and Safety Code) or the regulatory agreement for the property.

**Staff Position:** Projects are eligible for exemption when operated in consistency with the regulatory agreement regarding rent levels for the property and/or when operated within the Health and Safety Code rent level requirements. Staff does not construe section 214, subd. (g)(2)(B) to require lower rents than those required by the regulatory agreement or the Health and Safety Code.

In developing positions regarding applications of exemption law, the Board staff is sensitive to the needs of the affordable housing industry as well as to the Legislature's long-term objective in meeting a statewide need to provide such housing. We are confident that the proposed regulations will, therefore, be beneficial to affordable housing developments by providing much needed certainty and clarification regarding the requirements for exemption, as well as uniformity among the 58 counties and assessors' offices statewide.

This letter and all documents regarding this project will be posted on the Board's web site ([www.boe.ca.gov](http://www.boe.ca.gov)) and can be accessed by selecting 1) Property Taxes, 2) Property Tax Committee Work Plans, 3) Other Projects in Process 2005. If you have questions regarding this project, you may contact Ladeena Ford at (916) 324-5839 ; and if you have any legal questions regarding the positions expressed in this letter, you may contact Senior Tax Counsel Mary Ann Alonzo at (916) 324-1392.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee, Chief  
Assessment Policy and Standards Division

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