



STATE BOARD OF EQUALIZATION
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November 8, 2005

TO INTERESTED PARTIES:

PROPOSED WELFARE EXEMPTION RULES

On May 16, 2005, an interested parties letter was sent advising interested parties that staff would be presenting proposed welfare exemption rules to the Board at its June 30, 2005 meeting, and requesting permission to commence the formal rulemaking process on these rules. Staff presented the draft rules in a Chief Counsel Memorandum, dated June 10, 2005. The following draft rules were included:

- Rule 140, *Welfare Exemption Requirements for Low-Income Housing Properties*
- Rule 140.1, *Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties*
- Rule 140.2, *Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties*
- Rule 143, *Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption*

As indicated in the June 10, 2005 memorandum, agreement was reached on proposed rule language to all of the rules with the exception of proposed Rule 140.1. At the June 30, 2005 Board meeting, the Board voted to defer consideration of the matter. The Board has rescheduled the matter to be heard at its meeting on December 13, 2005. It is anticipated that the matter will be heard in the afternoon session, beginning at 1:30 p.m.

Staff's proposed language for proposed Rules 140, 140.2, and 143, which will be presented to the Board for consideration on December 13, 2005, is the same language that was presented in the June 10, 2005 Chief Counsel Memorandum. Staff's proposed language for Rule 140.1 with respect to the managing general partner has been modified. Enclosed is a draft of the rule, presenting changes to the June 10, 2005 draft in strikethrough and underline format.

If you would like to provide comments on the staff's proposed revision to Rule 140.1 and would like your comments presented to the Board for consideration in the Chief Counsel Memorandum that will be addressed to the Board for the December 13, 2005 meeting, you must submit the comments to staff by November 15, 2005. If you choose to submit comments, please provide the following information: (1) alternative language that you are proposing to be included in the rule, as well as any strikethrough deletions; and, (2) specific reasons supporting that proposed language, including reasons for disagreement with staff's proposed language. Please submit such comments to Ms. Sophia Chung at sophia.chung@boe.ca.gov or by fax at 916-323-3387.

The staff will be presenting staff's proposed rules to the Board at its December 13, 2005 meeting for permission to publish in the formal rulemaking process. Staff will also be presenting a Chief Counsel Memorandum outlining the remaining issues with respect to proposed Rule 140.1, and the alternative language submitted by interested parties and the reasons in support thereof. Please be advised that the formal rulemaking process commences once the Board approves regulatory language for publication.

These draft rules, as well as all documents relating to the project, are posted on the Board's website at <http://www.boe.ca.gov/proptaxes/ptrwelfare.htm>. If you have questions regarding this rulemaking project, you may contact Ms. Ladeena Ford, Senior Specialist Property Auditor Appraiser, at 916-324-5839. Questions regarding staff's proposed language should be directed to Tax Counsel Sophia Chung at 916-445-8485.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee, Chief
Assessment Policy and Standards Division

DRK:lf
Enclosure

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 140.1 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**

4
5 **DRAFT OF PROPOSED PROPERTY TAX RULE 140.1**
6 **REQUIREMENTS FOR MANAGING GENERAL PARTNER**
7 **OF LIMITED PARTNERSHIP FOR WELFARE EXEMPTION**
8 **FOR LOW-INCOME HOUSING PROPERTIES**
9

10
11 (a) Definitions. The definitions set forth in this regulation shall govern the construction of
12 Revenue and Taxation Code section 214, subdivision (g), which provides the requirements
13 for the welfare exemption for low-income housing properties owned by a limited partnership
14 in which the managing general partner is an eligible nonprofit corporation.

15
16 (1) "General partner" means "general partner" as defined by section 15611, subdivision (n)
17 of the Corporations Code.

18
19 (2) "Limited partner" means "limited partner" as defined by section 15611, subdivision (q)
20 of the Corporations Code.

21
22 (3) "Limited partnership" means a "limited partnership" as defined by section 15611,
23 subdivision (r) of the Corporations Code, or a "foreign limited partnership" as defined by
24 section 15611, subdivision (l) of the Corporations Code.

25
26 (4) "Limited partnership agreement" means any valid written agreement of the partners as to
27 the affairs of a limited partnership and the conduct of its business, including all
28 amendments thereto.

29
30 (5) "Majority in interest of the general partners" means more than 50 percent of the interests
31 of the general partners, and does not include the interests of any of the limited partners,
32 in the current profits derived from business operations of the limited partnership.

33
34 (6) "Managing general partner" means a general partner that:

35
36 (i) is a nonprofit corporation, or an eligible limited liability company meeting the
37 requirements of Revenue and Taxation Code section 214, designated in the
38 limited partnership agreement as the "managing general partner" of the limited
39 partnership;

40
41 (ii) is authorized to receive a partnership management fee, or similar form of
42 compensation, payable in the amount and the manner set forth in the limited
43 partnership agreement or other agreement executed by all of the general
44 partners for performing its duties;

45
46 (iii) has "material participation," as defined in subdivision (a)(7) below, in the
47 control, management, and direction of the limited partnership's business; and
48

1 (iv) the officers and directors of the for-profit general partners, for-profit limited
2 partners, or any of its for-profit affiliates, do not, as individuals or
3 collectively, have a controlling vote or majority interest in the nonprofit
4 managing general partner.

5
6 (7) "Material participation" means that the limited partnership agreement or other
7 agreement executed by all of the general partners expressly provides that the
8 managing general partner:

9
10 (i) has a right to vote in all the "major decisions," defined in subdivision (a)(8)
11 below;

12
13 (ii) performs "substantial management duties," defined in subdivision (a)(10)
14 below; ~~and~~

15
16 (iii) directly, or indirectly under its supervision, manages the limited partnership;

17
18 (iv) annually conducts a physical inspection of the low-income housing property
19 to ensure that the property is being used as low-income housing and meets all
20 of the requirements set forth in Regulation 140; and

21
22 (v) annually submits a certification to the county assessor for the county in which
23 the property is located that the low-income housing property meets all of the
24 requirements set forth in Regulation 140.

25
26
27 (8) "Major decisions" means those acts, if any, that require a vote of a majority in interest
28 of the general partners.

29
30 (9) "Partner" means a limited or general partner.

31
32 (10) "Substantial management duties" means that the managing general partner actually
33 performs ~~two~~ five or more of the following partnership management duties on
34 behalf of the limited partnership:

35
36 (i) rents, maintains and repairs the low-income housing property, or if such duties
37 are delegated to a property management agent, participates in hiring and
38 overseeing the work of the property management agent;

39
40 (ii) participates in hiring and overseeing the work of all persons necessary to
41 provide services for the management and operation of the limited partnership
42 business;

43
44 (iii) executes and enforces all contracts executed by the limited partnership;

45
46 (iv) executes and delivers all partnership documents on behalf of the limited
47 partnership;

- 1 (v) prepares or causes to be prepared all reports to be provided to the partners or
2 lenders on a monthly, quarterly, or annual basis consistent with the
3 requirements of the limited partnership agreement;
4
- 5 (vi) coordinates all present and future development, construction, or rehabilitation
6 of low-income housing property that is the subject of the limited partnership
7 agreement;
8
- 9 (vii) monitors compliance with all government regulations and files or supervises
10 the filing of all required documents with government agencies;
11
- 12 (viii) acquires, holds, assigns or disposes of property or any interest in property;
13
- 14 (ix) borrows money on behalf of the limited partnership, encumbers limited
15 partnership assets, places title in the name of a nominee to obtain financing,
16 prepays in whole or in part, refinances, increases, modifies or extends any
17 obligation;
18
- 19 (x) pays organizational expenses incurred in the creation of the partnership and all
20 operational expenses; ~~and~~
21
- 22 (xi) determines the amount and timing of distributions to partners and establish
23 and maintain all required reserves; and
24
- 25 (xii) ensures that charitable services or benefits, such as vocational training,
26 educational programs, childcare and after-school programs, cultural activities,
27 family counseling, transportation, meals, and linkages to health and/or social
28 services are provided or information regarding charitable services or benefits
29 are made available to the low-income housing tenants.
30

31 (b) The managing general partner must maintain records and documents evidencing the duties
32 performed by the managing general partner. Such records and documents may include, but
33 are not limited to:

- 34
- 35 (1) accounting books and records;
- 36 (2) tax returns;
- 37 (3) budgets and financial reports;
- 38 (4) reports required by lenders;
- 39 (5) documents related to the construction or rehabilitation of real property;
- 40 (6) legal documents such as contracts, deeds, notes, leases, and deeds of trust;
- 41 (7) documents related to complying with government regulations and filings;
- 42 (8) documents related to property inspections;
- 43 (9) documents related to charitable services or benefits provided or the information
44 provided regarding such services or benefits;
- 45 (10) reports prepared for the partners;
- 46 (11) bank account records;
- 47 (12) audited annual financial statement of the limited partnership; and
- 48 (13) property management agreement.

1
2 (c) Substitution of Managing General Partner. A limited partnership in which the managing
3 general partner is an eligible nonprofit corporation or an eligible limited liability company
4 that has qualified for the welfare exemption for low-income housing may allow a substitution
5 of its managing general partner by another eligible nonprofit corporation without affecting
6 the organizational qualification for the welfare exemption provided that:

7
8 (1) the limited partnership agreement authorizes the withdrawal or removal of the managing
9 general partner and the admission of a substitute managing general partner on the same
10 effective date and such admission of the substituting managing general partner into the
11 limited partnership is in compliance with the requirements of section 15641 of the
12 Corporations Code; and

13
14 (2) the substitute managing general partner meets all of the requirements of a managing
15 general partner set forth in subdivision (a)(6) above.

16
17 (d) Delegation of Authority Clause. If the limited partnership agreement contains a delegation of
18 authority clause, such clause must provide either that:

19
20 (1) the managing general partner may not delegate any of its substantial management duties
21 defined in (a)(10) above; or

22
23 (2) the managing general partner may delegate its substantial management duties, defined in
24 (a)(10) above, to persons who, under its supervision, may perform such duties for the
25 partnership subject to the supervision by the managing general partner. If the managing
26 general partner elects to delegate one or more of its substantial management duties, the
27 managing general partner must demonstrate that it is actually supervising the
28 performance of the delegated duties.

29
30 (e) Certification Requirements. The limited partnership must file for and receive a supplemental
31 clearance certificate from the Board as provided in Regulation 140.2.

32
33 (f) The provisions of this regulation shall apply prospectively to claims or applications for the
34 welfare exemption under Revenue and Taxation Code section 214 and supplemental
35 clearance certificates under Regulation 140.2, filed on or after the effective date of this
36 regulation. For supplemental clearance certificates issued prior to the effective date of this
37 regulation, claimants shall have until the January 1, 2007 lien date to be in compliance with
38 this regulation unless the Board has issued a written notice of noncompliance. If the Board
39 has issued such notice, claimant shall have 90 days from the date of the notice to comply
40 with this regulation. Upon written request for an extension of time prior to the expiration of
41 the 90-day period to comply, the Board shall grant a reasonable amount of time to comply
42 with this regulation.