



News & Publications

California State Board Of Equalization Lifts Freeze On Property Tax Exemption Filings

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CCN Client Alert

As you may already know, over the past half year, many property tax exemptions for affordable housing projects filed with the California Board of Equalization ("BOE") have been in administrative limbo. The BOE's informal action once again raised concerns among developers, lenders and investors about the efficacy of the property tax exemption. We have just received verification that this "hold" has been lifted. In addition, the BOE has issued guidance confirming the appropriate use of LLCs in affordable housing projects.

Since last summer, the BOE's County-Assessed Properties Division has stopped processing organizational clearance certificate ("OCC") applications for single-member LLCs, each of which is formed for the purpose of serving as the managing general partner ("MGP") of a partnership that owns a low-income restricted property. The BOE's inaction has resulted in property taxes being assessed against many low-income restricted projects that would otherwise be eligible for California's property tax exemption for low-income restricted properties.

Following a conference hosted by Cox, Castle on November 26, 2007, where Cox, Castle attorneys and other interested developers' attorneys discussed the relevant issues with BOE staff members and attorneys, the BOE County-Assessed Properties Division asked the BOE's legal division to provide written guidance as to whether a single-member LLC formed by an eligible non-profit qualifies as an eligible MGP for purposes of the property tax exemption.

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On Wednesday, February 6, 2008, the BOE County-Assessed Properties Division released the legal division's memorandum ("Memo") to interested parties (see attached). The Memo confirms that a single-member LLC formed solely for the purpose of serving as the MGP of a limited partnership that owns a low-income restricted property can indeed receive an OCC. This means that a low-income restricted property owned by a limited partnership whose MGP is a qualifying single-member LLC is eligible for the property tax exemption.

Importantly, the BOE's Memo touches on the issue of what constitutes an appropriate non-profit charitable purpose for an MGP for purposes of the property tax exemption. At the November 2007 conference, a BOE attorney unexpectedly voiced a concern about granting OCCs to eligible non-profits whose sole activities involve serving as MGP of partnerships that own low-income restricted properties. This attorney's comment was a real cause for concern, as it seemed to indicate the BOE legal division's willingness to revisit the notion that a non-profit MGP must provide a minimum defined level of charitable services. As we have done on several occasions over the past few years, Cox, Castle pointed out that the BOE's concern lacked merit, and that there is no such requirement in any section of the California Revenue and Taxation Code. We also pointed out that the notion of minimum charitable service for an MGP runs counter to the legislative history of the property tax exemption statute, which explicitly provides that making affordable projects "pencil out" is in fact the charitable objective.

In the attached Memo, the BOE legal division reaffirms that there are no statutory grounds for requiring an MGP of a limited partnership owning low-income housing to have any other charitable purposes aside from managing the limited partnership. The Memo goes on to state that the BOE "has not required that the MGP perform any other charitable activity other than serving as the MGP of a limited partnership providing low-income housing."

Ultimately, the Memo provides a much-needed reaffirmation of the BOE's commitment to administering California's property tax exemption statute for its intended statutory purpose—namely, increasing California's stock of affordable housing without the imposition of excessive governmental control over exactly how affordable housing projects are run.