

OCTOBER 1, 2014

LAW ALERT

CALIFORNIA BANS PILOT (PAYMENT IN LIEU OF TAXES) AGREEMENTS

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On September 29, 2014, Governor Jerry Brown signed into law SB 1203 and AB 1760, effective January 1, 2015, which ban payment in lieu of taxes (PILOT) agreements between local governments and owners of low income housing developments. SB 1203 cancels all property tax assessments and requires refunds for payment of property tax assessments related to PILOTs for the period from January 1, 2012 through January 1, 2015. AB 1760 also adds clarifications related to the property tax welfare exemption for low income housing developments.

PILOT Agreements Barred as of January 1, 2015

Under these bills, all new PILOT agreements are barred beginning January 1, 2015. A PILOT agreement is an agreement between a property owner of low income housing developments and a local government entity that requires the property owner to pay the local government a fee to compensate the local government for property tax revenue lost due to the property tax exemption for low income housing under Revenue and Taxation Code Section 214(g) ("Section 214(g)").

Tax Payments Cancelled and Refunds Required

SB 1203 cancels all outstanding ad valorem taxes, interest, and penalties that were levied

between January 1, 2012, and January 1, 2015 as a result of a PILOT agreement. For any property owner that paid any ad valorem taxes, interest, or penalties that were levied between January 1, 2012, and January 1, 2015 as a result of a PILOT agreement, the bill requires a refund to the property owner. Under the new law, after January 1, 2015, County tax assessors cannot levy an escape or supplemental assessment on the basis that payments made under a PILOT agreement were, or are being, used in a manner incompatible with the certification requirement for the property tax welfare exemption for low income housing under Section 214(g).

Clarifications to Welfare Exemption from Property Taxes for Low Income Housing Developments

a. Prior PILOT Payments Comply with Section 214(g) Certification Requirements

AB 1760 provides that any payment made under a PILOT agreement entered into before January 1, 2015 is in compliance with the certification requirements in Section 214(g). Some County tax assessors had taken the position that PILOT payments were inconsistent with the certification that monies that would otherwise have been used to pay property taxes would be used to maintain the affordability or reduce rents for the units

occupied by low income households. This provision clarifies that the Legislature disagrees with the position taken by some County tax assessors.

b. Common Areas Qualify for Welfare Exemption

SB 1203 clarifies that non-commercial common areas in low income housing developments will qualify for the property tax exemption. Prior to SB 1203, some County tax assessors calculated the welfare exemption by excluding the value of the common areas in the development. The bill amends Section 214 so that the statute now defines "related facilities" to include "any manager's units and any and all common area spaces that are included within the physical boundaries of the rental housing development, including, but not limited to, common area space, walkways, balconies, patios, clubhouse space, meeting rooms, laundry facilities and parking areas, except any portions of the overall development that are nonexempt commercial space." The exemption is calculated by taking the percentage of the number of lower income household units to the total number of residential units in the

development, and applying that percentage to the value of the portions of the property which are rental housing and related facilities. This clarification should result in larger exemption amounts in counties where the assessor did not include all non-commercial common area of a development as related facilities in calculating the exemption.

c. Extension to Vacant Units

An exemption for units reserved for lower income households if temporarily vacant on the lien date will also be available once this law takes effect.

If you have any questions about SB 1203 or AB 1760, please contact Lynn Hutchins, Amy DeVaudreuil, Luis A. Rodriguez, Hana Hardy or any of the other attorneys at Goldfarb & Lipman.

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