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NEW STATE LAW SB 996 INCREASES PROPERTY TAX WELFARE EXEMPTION FIVEFOLD FOR NON-PUBLICLY FINANCED PROJECTS

In response to increasing costs of housing and California's serious shortage of affordable housing, Governor Brown signed Senate Bill No. 996 (Hill) into law, amending section 214 of the California Revenue and Taxation Code ("RTC") to increase the amount of the welfare exemption from property tax for non-publicly financed affordable housing owned by nonprofit entities and eligible limited liability companies ("LLCs"). Specifically, the legislation increases the annual welfare exemption cap from $20,000 to $100,000, raising the cap for the first time since its initial enactment in 2000.

BACKGROUND ON WELFARE EXEMPTION

The exemption from property taxes, commonly known as the "welfare exemption," is available under section 214 of the Code for property used for charitable purposes and owned by nonprofit entities or other eligible entities that are organized and operated for charitable purposes. RTC section 214(g) partially exempts property used exclusively for rental housing, but distinguishes between publicly financed and non-publicly financed affordable housing projects.

Publicly financed projects—those with tax-exempt mortgage revenue bonds, general obligation bonds, grants, or low-income housing tax credits—are "entitled to a partial exemption equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower income households represents the total number of residential units." (RTC § 214(g)(1).)

In the case of non-publicly financed affordable housing projects, a nonprofit organization or an eligible LLC must own the property, and at least 90% of the units must be affordable. However, prior to the new legislation, nonprofit organizations and eligible LLCs could only claim an exemption up to $20,000 annually in tax for all properties owned in the state. (RTC § 214(g)(1)(C).)

ANNUAL WELFARE EXEMPTION CAP

The legislature first imposed this cap (along with other reforms to all affordable housing properties) on non-publicly financed housing in response to investigative findings that some substandard housing projects were exempt from property tax. However as housing costs have skyrocketed in California, the annual cap has hindered nonprofit organizations that own or want to purchase affordable housing in their communities. It has been especially burdensome for statewide organizations because the cap applies to all property owned in California. Further, no other organizations claiming the welfare exemption are subject to a similar cap, such as hospitals, churches, and universities.

SUMMARY OF NEW CHANGES

The major substantive changes included in SB 996 amending RTC section 214 are as follows.

- ***Increases welfare exemption amount for non-publicly financed affordable housing.*** SB 996 increases the welfare exemption tax cap on non-publicly financed affordable housing owned by nonprofit entities or eligible LLCs. Specifically, it increases the annual exemption amount for non-publicly financed affordable housing to $10 million ($100,000 in tax) and deletes the former limit of $20,000 in tax, effective for lien dates on or after January 1, 2017. (RTC § 214(g)(1)(C).)

- ***Allows refunds and cancellations of past and current taxes.*** The new law also creates a process for affected taxpayers to file claims to refund and cancel current taxes, imposed between January 1, 2013 and January 1, 2017 as a result of the current exemption cap. However, it does not permit cancellation of taxes that exceed the increased cap of $10 million in value. Additionally, SB 996 precludes assessors from issuing an escape assessment for taxpayers with cancelled or refunded taxes. (RTC § 214.17(b).)

- ***Requires claims to include affidavits.*** Lastly, claims for welfare exemptions for non-publicly financed affordable housing must include an affidavit from the property owner that includes a list of units occupied by lower income households for which the exemption is claimed. The affidavit must also include nonpersonalized information regarding the actual household income of the occupant, the maximum rent that may be charged to the occupant, and the actual rent charged to the occupant. (RTC § 259.14(a).) Affidavits are an additional requirement imposed on non-publicly financed projects, as units are still subject to deed restrictions or any other legal document that restricts the projects usage as required under RTC section 214(g)(2)(A)(i).

This legislation is especially significant for nonprofit entities or eligible LLCs that own affordable housing properties initially purchased with public financing but are now considered "non-publicly financed" affordable housing. Proponents of SB 996 assert that it will provide the necessary tax relief to these entities so that they can continue to preserve existing affordable housing and provide more affordable housing for low-income people and families.

For more information regarding the welfare exemption or eligibility requirements under RTC section 214, please contact Amy DeVaudreuil, Luis A. Rodriguez, or any other attorney at Goldfarb & Lipman LLP at 510-836-6336.

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