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NO DIRTY LAUNDRY! BOE FINDS WELFARE EXEMPTION APPLIES TO LAUNDRY ROOMS WITH FOR-PROFIT OPERATORS AND INTRODUCES BOE FORM 267-O

The State Board of Equalization (BOE) recently provided a legal determination in response to issues raised by Mutual Housing California, assisted by Goldfarb & Lipman, regarding certain practices of the Sacramento County Assessor's Office. The Assessor denied the welfare exemption for laundry rooms operated by for-profit laundry operators and for space used by third-party social service providers that contracted with the owner of an affordable housing development to provide services to its residents.

Mutual Housing California had been denied exemption for a portion of several properties in Sacramento County based on the Assessor's findings that (i) the lessee or operator of the laundry room equipment was a for-profit entity, and (ii) the third-party social service provider was an "independent contractor" and not an "agent" of the owner.

In the legal determination, the BOE found that any third-party user of the property on a regular basis is considered an "operator" regardless of the type (or lack) of agreement with the owner. Further, if the owner and operator are separate entities, only the owner is required to obtain an Organizational Clearance Certificate (OCC) and file a claim for welfare exemption with the County Assessor, based on *Jewish Community Center Development Corporation v. County of Los Angeles* (2016) 243 Cal.App.4th 700.

The BOE reasoned that where the operator is an agent of the owner, the operator need not be a qualifying entity under section 214 of the Revenue and Taxation Code. Rather, because the agent is performing its duties on behalf of

the owner as the owner's representative, the owner is deemed to be both the owner and operator. *See also* BOE Annotation 880.0160 (Nov. 12, 1987) (finding that for-profit property managers are agents of owners of affordable housing developments and do not need to be qualifying organizations themselves).

Here, the BOE found that laundry operators were performing their duties on behalf of the owners and therefore do not need to be qualifying entities themselves for the laundry room to be eligible for the welfare exemption. The BOE also found that regardless of whether a third-party social service provider were to be deemed an "agent" or an "operator," if the provider is organized and operated for exempt purposes, and the services are incidental to and reasonably necessary for the provision of affordable housing, then the community space used by the provider should be eligible for the welfare exemption and the providers need not have an OCC.

In another legal development, owners of affordable housing developments with third-party users will now have to file BOE Form 267-O with their county filings due February 15th. The new form requires disclosure of all third-party users, and for third-party operators, evidence of meeting the requirements of section 214, including being organized and operated for charitable tax-exempt purposes. Third-party operators need not have an OCC.

If you have any questions regarding these issues, please contact Amy DeVaudreuil or Katrine Shelton at Goldfarb & Lipman, 510-836-6336.