

# Retroactive Tax Exemption for Certain Housing Authority Nonprofits

## Introduction

AB 1528 clarifies that the tax exemption for housing authorities under Health and Safety Code section 34400 also applies to property held by certain housing authority-controlled nonprofit public benefit corporations. AB 1528 also provides for a refund of tax paid prior to January 1, 2024 for such properties. However, AB 1528's specific requirements may limit its beneficial effect as applied to low-income housing developments owned or operated by housing authority-related entities under some typical ownership structures. Housing authorities may still need to apply the "welfare exemption" under Revenue and Taxation Code section 214 to low-income housing developments that they own or operate through housing authority-related entities.

Governor Newsom signed AB 1528 into law on October 11, 2024. It took effect on January 1, 2024. The Housing Authority of the City and County of Los Angeles and the California Association of Housing Authorities sponsored AB 1528, and Assembly Member Mike A. Gipson authored it.

## Summary

The legislature enacted Health and Safety Code section 34400 in 1953 to provide tax exemption for "the property and bonds of a housing authority." AB 1528 amends Health and Safety Code section 34400 to clarify that the tax exemption exists under the California Constitution Article XIII, Sections 3(a) and (b) exemptions for property owned by state or local government. It also clarifies that the tax exemption also applies to property held by a housing authority-controlled nonprofit

public benefit corporation according to the following requirements:

1. A nonprofit public benefit corporation holds the property.
2. A housing authority controls the nonprofit public benefit corporation, meaning that:
  - a. "the nonprofit public benefit corporation is organized for purposes pursuant to the Housing Authorities Law;"
  - b. the nonprofit public benefit corporation "is solely directed and managed by directors, officers, or employees of the housing authority;" and
  - c. the nonprofit public benefit corporation's organizational documents provide that in the event of its liquidation, dissolution, or winding up, all of its assets revert to ownership by the housing authority.

AB 1528 applies prospectively by cancelling "any outstanding ad valorem tax, interest, or penalty that levied" on property now expressly covered by Health and Safety Code section 34400, as amended by AB 1528. It applies retroactively by requiring the refund of any tax, interest, or penalty paid prior to January 1, 2024.

Housing authorities should assess (1) whether and to what extent this statute affects their existing low-income housing developments or other real property holdings, and (2) whether the revised Health and Safety Code section 34400 enables any new or different approach to structuring ownership of low-income housing developments.

## Analysis of the Requirements

Housing authorities should consider each of the required elements when evaluating the applicability of the exemption under AB 1528.

First, the property must be “held by” a nonprofit public benefit corporation. Note that under some low-income housing programs that combine public and private funds, the low-income housing development must be or commonly is owned by a limited partnership (and not a nonprofit public benefit corporation). This is the case for the low-income housing tax credit program or the U.S. Department of Housing and Urban Development (HUD) public housing mixed finance program.

Second, the nonprofit public benefit corporation must be “organized for purposes pursuant to the Housing Authorities Law.” Under California Corporations Code sections 5111 and 5130, a California nonprofit public benefit corporation may be formed for any public or charitable purpose; public purposes must be further described, and charitable purposes may be (and frequently are) further described. AB 1528 requires the nonprofit public benefit corporation to be “organized for purposes pursuant to the Housing Authorities Law,” which appears in Housing Authority Law at Health and Safety Code Section 33000 *et seq.* For examples related to low-income housing, Health and Safety Code section 34201(c) states that “...the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern...”. Health and Safety Code section 34212 states that a “housing project” may serve one or more purposes, including for example “[t]o provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income and persons and households eligible for housing assistance...” as permitted under Health and Safety Code section 34312.3, which specifies a range of activities through which housing authorities can fund and operate low-

income housing. Health and Safety Code section 34315 provides for a broad range of housing authority powers related to real property. In order to comply with the purposes requirement, housing authorities should identify the applicable purposes stated in the Housing Authority Law and ensure that those purposes appear in the articles of incorporation of the property-holding nonprofit public benefit corporation.

Third, the nonprofit public benefit corporation must be “solely directed and managed by directors, officers, or employees of the housing authority.” A plain reading of the word “solely” in this context suggests that a nonprofit public benefit corporation with even a single director who is not a director, officer, or employee of the housing authority would not qualify for the exemption under AB 1528. This standard represents a very high standard of control by the housing authority. Housing authorities may operate through related nonprofit public benefit corporations that the housing authority controls through an ability to determine a majority of the board of directors. However, even though such an entity may be clearly under the control of the housing authority, it likely would not meet the very high standard of control required under AB 1528. To qualify under AB 1528, the nonprofit public benefit corporation’s board of directors cannot include any “outside” director.

The legislative record does not specifically state the reason or need for a very high standard of control. This very high standard also stands in contrast with the requirements under “welfare exemption” of California Revenue and Taxation Code section 214 (the “Welfare Exemption”), in particular, under the section 214(g) partial exemption for units serving low-income households as implemented by Property Tax Rule 140.1. According to Property Tax Rule 140.1, the nonprofit managing general partner of the limited partnership that owns the low-income housing development must perform “substantial management duties,” must not have a “majority interest” held by for-profit entities, and must materially participate in “major decisions.” The requirements under the Welfare Exemption

accommodate some of the typical ownership structures through which low-income housing can be developed, owned, and operated.

Fourth, and finally, the nonprofit public benefit corporation's organizational documents must provide that in the event of its liquidation, dissolution, or winding up, all of its assets revert to ownership by the housing authority.

## Conclusion

Application of AB 1528 will require careful analysis of its particular requirements. The very high standard of control required under AB 1528, coupled with the requirement that the property be held by the nonprofit, may prevent AB 1528 from providing tax exemption for low-income housing developments with typical structures of ownership. Nonetheless, housing authorities should review their property portfolio and contact their County Assessor's office where a refund appears warranted.

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