

AMENDED IN SENATE JUNE 11, 2014

AMENDED IN ASSEMBLY MAY 28, 2014

AMENDED IN ASSEMBLY MAY 14, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1760

Introduced by Assembly Members Chau and Bocanegra

February 14, 2014

An act to amend Section 214 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1760, as amended, Chau. Property taxation: welfare exemption: rental housing and related facilities: payment in lieu of taxes agreement.

Existing property tax law establishes a partial welfare exemption for property used exclusively for rental housing and related facilities that are owned and operated by either of any certain types of nonprofit entities or veterans' organizations that meet specified exemption requirements, if either of certain qualifying criteria are met.

This bill would, on or after January 1, 2015, prohibit a local government from entering into a payment in lieu of taxes (PILOT) agreement with a property owner of a low-income housing project, and would make any PILOT agreement entered into in violation of this provision void and unenforceable. This bill would presume that any payments made under any PILOT agreement entered into before January 1, 2015, are used to maintain the affordability of, or reduce the rents otherwise necessary for, the units occupied by lower income households.

This bill would require any outstanding ad valorem tax, interest, or penalty that was levied between January 1, 2012, and January 1, 2015, as a result of a PILOT agreement to be canceled, and would also require any tax, interest, or penalty, as so levied, that was paid prior to January 1, 2015, to be refunded. This bill would define a PILOT agreement to mean any agreement entered into between a local government and a property owner of a low-income housing project that requires the owner of the low-income housing project to pay the local government a charge, as provided, and would define a “low-income housing project” to mean a low-income housing project that is eligible for the exemption described above.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 214 of the Revenue and Taxation Code
 2 is amended to read:
 3 214. (a) Property used exclusively for religious, hospital,
 4 scientific, or charitable purposes owned and operated by
 5 community chests, funds, foundations, limited liability companies,
 6 or corporations organized and operated for religious, hospital,
 7 scientific, or charitable purposes is exempt from taxation, including
 8 ad valorem taxes to pay the interest and redemption charges on
 9 any indebtedness approved by the voters prior to July 1, 1978, or
 10 any bonded indebtedness for the acquisition or improvement of
 11 real property approved on or after July 1, 1978, by two-thirds of
 12 the votes cast by the voters voting on the proposition, if all of the
 13 following conditions are met:
 14 (1) The owner is not organized or operated for profit. However,
 15 in the case of hospitals, the organization shall not be deemed to
 16 be organized or operated for profit if, during the immediately
 17 preceding fiscal year, operating revenues, exclusive of gifts,
 18 endowments and grants-in-aid, did not exceed operating expenses
 19 by an amount equivalent to 10 percent of those operating expenses.
 20 As used herein, operating expenses include depreciation based on
 21 cost of replacement and amortization of, and interest on,
 22 indebtedness.
 23 (2) No part of the net earnings of the owner inures to the benefit
 24 of any private shareholder or individual.

1 (3) The property is used for the actual operation of the exempt
2 activity, and does not exceed an amount of property reasonably
3 necessary to the accomplishment of the exempt purpose.

4 (A) For the purposes of determining whether the property is
5 used for the actual operation of the exempt activity, consideration
6 shall not be given to use of the property for either or both of the
7 following described activities if that use is occasional:

8 (i) The owner conducts fundraising activities on the property
9 and the proceeds derived from those activities are not unrelated
10 business taxable income, as defined in Section 512 of the Internal
11 Revenue Code, of the owner and are used to further the exempt
12 activity of the owner.

13 (ii) The owner permits any other organization that meets all of
14 the requirements of this subdivision, other than ownership of the
15 property, to conduct fundraising activities on the property and the
16 proceeds derived from those activities are not unrelated business
17 taxable income, as defined in Section 512 of the Internal Revenue
18 Code, of the organization, are not subject to the tax on unrelated
19 business taxable income that is imposed by Section 511 of the
20 Internal Revenue Code, and are used to further the exempt activity
21 of the organization.

22 (B) For purposes of subparagraph (A):

23 (i) “Occasional use” means use of the property on an irregular
24 or intermittent basis by the qualifying owner or any other qualifying
25 organization described in clause (ii) of subparagraph (A) that is
26 incidental to the primary activities of the owner or the other
27 organization.

28 (ii) “Fundraising activities” means both activities involving the
29 direct solicitation of money or other property and the anticipated
30 exchange of goods or services for money between the soliciting
31 organization and the organization or person solicited.

32 (C) Subparagraph (A) shall have no application in determining
33 whether paragraph (3) has been satisfied unless the owner of the
34 property and any other organization using the property as provided
35 in subparagraph (A) have filed with the assessor a valid
36 organizational clearance certificate issued pursuant to Section
37 254.6.

38 (D) For the purposes of determining whether the property is
39 used for the actual operation of the exempt activity, consideration
40 shall not be given to the use of the property for meetings conducted

1 by any other organization if the meetings are incidental to the other
2 organization's primary activities, are not fundraising meetings or
3 activities as defined in subparagraph (B), are held no more than
4 once per week, and the other organization and its use of the
5 property meet all other requirements of paragraphs (1) to (5),
6 inclusive, of this subdivision. The owner or the other organization
7 also shall file with the assessor a copy of a valid, unrevoked letter
8 or ruling from the Internal Revenue Service or the Franchise Tax
9 Board stating that the other organization, or the national
10 organization of which it is a local chapter or affiliate, qualifies as
11 an exempt organization under Section 501(c)(3) or 501(c)(4) of
12 the Internal Revenue Code or Section 23701d, 23701f, or 23701w.

13 (E) Nothing in subparagraph (A), (B), (C), or (D) shall be
14 construed to either enlarge or restrict the exemption provided for
15 in subdivision (b) of Section 4 and Section 5 of Article XIII of the
16 California Constitution and this section.

17 (4) The property is not used or operated by the owner or by any
18 other person so as to benefit any officer, trustee, director,
19 shareholder, member, employee, contributor, or bondholder of the
20 owner or operator, or any other person, through the distribution
21 of profits, payment of excessive charges or compensations, or the
22 more advantageous pursuit of their business or profession.

23 (5) The property is not used by the owner or members thereof
24 for fraternal or lodge purposes, or for social club purposes except
25 where that use is clearly incidental to a primary religious, hospital,
26 scientific, or charitable purpose.

27 (6) The property is irrevocably dedicated to religious, charitable,
28 scientific, or hospital purposes and upon the liquidation,
29 dissolution, or abandonment of the owner will not inure to the
30 benefit of any private person except a fund, foundation, or
31 corporation organized and operated for religious, hospital,
32 scientific, or charitable purposes.

33 (7) The property, if used exclusively for scientific purposes, is
34 used by a foundation or institution that, in addition to complying
35 with the foregoing requirements for the exemption of charitable
36 organizations in general, has been chartered by the Congress of
37 the United States (except that this requirement shall not apply
38 when the scientific purposes are medical research), and whose
39 objects are the encouragement or conduct of scientific

1 investigation, research, and discovery for the benefit of the
2 community at large.

3 The exemption provided for herein shall be known as the
4 “welfare exemption.” This exemption shall be in addition to any
5 other exemption now provided by law, and the existence of the
6 exemption provision in paragraph (2) of subdivision (a) of Section
7 202 shall not preclude the exemption under this section for museum
8 or library property. Except as provided in subdivision (e), this
9 section shall not be construed to enlarge the college exemption.

10 (b) Property used exclusively for school purposes of less than
11 collegiate grade and owned and operated by religious, hospital, or
12 charitable funds, foundations, limited liability companies, or
13 corporations, which property and funds, foundations, limited
14 liability companies, or corporations meet all of the requirements
15 of subdivision (a), shall be deemed to be within the exemption
16 provided for in subdivision (b) of Section 4 and Section 5 of Article
17 XIII of the California Constitution and this section.

18 (c) Property used exclusively for nursery school purposes and
19 owned and operated by religious, hospital, or charitable funds,
20 foundations, limited liability companies, or corporations, which
21 property and funds, foundations, limited liability companies, or
22 corporations meet all the requirements of subdivision (a), shall be
23 deemed to be within the exemption provided for in subdivision
24 (b) of Section 4 and Section 5 of Article XIII of the California
25 Constitution and this section.

26 (d) Property used exclusively for a noncommercial educational
27 FM broadcast station or an educational television station, and
28 owned and operated by religious, hospital, scientific, or charitable
29 funds, foundations, limited liability companies, or corporations
30 meeting all of the requirements of subdivision (a), shall be deemed
31 to be within the exemption provided for in subdivision (b) of
32 Section 4 and Section 5 of Article XIII of the California
33 Constitution and this section.

34 (e) Property used exclusively for religious, charitable, scientific,
35 or hospital purposes and owned and operated by religious, hospital,
36 scientific, or charitable funds, foundations, limited liability
37 companies, or corporations or educational institutions of collegiate
38 grade, as defined in Section 203, which property and funds,
39 foundations, limited liability companies, corporations, or
40 educational institutions meet all of the requirements of subdivision

1 (a), shall be deemed to be within the exemption provided for in
2 subdivision (b) of Section 4 and Section 5 of Article XIII of the
3 California Constitution and this section. As to educational
4 institutions of collegiate grade, as defined in Section 203, the
5 requirements of paragraph (6) of subdivision (a) shall be deemed
6 to be met if both of the following are met:

7 (1) The property of the educational institution is irrevocably
8 dedicated in its articles of incorporation to charitable and
9 educational purposes, to religious and educational purposes, or to
10 educational purposes.

11 (2) The articles of incorporation of the educational institution
12 provide for distribution of its property upon its liquidation,
13 dissolution, or abandonment to a fund, foundation, or corporation
14 organized and operated for religious, hospital, scientific, charitable,
15 or educational purposes meeting the requirements for exemption
16 provided by Section 203 or this section.

17 (f) Property used exclusively for housing and related facilities
18 for elderly or handicapped families and financed by, including,
19 but not limited to, the federal government pursuant to Section 202
20 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section
21 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of
22 Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of
23 Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and
24 operated by religious, hospital, scientific, or charitable funds,
25 foundations, limited liability companies, or corporations meeting
26 all of the requirements of this section shall be deemed to be within
27 the exemption provided for in subdivision (b) of Section 4 and
28 Section 5 of Article XIII of the California Constitution and this
29 section.

30 The amendment of this paragraph made by Chapter 1102 of the
31 Statutes of 1984 does not constitute a change in, but is declaratory
32 of, existing law. However, no refund of property taxes shall be
33 required as a result of this amendment for any fiscal year prior to
34 the fiscal year in which the amendment takes effect.

35 Property used exclusively for housing and related facilities for
36 elderly or handicapped families at which supplemental care or
37 services designed to meet the special needs of elderly or
38 handicapped residents are not provided, or that is not financed by
39 the federal government pursuant to Section 202 of Public Law
40 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public

1 Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law
2 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law
3 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption
4 pursuant to this subdivision unless the property is used for housing
5 and related facilities for low- and moderate-income elderly or
6 handicapped families. Property that would otherwise be exempt
7 pursuant to this subdivision, except that it includes some housing
8 and related facilities for other than low- or moderate-income elderly
9 or handicapped families, shall be entitled to a partial exemption.
10 The partial exemption shall be equal to that percentage of the value
11 of the property that is equal to the percentage that the number of
12 low- and moderate-income elderly and handicapped families
13 occupying the property represents of the total number of families
14 occupying the property.

15 As used in this subdivision, “low and moderate income” has the
16 same meaning as the term “persons and families of low or moderate
17 income” as defined by Section 50093 of the Health and Safety
18 Code.

19 (g) (1) Property used exclusively for rental housing and related
20 facilities and owned and operated by religious, hospital, scientific,
21 or charitable funds, foundations, limited liability companies, or
22 corporations, including limited partnerships in which the managing
23 general partner is an eligible nonprofit corporation or eligible
24 limited liability company, meeting all of the requirements of this
25 section, or by veterans’ organizations, as described in Section
26 215.1, meeting all the requirements of paragraphs (1) to (7),
27 inclusive, of subdivision (a), shall be deemed to be within the
28 exemption provided for in subdivision (b) of Section 4 and Section
29 5 of Article XIII of the California Constitution and this section
30 and shall be entitled to a partial exemption equal to that percentage
31 of the value of the property that the portion of the property serving
32 lower income households represents of the total property in any
33 year in which any of the following criteria applies:

34 (A) The acquisition, rehabilitation, development, or operation
35 of the property, or any combination of these factors, is financed
36 with tax-exempt mortgage revenue bonds or general obligation
37 bonds, or is financed by local, state, or federal loans or grants and
38 the rents of the occupants who are lower income households do
39 not exceed those prescribed by deed restrictions or regulatory

1 agreements pursuant to the terms of the financing or financial
2 assistance.

3 (B) The owner of the property is eligible for and receives
4 low-income housing tax credits pursuant to Section 42 of the
5 Internal Revenue Code of 1986, as added by Public Law 99-514.

6 (C) In the case of a claim, other than a claim with respect to
7 property owned by a limited partnership in which the managing
8 general partner is an eligible nonprofit corporation, that is filed
9 for the 2000–01 fiscal year or any fiscal year thereafter, 90 percent
10 or more of the occupants of the property are lower income
11 households whose rent does not exceed the rent prescribed by
12 Section 50053 of the Health and Safety Code. The total exemption
13 amount allowed under this subdivision to a taxpayer, with respect
14 to a single property or multiple properties for any fiscal year on
15 the sole basis of the application of this subparagraph, may not
16 exceed twenty thousand dollars (\$20,000) of tax.

17 (D) (i) The property was previously purchased and owned by
18 the Department of Transportation pursuant to a consent decree
19 requiring housing mitigation measures relating to the construction
20 of a freeway and is now solely owned by an organization that
21 qualifies as an exempt organization under Section 501(c)(3) of the
22 Internal Revenue Code.

23 (ii) This subparagraph shall not apply to property owned by a
24 limited partnership in which the managing partner is an eligible
25 nonprofit corporation.

26 (2) In order to be eligible for the exemption provided by this
27 subdivision, the owner of the property shall do both of the
28 following:

29 (A) (i) For any claim filed for the 2000–01 fiscal year or any
30 fiscal year thereafter, certify and ensure, subject to the limitation
31 in clause (ii), that there is an enforceable and verifiable agreement
32 with a public agency, a recorded deed restriction, or other legal
33 document that restricts the project's usage and that provides that
34 the units designated for use by lower income households are
35 continuously available to or occupied by lower income households
36 at rents that do not exceed those prescribed by Section 50053 of
37 the Health and Safety Code, or, to the extent that the terms of
38 federal, state, or local financing or financial assistance conflicts
39 with Section 50053, rents that do not exceed those prescribed by
40 the terms of the financing or financial assistance.

1 (ii) In the case of a limited partnership in which the managing
2 general partner is an eligible nonprofit corporation, the restriction
3 and provision specified in clause (i) shall be contained in an
4 enforceable and verifiable agreement with a public agency, or in
5 a recorded deed restriction to which the limited partnership
6 certifies.

7 (B) Certify that the funds that would have been necessary to
8 pay property taxes are used to maintain the affordability of, or
9 reduce rents otherwise necessary for, the units occupied by lower
10 income households.

11 (3) As used in this subdivision, “lower income households” has
12 the same meaning as the term “lower income households” as
13 defined by Section 50079.5 of the Health and Safety Code.

14 (4) (A) Notwithstanding any other law, both of the following
15 shall apply:

16 (i) (I) On or after January 1, 2015, a local government shall not
17 enter into a payment in lieu of taxes (PILOT) agreement with a
18 property owner of a low-income housing project.

19 (II) Any PILOT agreement entered into in violation of subclause
20 (I) shall be void and unenforceable.

21 (ii) (I) It shall be presumed that any payments made under any
22 PILOT agreement entered into before January 1, 2015, are used
23 to maintain the affordability of, or reduce rents otherwise necessary
24 for, the units occupied by lower income households.

25 (II) Any outstanding ad valorem tax, interest, or penalty that
26 was levied between January 1, 2012, and January 1, 2015, as a
27 result of a PILOT agreement shall be canceled, and any tax,
28 interest, or penalty, as so levied, that was paid prior to January 1,
29 2015, shall be refunded.

30 (B) For purposes of this paragraph, all of the following shall
31 apply:

32 (i) “Local government” means any city, county, city and county,
33 housing authority, housing successor to a redevelopment agency,
34 or a joint powers agency that has approved land use entitlements
35 or building permits, provided land or financing, or approved the
36 issuance of tax-exempt bonds pursuant to the federal Tax Equity
37 and Fiscal Responsibility Act for the low-income housing project.

38 (ii) “Low-income housing project” means a low-income housing
39 project that is eligible for the exemption provided by this
40 subdivision.

1 (iii) “Payment in lieu of taxes agreement” means any agreement
2 entered into between a local government and a property owner of
3 a low-income housing project that requires the owner of the
4 low-income housing project to pay the local government a charge,
5 including, but not limited to, any charge designed to compensate
6 the local government for lost property tax revenues resulting from
7 the low-income housing project receiving an exemption pursuant
8 to this subdivision. ~~A For purposes of this clause, a charge shall~~
9 ~~does not include a fee that is permitted by the Mitigation Fee Act~~
10 ~~(Chapter 5 (commencing with Section 66000), Chapter 6~~
11 ~~(commencing with Section 66010), Chapter 7 (commencing with~~
12 ~~Section 66012), Chapter 8 (commencing with Section 66016), and~~
13 ~~Chapter 9 (commencing with Section 66020) of Division 1 of Title~~
14 ~~7 of the Government Code) pursuant to any payment made pursuant~~
15 ~~to the terms of a development agreement entered into pursuant to~~
16 ~~Article 2.5 (commencing with Section 65864) of Chapter 4 of~~
17 ~~Division 1 of Title 7 of the Government Code that is consistent~~
18 ~~with paragraph (1) of subdivision (d) of Section 65008 of the~~
19 ~~Government Code.~~

20 (h) Property used exclusively for an emergency or temporary
21 shelter and related facilities for homeless persons and families and
22 owned and operated by religious, hospital, scientific, or charitable
23 funds, foundations, limited liability companies, or corporations
24 meeting all of the requirements of this section shall be deemed to
25 be within the exemption provided for in subdivision (b) of Section
26 4 and Section 5 of Article XIII of the California Constitution and
27 this section. Property that otherwise would be exempt pursuant to
28 this subdivision, except that it includes housing and related
29 facilities for other than an emergency or temporary shelter, shall
30 be entitled to a partial exemption.

31 As used in this subdivision, “emergency or temporary shelter”
32 means a facility that would be eligible for funding pursuant to
33 Chapter 11 (commencing with Section 50800) of Part 2 of Division
34 31 of the Health and Safety Code.

35 (i) Property used exclusively for housing and related facilities
36 for employees of religious, charitable, scientific, or hospital
37 organizations that meet all the requirements of subdivision (a) and
38 owned and operated by funds, foundations, limited liability
39 companies, or corporations that meet all the requirements of
40 subdivision (a) shall be deemed to be within the exemption

1 provided for in subdivision (b) of Section 4 and Section 5 of Article
2 XIII of the California Constitution and this section to the extent
3 the residential use of the property is institutionally necessary for
4 the operation of the organization.

5 (j) For purposes of this section, charitable purposes include
6 educational purposes. For purposes of this subdivision,
7 “educational purposes” means those educational purposes and
8 activities for the benefit of the community as a whole or an
9 unascertainable and indefinite portion thereof, and do not include
10 those educational purposes and activities that are primarily for the
11 benefit of an organization’s shareholders. Educational activities
12 include the study of relevant information, the dissemination of that
13 information to interested members of the general public, and the
14 participation of interested members of the general public.

15 (k) In the case of property used exclusively for the exempt
16 purposes specified in this section, owned and operated by limited
17 liability companies that are organized and operated for those
18 purposes, the State Board of Equalization shall adopt regulations
19 to specify the ownership, organizational, and operational
20 requirements for those companies to qualify for the exemption
21 provided by this section.

22 (l) The amendments made by Chapter 354 of the Statutes of
23 2004 shall apply with respect to lien dates occurring on and after
24 January 1, 2005.