



Affordable Housing and Ad Valorem Taxation In Texas

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Affordable Housing and the Texas Property Tax Code

For purposes of ad valorem (real property) taxation in Texas, affordable housing is treated differently depending on two factors: ownership and the specific affordable housing financing program used in its development. Properties owned by governmental entities, such as cities, are tax exempt pursuant to Section 11.11, Tax Code.¹ This exemption includes property owned by a governmental entity and leased to an affordable housing development (ground lease), or properties under other methods of ownership involving governmental entities that are partners in transactions such as lease-purchase agreements, as long as the governmental entity has equitable title to the property.² Other quasi-governmental entities owning affordable housing, such as housing finance corporations, have specific exemptions from taxation in other codes.³ A community housing development organization (and potentially a limited partnership comprised of a 100% CHDO general partner, see below for discussion on this) is also entitled to an exemption of certain properties used for affordable housing.⁴ Qualified nonprofit organizations constructing or purchasing affordable housing for rehabilitation and meeting certain requirements receive up to a 50% exemption.⁵

In addition to exemptions created by ownership interests in certain affordable housing, exemptions based on participation in a specific financing program affects how an affordable housing development is appraised, and therefore, taxed. All affordable housing developed under a program restricting rents or incomes (such as USDA Rural Development funding) is covered under the general affordable housing appraisal method first adopted by the Texas Legislature in 1997, Section 23.21, Tax Code.⁶ In 2003, the Texas Legislature granted a special appraisal method to properties developed under the Low Income Housing Tax Credit (“LIHTC” or “tax credit”) Program (both 4% and 9% LIHTC) and entitled them to the income method of appraisal under the specific provisions granted under the qualified nonprofit exemption in Section 11.1825(q), Tax Code.⁷ It is obvious that an LIHTC project would claim the 2003 method (Section 23.215, Tax Code), rather than the older 1997 method (Section 21.21, Tax Code) since it results in a much lower appraised value.

Valuing LIHTC Properties

Valuation of LIHTC apartments for property taxes is complex due to the unusual restrictions imposed upon them by federal and state governments. Accounting for such restrictions presents special difficulties because of the limited number of these properties and the severity of the restrictions including a lack of residual value, restricted rental rates and a compliance period of up to 30 years. Such factors reduce the market value of LIHTC properties when compared to conventional properties, and therefore tax credit property valuations need to address these issues. This article addresses valuation of the real estate and does not include the value of the tax credits, which are personal property for purposes of property tax assessment and not assessed property taxes in Texas.

Land Use Restriction Agreements (LURAs)

In order for LIHTC property owners to receive tax credits in Texas, they must agree to follow the restrictions promulgated by the State of Texas and the federal government in a Land Use Restriction Agreement (“LURA”). By complying with LURA, LIHTC property owners accept rent rate restrictions, a 15 to 40-year compliance period, limited proceeds upon sale, and government monitoring of the property. The property owners must represent to the Texas Department of Housing and Community Affairs (“TDHCA”), in a LIHTC application which is

authorized by the Low Income Rental Housing Tax Credit Rules (“QAP”), that they will lease a portion of the units to individuals or families with an income that is 60% or less than that of the area median gross income (“AMGI”). A portion of units is often allocated for those at 50% or less of AMGI. Property owners must represent in the application that they will impose additional rent and occupancy restrictions as required. The LURA may also require that the property owner offer a first right of refusal for sale of the property to a qualified nonprofit, or the state, if a property is in danger of losing affordability, which affects the market value of the development for ad valorem tax purposes.

The LURA also states that the property owner is subject to the regulatory powers of the TDHCA. Ultimately, for allocation of tax credits to exist on a LIHTC property, the TDHCA mandates that the property owner “execute, deliver and record” the LURA in real property records of the county in which the property is located in order to create covenants with the land so the TDHCA has the ability to enforce the restrictions described in the LURA. Moreover, the covenants made by the property owner with the TDHCA are binding upon all subsequent owners of the property.

Texas Tax Code

Under the Texas Property Tax Code all real and tangible personal property, including LIHTC apartment properties, is appraised at market value as of January 1st of that year unless otherwise noted. However, for LIHTC apartments, a substantial difference exists between the cost of development and market value due to the LURA restrictions (primarily lower rent, lack of reversion benefits and illiquidity). Recognizing this difference, in 2003, the Texas Legislature added Section 23.215⁸, which requires the chief appraiser to perform an income-based appraisal on LIHTC property, using the same methodology as that done on property owned by qualified nonprofits:

(q) If property qualifies for an exemption under this section, the chief appraiser shall use the income method of appraisal as provided by Section 23.012 to determine the appraised value of the property. In appraising the property, the chief appraiser shall:

- (1) consider the restrictions provided by this section on the income of the individuals or families to whom the dwelling units of the housing project may be rented and the amount of rent that may be charged for purposes of computing the actual rental income from the property or projecting future rental income; and
- (2) use the same capitalization rate that the chief appraiser uses to appraise other rent-restricted properties.

Tex. Tax Code. § 11.1825(q) (West 2005).

This section requires the chief appraiser to take into consideration the LURA restrictions on the property, and the rental restrictions imposed by TDHCA. It also requires the chief appraiser to use the same capitalization rate he uses to appraise other rent-restricted properties.

Unfortunately, there is little understanding or even consensus among appraisers on how to take these items into consideration when performing an income appraisal of a LIHTC property.

Income Based Appraisal Method

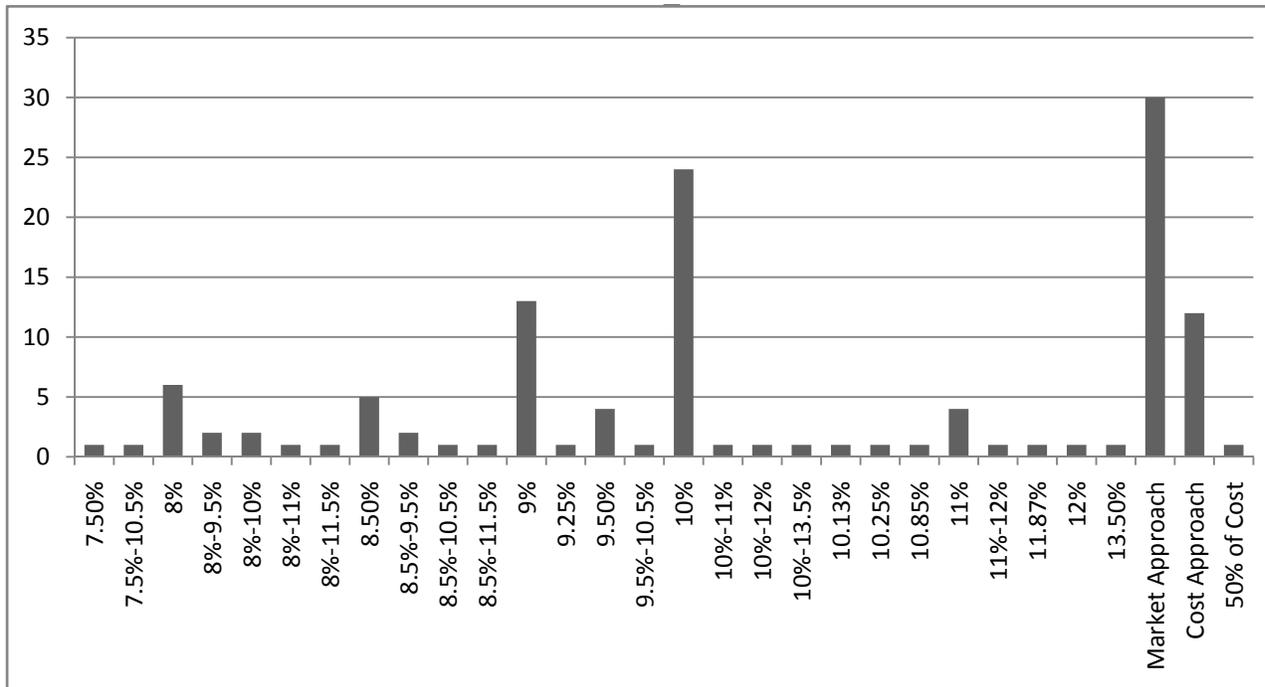
The method of conducting an income method appraisal is set forth in Tax Code § 23.012, which states that “the chief appraiser shall:

- (1) analyze comparable rental data available to the chief appraiser or the potential earnings capacity of the property, or both, to estimate the gross income potential of the property;
 - (2) analyze comparable operating expense data available to the chief appraiser to estimate the operating expenses of the property;
 - (3) analyze comparable data available to the chief appraiser to estimate rates of capitalization or rates of discount; and
 - (4) base projections of future rent or income potential and expenses on reasonably clear and appropriate evidence.
- (b) In developing income and expense statements and cash-flow projections, the chief appraiser shall consider:
- (1) historical information and trends;
 - (2) current supply and demand factors affecting those trends; and
 - (3) anticipated events such as competition from other similar properties under construction.

Tex. Tax Code. § 23.012 (West 2005).

The chief appraiser is directed by this statute to “analyze comparable” income, operating expense, and capitalization data in formulating his appraisal. However, since LIHTC properties, due to the special restrictions in both LURAs and income/rent requirements, have few, if any “comparables” in the appraisal district, complying with the statute is difficult. It is also very difficult to calculate an appropriate capitalization rate due to the lack of comparable sales of LIHTC properties and right of first refusal held by the State of Texas. A research of sales records disclosed that, in the three years preceeding January 1, 2006, only 3 LIHTC properties in the entire state of Texas were able to be sold on the open market. This makes it nearly impossible for an appraiser to calculate an accurate rate of capitalization. This problem is demonstrated by a comparison of different capitalization rates applied to LIHTC properties by appraisal districts. See Table 1. What is even more disturbing is the fact that over half of the appraisal districts in Texas surveyed either are unknowledgeable about or choose to ignore Section 11.1825, Tax Code, and continue to use either the Market Approach or the Cost Approach or some variation thereof in appraising CHDO/nonprofit/LIHTC properties. This is appalling, since this law has been in effect for four years. As a result, appraised values of LIHTC properties vary widely from year to year and from district to district. To simplify appraisals, and ensure consistency across the state, the Tax Code should include a base capitalization rate, with authority given to chief appraisers to deviate from the statutory rate when justified.

Table 1. Affordable Housing Capitalization Rates used by Texas Appraisal Districts 2007.



Fortunately, the statute’s direction to the chief appraiser that he “base projections of future rent or income potential and expenses on reasonably clear and appropriate evidence” allows a property owner to provide to the appraiser audited financial statements from the previous year, business records proving increased expenses, and actual rent rolls to prove occupancy/vacancy discounts. This actual performance data from the individual property is usually sufficient to make the case for an accurate appraisal. However, the property owner is burdened with providing this evidence due to the vagueness of the statute, and making his case either informally with the appraiser or formally with the Appraisal Review Board, the members of which are usually also unknowledgeable about how to perform a proper income-based appraisal of LIHTC properties. The complexity of the statute has created an industry of “tax consultants” and property tax attorneys who, for a profit, argue property tax protests on behalf of LIHTC property owners.

Another example of the lack of clarity in the statute and consistency in methods of appraisal across the state is in the calculation of “cash flow” for projecting income for the coming year. Tax Code § 23.012 requires a chief appraiser to develop a projection of income or “cash flow” and base his appraisal on it for the upcoming year. Section 23.012 does not define “cash flow.” The only definition of “cash flow” is found in Tax Code §11.182, which states:

- (1) "Cash flow" means the amount of money generated by a housing project for a fiscal year less the disbursements for that fiscal year for operation and maintenance of the project, including:

- (A) standard property maintenance;
- (B) debt service;
- (C) employee compensation;
- (D) fees required by government agencies;
- (E) expenses incurred in satisfaction of requirements of lenders, including reserve requirements;
- (F) insurance; and
- (G) other justifiable expenses related to the operation and maintenance of the project.

Tex. Tax Code. § 11.182 (West 2005).

So-called “standard” appraisal methods used by appraisal districts across Texas, however ignore this definition and exclude debt service from allowable expenses. Moreover, some appraisal districts follow the statutory definition and allow deduction of debt service as an allowable expense. This definition needs to be copied from § 11.182 and reiterated in § 23.012, or § 11.1825(q), to ensure consistent inclusion of debt service in calculating cash flow.

80th Texas Legislature

Despite the best efforts of affordable housing advocates, appraisers successfully fought off good appraisal reform legislation this past session. Various bills were filed to clean up inconsistencies in the Property Tax Code (especially the confusing CHDO/nonprofit exemption language in Sections 11.182 and 11.1825, Tax Code), fix a capitalization rate at 13.5%, and set out clear methodology for income appraisals. Reforms are still needed to simplify the appraisal process for LIHTC properties as well as to ensure consistency across the state in appraisal methods. In addition, the process for infusing non-profit capital to supplement the private capital and government funds currently used in developing and maintaining affordable housing needs to be simplified.

Affordable Housing Litigation Outlook

Important litigation affecting affordable housing taxation and valuation is currently before the Texas Supreme Court, and there are a series of cases currently in various stages of litigation in the Courts of Appeals and District Courts.

TRQ Captain's Landing L.P. v. Galveston Cent. Appraisal Dist., 212 S.W.3d 726 (Tex. App.--Houston [1st Dist.] 2006, pet. filed), *Am. Housing Found. v. Brazos County Appraisal Dist.*, 166 S.W.3d 885, 889 n.2 (Tex. App.--Waco 2005, pet. denied), and *Jim Wells County Appraisal District v. Cameron Village, Ltd.*, ___ S.W.3d ___, No. 04-06-00284-CV (Tex. App.—San Antonio 2007) all concern the interpretation of Section 11.182, Tax Code; specifically, whether limited partnerships consisting of CHDO 100% general partners qualify for the CHDO exemption from ad valorem taxation. *TRQ Captain's Landing* is currently before the Texas Supreme Court, *AHF* was denied a petition for review, and *Cameron Village* is likely to be appealed to the Supreme Court as well (the Court of Appeals decision denying the CHDO exemption was just handed down last week).

In *TRQ Captain's Landing*, TRQ, a limited partnership that was not a CHDO, owned a low-income housing project. American Housing Foundation, a CHDO, owned 100% of the general partner interest. The question before the First Court of Appeals was whether the low-income housing project was entitled to a property tax exemption under Section 11.182 on the basis that a CHDO (AHF) was the property's equitable owner (through its ownership and control of the partnership) even though a non-CHDO (TRQ) was the project's legal title holder.

In its decision, the court's majority concluded, over a vigorous dissent, that the exemption extended to both legal and equitable ownership; thus, the property was entitled to the exemption. The appraisal district then filed a petition for review with the Texas Supreme Court, and earlier this year the property owner filed its response to the district's petition. In June, the Texas Supreme Court requested briefing on the merits, signaling that it may grant the petition and resolve the issue of whether the exemption in Section 11.182 extends to properties equitably owned by a CHDO as well as to those legally owned by such an entity. The courts in both *AHF* and *Cameron Village*, both over dissents, came to the opposite conclusion of the First Court in *TRQ Captain's Landing*.

The issue of allowable expenses in LIHTC and CHDO income approach valuation is also at issue in litigation before two District Courts in Travis County and the McLennan County District Court.⁹ This is also an important issue for the affordable housing industry, with broader implication for both for-profit and non-profit developers, as the question of whether debt service expenses are allowable deductions in calculating net operating income can have a dramatic impact on the appraised value of a property, in some cases bringing it near zero using the income approach. Appraisal districts' decision to arbitrarily exclude debt service as an operating expense has forced many developers into the difficult position of having to choose whether to service debt or pay artificially high taxes—and has edged many properties close to foreclosure. Compounding the problem, TDHCA's underwriting estimates for property tax expenses, which are used to properly size tax credit allocations, have been dramatically lower than actual assessments in those appraisal districts which exclude debt service. This creates a gap in financing which is unmet, and puts Texas' affordable housing stock, and the great investment in public funds associated with its construction, at severe risk.

¹ "...property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes." Tex. Tax Code §11.11 (West 2007).

² See, e.g. Tex. Tax Code §11.11(h), "For purposes of this section, tangible personal property is owned by this state or a political subdivision of this state if it is subject to a lease-purchase agreement providing that the state or political subdivision, as applicable, is entitled to compel delivery of the legal title to the property to the state or political subdivision, as applicable, at the end of the lease term." For an extensive discussion of the issues surrounding governmental entity equitable title and affordable housing, see Tex. Atty. Gen. Op. GA-0485 (2006).

³ See, e.g. Tex. Loc. Gov't. Code §§ 392.005 (public housing authorities), 394.905 (housing finance corporations) (West 2007).

⁴ § 11.182. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS IMPROVING PROPERTY FOR LOW-INCOME AND MODERATE-INCOME HOUSING: PROPERTY PREVIOUSLY EXEMPT. (a) In this section:

(1) "Cash flow" means the amount of money generated by a housing project for a fiscal year less the disbursements for that fiscal year for operation and maintenance of the project, including:

(A) standard property maintenance;
(B) debt service;
(C) employee compensation;

- requirements;
- (D) fees required by government agencies;
 - (E) expenses incurred in satisfaction of requirements of lenders, including reserve
- requirements;
- (F) insurance; and
 - (G) other justifiable expenses related to the operation and maintenance of the project.
- (2) "Community housing development organization" has the meaning assigned by 42 U.S.C.

Section 12704.

(b) An organization is entitled to an exemption from taxation of improved or unimproved real property it owns if the organization:

- (1) is organized as a community housing development organization;
- (2) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);
- (3) owns the property for the purpose of building or repairing housing on the property to sell without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements or to rent without profit to such an individual or family; and
- (4) engages exclusively in the building, repair, and sale or rental of housing as described by Subdivision (3) and related activities.

(c) Property owned by the organization may not be exempted under Subsection (b) after the third anniversary of the date the organization acquires the property unless the organization is offering to rent or is renting the property without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements.

(d) A multifamily rental property consisting of 36 or more dwelling units owned by the organization that is exempted under Subsection (b) may not be exempted in a subsequent tax year unless in the preceding tax year the organization spent, for eligible persons in the county in which the property is located, an amount equal to at least 40 percent of the total amount of taxes that would have been imposed on the property in that year without the exemption on social, educational, or economic development services, capital improvement projects, or rent reduction. This subsection does not apply to property acquired by the organization using tax-exempt bond financing after January 1, 1997, and before December 31, 2001.

(e) In addition to meeting the applicable requirements of Subsections (b) and (c), to receive an exemption under Subsection (b) for improved real property that includes a housing project constructed after December 31, 2001, and financed with qualified 501(c)(3) bonds issued under Section 145 of the Internal Revenue Code of 1986, tax-exempt private activity bonds subject to volume cap, or low-income housing tax credits, the organization must:

- (1) control 100 percent of the interest in the general partner if the project is owned by a limited partnership;
- (2) comply with all rules of and laws administered by the Texas Department of Housing and Community Affairs applicable to community housing development organizations; and
- (3) submit annually to the Texas Department of Housing and Community Affairs and to the governing body of each taxing unit for which the project receives an exemption for the housing project evidence demonstrating that the organization spent an amount equal to at least 90 percent of the project's cash flow in the preceding fiscal year as determined by the audit required by Subsection (g), for eligible persons in the county in which the property is located, on social, educational, or economic development services, capital improvement projects, or rent reduction.

(f) An organization entitled to an exemption under Subsection (b) is also entitled to an exemption from taxation of any building or tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, sale, or rental of property. To qualify for an exemption under this subsection, property must be used exclusively by the organization, except that another person may use the property for activities incidental to the organization's use that benefit the beneficiaries of the organization.

(g) To receive an exemption under Subsection (b) or (f), an organization must annually have an audit prepared by an independent auditor. The audit must include a detailed report on the organization's sources and uses of funds. A copy of the audit must be delivered to the Texas Department of Housing and Community Affairs and to the chief appraiser of the appraisal district in which the property subject to the exemption is located.

(h) Subsections (d) and (e)(3) do not apply to property owned by an organization if:

- (1) the entity that provided the financing for the acquisition or construction of the property:
 - (A) requires the organization to make payments in lieu of taxes to the school district in which the property is located; or

(B) restricts the amount of rent the organization may charge for dwelling units on the property; or

(2) the organization has entered into an agreement with each taxing unit for which the property receives an exemption to spend in each tax year for the purposes provided by Subsection (d) or (e)(3) an amount equal to the total amount of taxes imposed on the property in the tax year preceding the year in which the organization acquired the property.

(i) If any property owned by an organization receiving an exemption under this section has been acquired or sold during the preceding year, such organization shall file by March 31 of the following year with the chief appraiser in the county in which the relevant property is located, on a form promulgated by the comptroller of public accounts, a list of such properties acquired or sold during the preceding year.

(j) An organization may not receive an exemption under Subsection (b) or under Subsection (f), as added by Chapter 1191, Acts of the 77th Legislature, Regular Session, 2001, for property for a tax year beginning on or after January 1, 2004, unless the organization received an exemption under that subsection for that property for any part of the 2003 tax year.

⁵ § 11.1825. ORGANIZATIONS CONSTRUCTING OR REHABILITATING LOW-INCOME HOUSING: PROPERTY NOT PREVIOUSLY EXEMPT. (a) An organization is entitled to an exemption from taxation of real property owned by the organization that the organization constructs or rehabilitates and uses to provide housing to individuals or families meeting the income eligibility requirements of this section.

(b) To receive an exemption under this section, an organization must meet the following requirements:

(1) for at least the preceding three years, the organization:

(A) has been exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code;

(B) has met the requirements of a charitable organization provided by Sections 11.18(e) and (f); and

(C) has had as one of its purposes providing low-income housing;

(2) a majority of the members of the board of directors of the organization have their principal place of residence in this state;

(3) at least two of the positions on the board of directors of the organization must be reserved for and held by:

(A) an individual of low income as defined by Section 2306.004, Government Code, whose principal place of residence is located in this state;

(B) an individual whose residence is located in an economically disadvantaged census tract as defined by Section 783.009(b), Government Code, in this state; or

(C) a representative appointed by a neighborhood organization in this state that represents low-income households; and

(4) the organization must have a formal policy containing procedures for giving notice to and receiving advice from low-income households residing in the county in which a housing project is located regarding the design, siting, development, and management of affordable housing projects.

(c) Notwithstanding Subsection (b), an owner of real property that is not an organization described by that subsection is entitled to an exemption from taxation of property under this section if the property otherwise qualifies for the exemption and the owner is:

(1) a limited partnership of which an organization that meets the requirements of Subsection (b) controls 100 percent of the general partner interest; or

(2) an entity the parent of which is an organization that meets the requirements of Subsection (b).

(d) If the owner of the property is an entity described by Subsection (c), the entity must:

(1) be organized under the laws of this state; and

(2) have its principal place of business in this state.

(e) A reference in this section to an organization includes an entity described by Subsection (c).

(f) For property to be exempt under this section, the organization must own the property for the purpose of constructing or rehabilitating a housing project on the property and:

(1) renting the housing to individuals or families whose median income is not more than 60 percent of the greater of:

(A) the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(B) the statewide area median family income, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(2) selling single-family dwellings to individuals or families whose median income is not more than the greater of:

(A) the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(B) the statewide area median family income, as adjusted for family size and as established by the United States Department of Housing and Urban Development.

(g) Property may not receive an exemption under this section unless at least 50 percent of the total square footage of the dwelling units in the housing project is reserved for individuals or families described by Subsection (f).

(h) The annual total of the monthly rent charged or to be charged for each dwelling unit in the project reserved for an individual or family described by Subsection (f) may not exceed 30 percent of the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development.

(i) Property owned for the purpose of constructing a housing project on the property is exempt under this section only if:

(1) the property is used to provide housing to individuals or families described by Subsection (f);

or

(2) the housing project is under active construction or other physical preparation.

(j) For purposes of Subsection (i)(2), a housing project is under physical preparation if the organization has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the project or has conducted an environmental or land use study relating to the construction of the project.

(k) An organization may not receive an exemption for a housing project constructed by the organization if the construction of the project was completed before January 1, 2004.

(l) If the property is owned for the purpose of rehabilitating a housing project on the property:

(1) the original construction of the housing project must have been completed at least 10 years before the date the organization began actual rehabilitation of the project;

(2) the person from whom the organization acquired the project must have owned the project for at least five years, if the organization is not the original owner of the project;

(3) the organization must provide to the chief appraiser and, if the project was financed with bonds, the issuer of the bonds a written statement prepared by a certified public accountant stating that the organization has spent on rehabilitation costs at least the greater of \$5,000 or the amount required by the financial lender for each dwelling unit in the project; and

(4) the organization must maintain a reserve fund for replacements:

(A) in the amount required by the financial lender; or

(B) if the financial lender does not require a reserve fund for replacements, in an amount equal to \$300 per unit per year.

(m) Beginning with the 2005 tax year, the amount of the reserve required by Subsection (l)(4)(B) is increased by an annual cost-of-living adjustment determined in the manner provided by Section 1(f)(3), Internal Revenue Code of 1986, as amended, substituting "calendar year 2004" for the calendar year specified in Section 1(f)(3)(B) of that code.

(n) A reserve must be established for each dwelling unit in the property, regardless of whether the unit is reserved for an individual or family described by Subsection (f). The reserve must be maintained on a continuing basis, with withdrawals permitted:

(1) only as authorized by the financial lender; or

(2) if the financial lender does not require a reserve fund for replacements, only to pay the cost of capital improvements needed for the property to maintain habitability under the Minimum Property Standards of the United States Department of Housing and Urban Development or the code of a municipality or county applicable to the property, whichever is more restrictive.

(o) For purposes of Subsection (n)(2), "capital improvement" means a property improvement that has a depreciable life of at least five years under generally accepted accounting principles, excluding typical "make ready" expenses such as expenses for plasterboard repair, interior painting, or floor coverings.

(p) If the organization acquires the property for the purpose of constructing or rehabilitating a housing project on the property, the organization must be renting or offering to rent the applicable square footage of dwelling units in the property to individuals or families described by Subsection (f) not later than the third anniversary of the date the organization acquires the property.

(q) If property qualifies for an exemption under this section, the chief appraiser shall use the income method of appraisal as provided by Section 23.012 to determine the appraised value of the property. In appraising the property, the chief appraiser shall:

(1) consider the restrictions provided by this section on the income of the individuals or families to whom the dwelling units of the housing project may be rented and the amount of rent that may be charged for purposes of computing the actual rental income from the property or projecting future rental income; and

(2) use the same capitalization rate that the chief appraiser uses to appraise other rent-restricted properties.

(r) Not later than January 31 of each year, the appraisal district shall give public notice in the manner determined by the district, including posting on the district's website if applicable, of the capitalization rate to be used in that year to appraise property receiving an exemption under this section.

(s) Unless otherwise provided by the governing body of a taxing unit any part of which is located in a county with a population of at least 1.4 million under Subsection (x), the amount of the exemption under this section from taxation is 50 percent of the appraised value of the property.

(t) Notwithstanding Section 11.43(c), an exemption under this section does not terminate because of a change in ownership of the property if:

(1) the property is foreclosed on for any reason and, not later than the 30th day after the date of the foreclosure sale, the owner of the property submits to the chief appraiser evidence that the property is owned by:

(A) an organization that meets the requirements of Subsection (b); or

(B) an entity that meets the requirements of Subsections (c) and (d); or

(2) in the case of property owned by an entity described by Subsections (c) and (d), the organization meeting the requirements of Subsection (b) that controls the general partner interest of or is the parent of the entity as described by Subsection (c) ceases to serve in that capacity and, not later than the 30th day after the date the cessation occurs, the owner of the property submits evidence to the chief appraiser that the organization has been succeeded in that capacity by another organization that meets the requirements of Subsection (b).

(u) The chief appraiser may extend the deadline provided by Subsection (t)(1) or (2), as applicable, for good cause shown.

(v) Notwithstanding any other provision of this section, an organization may not receive an exemption from taxation by a taxing unit any part of which is located in a county with a population of at least 1.4 million unless the exemption is approved by the governing body of the taxing unit in the manner provided by law for official action.

(w) To receive an exemption under this section from taxation by a taxing unit for which the approval of the governing body of the taxing unit is required by Subsection (v), an organization must submit to the governing body of the taxing unit a written request for approval of the exemption from taxation of the property described in the request.

(x) Not later than the 60th day after the date the governing body of the taxing unit receives a written request under Subsection

(w) for an exemption under this section, the governing body shall:

(1) approve the exemption in the amount provided by Subsection (s);

(2) approve the exemption in a reasonable amount other than the amount provided by Subsection

(s); or

(3) deny the exemption if the governing body determines that:

(A) the taxing unit cannot afford the loss of ad valorem tax revenue that would result from approving the exemption; or

(B) additional housing for individuals or families meeting the income eligibility requirements of this section is not needed in the territory of the taxing unit.

(y) Not later than the fifth day after the date the governing body of the taxing unit takes action under Subsection

(x), the taxing unit shall issue a letter to the organization stating the governing body's action and, if the governing body denied the exemption, stating whether the denial was based on a determination under Subsection (x)(3)(A) or (B) and the basis for the determination. The taxing unit shall send a copy of the letter by regular mail to the chief appraiser of each appraisal district that appraises the property for the taxing unit. The governing body may charge the organization a fee not to exceed the administrative costs of processing the request of the organization, approving or denying the exemption, and issuing the letter required by this subsection. If the chief appraiser determines that the property qualifies for an exemption under this section and the governing body of the taxing unit approves the exemption, the chief appraiser shall grant the exemption in the amount approved by the governing body.

⁶ § 23.21. PROPERTY USED TO PROVIDE AFFORDABLE HOUSING. (a) In appraising real property that is rented or leased to a low-income individual or family meeting income-eligibility standards established by the owner of the property under regulations or restrictions limiting to a percentage of the individual's or the family's income the amount that the individual or family may be required to pay for the rental or lease of the property, the chief appraiser shall take into account the extent to which that use and limitation reduce the market value of the property.

(b) In appraising real property that is rented or leased to a low-income individual or family meeting income-eligibility standards established by a governmental entity or under a governmental contract for affordable housing limiting the amount that the individual or family may be required to pay for the rental or lease of the property, the chief appraiser shall take into account the extent to which that use and limitation reduce the market value of the property.

⁷ § 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED FOR LOW-INCOME OR MODERATE-INCOME HOUSING. (a) This section applies only to real property owned by an organization:

(1) that on the effective date of this section was rented to a low-income or moderate-income individual or family satisfying the organization's income eligibility requirements and that continues to be used for that purpose;

(2) that was financed under the low income housing tax credit program under Subchapter DD, Chapter 2306, Government Code;

(3) that does not receive an exemption under Section 11.182 or 11.1825; and

(4) the owner of which has not entered into an agreement with any taxing unit to make payments to the taxing unit instead of taxes on the property.

(b) The chief appraiser shall appraise the property in the manner provided by Section 11.1825(q).

⁸ § 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED FOR LOW-INCOME OR MODERATE-INCOME HOUSING. (a) This section applies only to real property owned by an organization:

(1) that on the effective date of this section was rented to a low-income or moderate-income individual or family satisfying the organization's income eligibility requirements and that continues to be used for that purpose;

(2) that was financed under the low income housing tax credit program under Subchapter DD, Chapter 2306, Government Code;

(3) that does not receive an exemption under Section 11.182 or 11.1825; and

(4) the owner of which has not entered into an agreement with any taxing unit to make payments to the taxing unit instead of taxes on the property.

(b) The chief appraiser shall appraise the property in the manner provided by Section 11.1825(q).

⁹ Disclosure: The author of this article is counsel of record for plaintiffs in each of these cases.

Eric Opiela is a shareholder in Opiela Booth PLLC, an Austin-based law firm focusing on the affordable housing development industry. Eric's involvement in affordable housing began in 2003 as Committee Director and Counsel for the Texas House of Representatives Urban Affairs Committee, where he crafted the Sunset Bill for the Texas Department of Housing and Community Affairs. He continues to serve as counsel for the Committee as necessary, and represents developers and nonprofit affordable housing providers. Eric has successfully argued over \$12 million in property tax valuation reductions through litigation on behalf of clients with Harris, Travis, Williamson, Hays, Lamar, Henderson, and Gregg County Appraisal Districts. BA with Honors, ΦBK, University of Texas at Austin, 2000; JD, University of Texas School of Law, 2002. Licensed to Practice in Texas, The United States Court of Appeals for the Federal Circuit, The United States Court of Federal Claims, and The United States District Court for the Western District of Texas. Not certified by the Texas Board of Legal Specialization.