

Eliminating Ad Valorem Taxes on Multifamily Housing

Section 11.182 of the Texas Property Tax Code exempts owned by a Community Housing Development Organization (CHDO) from being subject to the payment of ad valorem taxes. CHDOs are defined under Federal law as part of the Cranston-Gonzalez National Affordable Housing Act at 24 CFR 92.2. As with all other exemptions from property taxes in Texas, the CHDO exemption applies to the action or status of the owner of the property and does not run merely to the property itself.

Among the criteria for qualification are:

- Having a board that includes at least one-third of its members being residents of a low income neighborhood, other low income community residents, or an elected representative of such neighborhood organization,
- Receive determination from the IRS that they are a 501 (c)(3) organization,
- Having one year's experience in serving the community regarding housing (this requirement can be satisfied for newly formed organizations through the experience of their directors)
- Showing adequate organizational capability.

The Texas Department of Housing and Community Affairs (TDHCA) as well as certain local agencies designate CHDOs in the State. To date more than 230 organizations have received CHDO designation in Texas.

The most commonly-used structure for a 501(3)(c) organization owning and operating charitable multifamily housing is to have legal title of such a project held by a limited liability company (LLC) with the 501(c)(3) as its sole member, and financed through tax exempt bonds issued by a local housing finance corporation. The new rules for CHDOs by the TDHCA now allow the LLC to apply for CHDO exemption on its own, thus making qualifying the project for the exemption from ad valorem tax with the county appraisal district easier.

The CHDO determination for a 501(c)(3) is good for three years. Thereafter the organization must apply to be recertified. The basis for recertification is the same as for the initial designation. This will be no problem as long as the organization maintains its 501(c)(3) status, low-income board representation and operates as a nonprofit. The risk of not being recertified is similar to the risk of the bonds remaining tax-exempt. In either case, if the borrower fails to operate in a manner consistent with its charitable purpose, it could jeopardize the bonds issued to finance the project.

Obtaining CHDO status for the 501(c)(3) also helps the organization achieve financing commitments for the acquisition of multifamily housing. Several institutional lenders, including Allstate, Charter/Mac and the Nuveen Funds have given full credit for the CHDO exemption in their underwriting. The FHA also gives full credit for the CHDO exemption. Fannie Mae generally does not give credit but is willing to do so under certain circumstances. Moody's Investors Service does give credit for real estate tax exemption in Texas, provided that certain criteria are met.