Georgia Low Income Housing Tax Credit Property Valuation

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Assessments of Section 42 Low Income Housing Tax Credit (LIHTC) properties have been a challenging enterprise in the state of Georgia. With vague legislation and perplexing court decisions, property owners are left with a multitude of unanswered questions. Most of these questions amount to one central concern: When valued for property tax purposes, do the assessors account for all the unique factors that apply to these properties? And if so, how?

First, we should take a brief look at the history of Section 42. The program was created in 1986 as an incentive for private businesses to own/operate low income housing. The way the program works is through income tax credits to the owner. These credits return a percentage of the cost of constructing, acquiring and/or rehabilitating low income rental housing. They also cover expenditures on units occupied by low income persons. Credits are claimed in equal amounts for ten taxable years. In return, owners must agree to rent some, or all, units in their building to low income tenants at restricted rents. Rents for these tenants are determined by the tenant income in comparison to the median income in the area. In addition, owners must also enter into an extended use agreement, which restricts the use of the property for up to 30 years. Today, Section 42 is the primary form of federal assistance for subsidized rental housing.

In an effort to help answer the above mentioned questions, the Georgia Department of Revenue (DOR) issued an informational bulletin in September of 2013. The purpose was to provide guidance to county appraisal staffs in determining fair market value for properties that qualify for LIHTC. According to the DOR, assessors are guided by the definition of “fair market value of property” as defined by Georgia state law. The bulletin also stated that assessors must also consider existing zoning of property, existing use of property, including any restrictions or limitation, existing covenants or restrictions in deed dedicating the property to a particular use, and any other factors deemed pertinent. Finally, the DOR specified that the tax assessor shall not consider any income tax credits with respect to real property claimed under Section 42.

Essentially, the DOR restated Georgia state law, that the assessors cannot place a real property value on income tax credits and must consider covenants or restrictions in deed. The term “in deed” is a vital factor as it pertains to LIHTC properties. Any rent and/or use restrictions associated with a property must be recorded with the deed in order for the assessor to consider them. This is further emphasized in a December 2011 Superior Court ruling in Toombs County. In this case the court decided that restrictive rents for a 72 unit apartment complex should not be considered due to the fact that the restrictive agreement was not contained in the deed to the property. It was viewed rather, as a “stand alone agreement between the owners of the property and the Georgia Financing and Housing Authority.” Subsequently, the court ruled in favor of the assessor, stating that “the only evidence as to the value presented by the plaintiff was based upon the faulty premise that the rent restrictions should be considered.” Had the restrictions been in the deed and allowed for consideration, the outcome may have been different.

With all the subtle nuances in regard to restrictions and allowable expenses of LIHTC property, owners need to be sure that all factors are being considered in the valuation and title of their property. Paradigm Tax Group has a team of professionals with years of experience able to do just that. If you would like more information on how Paradigm may help you, contact Judson Bracewell at (678) 954-6012 or jbracewell@paradigmtax.com, Adrian Dekker at (678) 954-6006 or adekker@paradigmtax.com, or Darryl Bucher at (404) 937-6520 or dbucher@paradigmtax.com.