

## Georgia's HB 954 Improves Low-Income Housing Tax Credit Valuation

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In the 2014 Georgia legislative session, an important bill was passed regarding ad valorem taxation of low-income housing. House Bill 954, fronted by the Georgia Affordable Housing Coalition, was a follow up-to a white paper presented to the Georgia Department of Revenue pertaining specifically to the valuation of Low Income Housing Tax Credit (LIHTC) and other properties that have "rent limitations, operational requirements and any other restrictions imposed upon the property." The Georgia legislation made several refinements to the property tax code over the last decade or so with the intent of providing guidelines as to how Section 42 LIHTC property should be valued.

Section 42 LIHTC housing came out of the tax reform act of 1986, which was lead by then Housing of Urban Development (HUD) chairman Jack Kemp. The program incentivizes private businesses to own and operate low-income housing in coordination with local housing authorities. By awarding tax credits, it allowed the construction of low-income housing that would not have been built otherwise due to the simple real estate principle of "Economic Feasibility." The issuance of the tax credits themselves was the only way that any of these rent restricted properties would be "economically feasible" in the first place.

In the early days of the program it was very difficult to convince local assessors that these nice new apartment complexes were not worth as much as it cost to build them the day they opened for business, let alone try to convince them that the true value was perhaps half or less of the actual cost to construct. Tax Assessors in Georgia and across the country wanted to value the tax credits as part of the value of the property for ad valorem purposes.

Over the years, local tax assessors, aided by vague legislation and confusing and contradictory court decisions, interpreted the laws pretty much however they wanted to. The Georgia Legislature eventually stepped in and made a law that said the tax credits were not taxable. This ended one of the battles LIHTC owners face, but the assessors did not give up their fight. Each time the legislature would tweak the law referencing the criteria the tax assessor should apply to determine the fair market value of real property, some local assessors would continue to interpret the law as they saw it, without regard for the intent of the legislature.

Most of the assessor arguments of recent years had to do with the tax officials wanting to use "market rents" instead of the actual restricted rents the properties collected. Past revisions by the Legislature to the law establishing the criteria in determining the fair market value of real property were still not clear enough to local assessors. Previous revisions included the following language in the criteria in determining fair market value:

***"Existing use of property, including any restrictions or limitation on the use of property resulting from state or federal law or rules or regulations adopted pursuant to the authority of state or federal law"***

***"Existing covenants or restrictions in deed dedicating the property to a particular use"***

This wording did not clearly get the message across to many assessment officials across the state and they continued to use “market rents” instead of actual restricted rents in place. But with the passage of HB 954 do we finally have the answer? Will tax assessors across the state utilize the income approach to value on LIHTC properties using the criteria as laid out in Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia? This code section now includes the following provision with the passage of HB954:

***(vi) Rent limitation, operational requirements, and any other restrictions imposed upon the property in connection with the property being eligible for any income tax credits described in subparagraph (B.1) of this paragraph or receiving any other state or federal subsidies provided with respect to the use of the property as residential rental property; provided, however, that such properties described in subparagraph (B.1) of this paragraph shall not be considered comparable real property for assessment or appeal of assessment of other properties;***

To me, the answer seems clear. The Georgia Legislature has once again expanded its intent through legislation that charges tax assessors with using the restricted rents in determining fair market value for taxation purposes. Owners of LIHTC properties need to make sure that all factors are being considered in the valuation of their properties. Paradigm tax Group has a team of professional with years of experience able to do just that. If you would like more information on how Paradigm may help you, contact Darryl Bucher at (404) 937-6520 or [dbucher@paradigmtax.com](mailto:dbucher@paradigmtax.com).