



Legal Minute

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Recent Change To Texas Legislation Affect Nonprofit Organization Constructing and Rehabilitating Affordable Housing

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For the past year, certain nonprofit organizations that qualified as Community Housing Development Organizations ("CHDO") and constructed or rehabilitated low-income housing in Texas have been able to qualify for an exemption from ad valorem taxation. Over the year, the so-called "CHDO Exemption" (Section 11.182 of the Texas Tax Code) became a popular financing tool. However, House Bill 3546 replaced the CHDO Exemption during the recent 78th Legislative Session, changing the circumstances under which a nonprofit organization qualifies for the ad valorem exemption. The new law, which takes effect on January 1, 2004, and the manner by which an entity qualifies for the exemption, are described below.

Ownership Requirement

To qualify for the exemption, the property must be owned by a **qualified entity**, a qualified entity must satisfy the following criteria:

- For the past three years, it has:
 - (1) Been exempt from federal income taxation under IRC Section 501(c)(3);
 - (2) Qualified as a "charitable" organization under the Texas Tax Code; and
 - (3) Had a purpose of providing low-income housing;
- A majority of its board members have a principal residence in Texas;
- At least two of its board members are:
 - (1) Low-income Texan;
 - (2) Resident of economically disadvantaged community; or
 - (3) Representative of low-income neighborhood association; and
- It has a policy for seeking input from low-income communities with regard to the development of housing.

The exemption is also available if the property is owned by

- (a) a Texas limited partnership, the general partner of which is owned (100%) by a qualified entity, or
- (b) another form of Texas entity that has a qualified entity as its parent.

Note: For organizations interested in HUD funding, one-third of the board members must be representatives of low-income communities and not more than one-third can be public officials or representatives of participating jurisdictions.

Property Requirement

In addition to meeting the above ownership requirement, the property must meet the following requirements:

Rental Properties

- At least 50% of the rental property's dwelling units must be rented to low-income tenants at rents not to exceed 30% of the Area Median Family Income ("AMFI").
- Low-income tenants are defined as having income that does not exceed 60% of the greater of the AMFI for the property's location or the statewide AMFI.

Sale Propertie / Homeowner hip

- The property mu t be old to purcha er with income that do not exceed 100% of the greater of the AMFI for the property' location or the tatewide AMFI.

Vacant or New Con truction Propertie

- Hou ing mu t be con tructed after January 1, 2004;
- The property mu t be under active con truction or phy ical preparation; and
- Hou ing mu t be provided within three year of acqui ition.

Rehabilitation Propertie

- Original con truction mu t have occurred at lea t ten year ago;
- The eller mu t have owned the property for at lea t five year prior to the nonprofit organization' acqui ition of the property;
- The nonprofit organization mu t complete the rehabilitation in an amount equal to or greater than the equivalent of \$5,000 per unit, or uch other amount a may be required by the lender;
- A replacement re rve mu t be e tabli hed and maintained at \$300 per unit per year (ulyect to a co t-of-living adju tment), or uch amount a i required by the lender; and
- Hou ing mu t be provided within three year of acqui ition.

Amount of Exemption

Generally. An owner and property that meet the requirement li ted above are exempt a to 50% of the apprai ed value of the property.

Large County Exception. An exception ha been e tabli hed for countie with a population of 1.4 million people or more (current-ly Dalla , Harri , and Tarrant countie), which provide that in each uch county, each taxing authority can decide, in it di cretion, whether to grant an exemption (of any amount) or deny the exemption.

Application Proce

Generally. The application proce under Hou e Bill 3546 remain the ame a that of the CHDO Exemption. Application i made to the chief apprai er in the county in which the property i located and hould be made within 30 day of the qualifying entity' acqui ition of the property. The pre-determination proce remain in place, except that the chief apprai er' re pon e period ha been increa ed from 21 to 45 day .

Large County Exception. In the ca e of countie with a population of 1.4 million people or more, the nonprofit organization mu t ubmit a reque t for the exemption to each taxing authority, and each taxing authority mu t make it deci ion within 60 day .

Duration of Exemption

CHDO Exemption. Propertie that are exempt under the CHDO Exemption in 2003 remain exempt under that law until uch time a the owner hip of the property change .

New Exemption. Propertie that become exempt under the new law continue to be exempt until uch time a the owner hip of the property change . There are two exception that allow the nonprofit organization to be replaced with a new nonprofit organization without jeopardizing the exemption.

Compliance

A qualified nonprofit organization receiving an exemption under thi new law mu t, within 180 day after the clo e of it fi cal year, prepare an annual audit and ubmit it to the chief apprai er and the Texa Department of Hou ing and Community Affair . The audit mu t include a tatement of the organization' financial po ition a well a an opinion a to compliance with the exemp- tion law. A nonprofit organization owning a property with 36 unit or fewer may deliver a detailed report and certification in lieu of an audit. The audit requirement apply equally to propertie continuing to receive the CHDO Exemption, except that the audi- tor mu t include an opinion a to compliance with the CHDO Exemption in tead of the new law.

Final Note: Thi paper i intended to provide a brief ummary of the new tax exemption law and i not comprehen ive. To determine the application of thi new law to any particular property, plea e review Hou e Bill 3546 carefully and con ult with your attorney.