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Texas Supreme Court Takes Action on CHDO Property Tax Exemption Cases

Today, the Texas Supreme Court denied the petitions of the appellants in *Cameron Village, Ltd. v. Jim Wells County Appraisal District and Jim Wells County Appraisal Review Board* and *Primrose Houston 7 Housing, LP v. Harris County Appraisal District and Harris County Appraisal Review Board*. The denial of the appellants' petitions in these two cases has implications for the 100 percent ad valorem tax exemption under Section 11.182 of the Texas Tax Code, as it relates to tax credit limited partnerships. With the denial of the petitions, the opinion of the Appellate Court in each instance stands as precedent.

In *Cameron Village*, the owner of a multi-family housing property sought a 100 percent exemption from ad valorem taxes under Section 11.182 of the Texas Tax Code. The owner was structured as a limited partnership, with a Community Housing Development Organization ("CHDO") owning the general partner interest and a housing tax credit syndicator owning the limited partner interest. In this case, the Court of Appeals held that the owner was not entitled to the exemption because the statute requires record title for the property to be vested in the CHDO itself, not an entity like a limited partnership that is partially owned by a CHDO.

In *Primrose*, the owner of a multifamily housing property sought the same exemption, with a similar organizational structure. The owner claimed that the CHDO general partner had equitable ownership of the housing property. The Court cited the precedent of *TRQ Captain's Landing, L.P. v. Galveston Cent. Appraisal Dist.*, 212 S.W.3d 726, 729

(Tex. App.--Houston [1st Dist.] 2006, pet. filed) and held that, in order for equitable ownership to apply, the CHDO must own 100 percent of the subsidiary. Since the CHDO owned only 0.01 percent of the *Primrose* limited partnership, it did not have the present right to compel title required for equitable ownership, and the exemption was not available.

Because numerous affordable housing properties using housing tax credits rely upon the exemption provided in Section 11.182 of the Texas Tax Code, it will be important for the industry to work cooperatively to address challenges that will arise from this Texas Supreme Court action.

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Cynthia Bast is a partner at Locke Lord. Ms. Bast is nationally recognized as a pre-eminent attorney in the area of affordable housing and community development finance and leads the Firm's Affordable Housing Section.