



Texas Court Upholds Constitutionality of Property Tax Exemption for Tax Credit Limited Partnerships

By: Christine Richardson

In the recent decision of *McLennan County Appraisal District v. American Housing Foundation, Waco Parkside Village, Ltd., and Waco Robinson Garden, Ltd.*, the Tenth Court of Appeals upheld the constitutionality of the 50 percent ad valorem tax exemption under Section 11.1825 of the Texas Tax Code (the "11.1825 Exemption"), as applied to tax credit limited partnerships. Specifically, the court of appeals held that the owners of two affordable housing developments structured as limited partnerships that were 99.98 percent owned by a for-profit investor qualified as institutions "engaged primarily in public charitable functions," for purposes of Article VIII, Section 2(a) of the Texas Constitution. Because the limited partnerships met this standard, the court determined that there was no constitutional bar to the ability of the limited partnerships to qualify for the 11.1825 Exemption.

The *McLennan County* case involved two affordable housing complexes, known as Parkside Village Apartments and Robinson Garden Apartments (collectively, the "Projects"), both of which were financed with low-income housing tax credits. Record title to each complex was held by a limited partnership (collectively, the "Property Owners") in which American Housing Foundation ("AHF"), a community housing development organization and 501(c)(3) exempt entity, owned all of the general partner interests, and a for-profit investor owned at least a 99.98 percent limited partner interest. The Property Owners applied to the McLennan County Appraisal District ("MCAD") for recognition of ad valorem exemption for the Projects under Section 11.1825 of Texas Tax Code. MCAD denied the applications and the Property Owners filed suit. At trial, the court ruled that both Property Owners were entitled to the requested exemption for their respective Projects.

On appeal, MCAD argued that the Property Owners were not entitled to the exemption because they were each "99.98 percent or more owned by purely for-profit entities for purely profit motives," and thus could not satisfy the constitutional standard of performing charitable functions necessary for their properties to qualify for the exemption. MCAD did not otherwise dispute that the organizational structure satisfied the requirements of Section 11.1825.

In a 3-0 decision, the court of appeals affirmed the trial court's ruling, holding that the Property Owners were institutions primarily engaged in a public charitable function, as required by Article VIII, Section 2 of the Texas Constitution. In support of its holding, the court pointed to the findings in the trial court record that the Property Owners were engaged exclusively in the provision of low-income and moderate-income housing, which is recognized as a charitable function under Section 11.18 of the Texas Tax Code. The court distinguished the prior language of the Constitution, which required an organization to be an "institution of purely public charity" in order to qualify for exemption,



and emphasized that the current language of the Texas Constitution no longer contains the word “purely” and requires only that institutions be *primarily* engaged in public charitable functions. The court concluded that this standard was met by the Property Owners because of their exclusive provision of low and moderate income housing, and that this conclusion was not altered by the ownership interests of the 99.98 percent investors because the investors, by nature of being limited partners in the Property Owners, did not control the operations of the Property Owners or their function of providing affordable housing.

For more information on the matters discussed in *Locke Lord's QuickStudy*, please contact the author:

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