Georgia Department of Revenue
Informational Bulletin
Fair Market Value of Qualified Low-Income Housing Tax Credit Property

September 30, 2013

Purpose

The purpose of this informational bulletin is to provide guidance to county appraisal staff in determining the fair market value of property that qualifies for low-income housing tax credits ("LIHTC") for ad valorem tax purposes.

Background

Under Georgia law, the appraisal staff in each county is responsible for the valuation of all real property located within that county.[1] At the same time, the Georgia Department of Revenue is tasked with providing guidance in the appraisal process,[2] and has developed an Appraisal Procedures Manual ("APM") in order to facilitate the uniform appraisal of real property across the state.[3] The APM and applicable law direct the appraisal staff in their valuation of real property for ad valorem tax purposes.

Federal law authorizes LIHTC to be available to owners of residential housing developments that meet the requirements provided in Section 42 of the Internal Revenue Code.[4] Each state has a housing credit agency responsible for administering various aspects of the Federal LIHTC program for developments located in the state. The housing credit agency responsible for administering this program in Georgia is the Georgia Housing and Finance Authority/Department of Community Affairs ("DCA").

The amount of LIHTC available for each property is determined in part by the portion of units in a building that are "low-income units."[5] Low-income units are those units that are leased to tenants whose income is less than area median income, and the rents charged to such tenants cannot exceed thirty percent of such tenant's income. In order to claim the credits, an owner of property that qualifies for LIHTC must comply with occupancy and rent restriction limitations, as well as the other requirements under Section 42, during a 10-year credit period that LIHTC are available. A portion of any LIHTC previously claimed with respect to a property are subject to recapture if the property ceases to meet the occupancy, rent restriction and other requirements during a 15-year compliance period.[6]

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[1] O.C.G.A. § 48-5-263(b).
[2] O.C.G.A. § 48-5-269.1.
[3] Ga. Comp. R. & Regs. 560-11-10, et. seq.
[4] 26 U.S.C. § 42.
[5] 26 U.S.C. § 42(d)(3).
[6] 26 U.S.C. § 42(j).

Section 42 also requires that an Extended Use Agreement be entered into between the owner of the property and the DCA.[7] The Extended Use Agreement is enforceable for a 30-year period and must be binding upon any subsequent purchaser of the property. Separately, Georgia also authorizes an additional state LIHTC which is similar to the federal credits under Section 42.[8]

Valuing LIHTC Properties

In determining the fair market value of real property for ad valorem tax purposes, tax assessors are guided by the definition of "fair market value of property" provided by O.C.G.A. § 48-5-2(3): "'Fair market value of property' means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale. The income approach, if data is available, shall be considered in determining the fair market value of income-producing property." In addition, the tax assessor "shall apply the following criteria in determining the fair market value of real property:

> (i) Existing zoning of property;
> (ii) Existing use of property, including any restrictions or limitations 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;
> (iii) Existing covenants or restrictions in deed dedicating the property to a particular use;
> . . . and
> (vi) Any other existing factors provided by law or by rule and regulation of the commissioner deemed pertinent in arriving at fair market value."[9]

O.C.G.A. § 48-5-2(3) further provides that a tax assessor **shall not** consider any income tax credits with respect to real property claimed under Section 42 or state law when determining the fair market value.[10] Additional factors such as the applicability of certain restrictions[11] and uses[12] will also have an impact on the final valuation.

Regarding the method of evaluation, O.C.G.A. § 48-5-2(3) specifically contemplates the income approach while the APM broadens the methods available by providing three approaches:

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[7] 26 U.S.C. § 42(h)(6).
[8] O.C.G.A. § 48-7-29.6.
[9] O.C.G.A. § 48-5-2(3)(B).
[10] O.C.G.A. § 48-5-2(3)(B.1).
[11] The Superior Court of Toombs County has concluded that rent restrictions for Section 42 properties should not be considered, at least where the rent restrictions are not recorded in the deed, because the General Assembly has not specified their inclusion and that it would be unfair to consider the rent restrictions while disregarding the income tax credits in valuing these types of properties. *See* Order Granting Motion for Directed Verdict, Lakeview v. Toombs County Board of Tax Assessors, Sup. Ct. of Toombs County (December 7, 2011).
[12] Both O.C.G.A. § 48-5-2(3)(B)(ii)("Existing use of property, including any restrictions…") and O.C.G.A. § 48-5-2(3)(B)(iii)(" Existing covenants or restrictions in deed dedicating the property to a particular use…*")* require that the "use" should be considered in the fair market valuation. However, no court has fully explored whether or how the restrictions for Section 42 properties should be considered a "use" of property. *But see* Martin v. Liberty County Board of Tax Assessors, 152 Ga. App. 340 (1979)(Holding that "use" refers to the activity or occupation pursued on the property, not how the taxpayer divides the fee or the income derived).

the sales comparison approach, the cost approach, and the income approach.[13] Further, although O.C.G.A. § 48-5-2(3) provides that the income approach "shall be considered" and the APM states that appraisal staff "shall consider" all three approaches, neither the statute nor the APM mandate the specific approach which must be applied. Rather, the paramount consideration for appraisal staff is to give the greatest weight to the valuation approach that best represents what factors are "most likely to influence buyers and sellers when those buyers and sellers are determining exchange prices in the market place. . ."[14] A brief summary of the three approaches is as follows:

> The Sales Comparison Approach: When valuing property based on this approach, "the appraisal staff shall estimate value by comparing the subject property to similar properties that have recently sold."[15] However, there have historically been very few sales of LIHTC properties for appraisal staff to use for comparison. Thus, this method is generally not available when valuing LIHTC properties.
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> The Cost Approach: This approach involves a three-step process for appraisal staff to follow: "Estimate the cost new of the improvements, subtract accrued depreciation, and add the value of the land."[16] This assessment method is widely used, but measuring depreciation can prove difficult in the absence of supporting sales comparison and income analysis.
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> The Income Approach: The income approach requires appraisal staff to "analyze the income stream and project a future income stream that reflects typical management and current market conditions."[17] O.C.G.A. § 48-5-2(3) specifically directs appraisal staff to consider this method in determining the fair market value of income-producing property. Further, the APM states that appraisers should consider "typical unit rent" and not "non-market leases" when valuing property using the income approach.[18]

Conclusion

The appraisal staff for each county is guided by both applicable law and the APM when assessing real property for ad valorem tax purposes. These authorities provide guidance while still giving the appraisal staff the ability to make the final determination. The APM directs appraisal staff to determine the reliability and representativeness of each of the aforementioned valuation approaches, and directs appraisal staff to use the factors most likely to influence buyers and sellers when those buyers and sellers are determining exchange prices in the market place. The law also makes it clear that tax assessors shall not consider any income tax credits with respect to real property claimed under Section 42 or state law when determining the fair market value of these properties. Additional factors such as the applicability of certain restrictions and uses will also have an impact on the final valuation.

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[13] GA. Comp. R. & Regs. 560-11-10-.01(2), 560-11-10-.09(1).
[14] GA. Comp. R. & Regs. 560-11-10-.01(2), 560-11-10-.09(4).
[15] GA. Comp. R. & Regs. 560-11-10-.09(4)(b).
[16] GA. Comp. R. & Regs. 560-11-10-.09(4)(a).
[17] GA. Comp. R. & Regs. 560-11-10-.09(4)(c).
[18] GA. Comp. R. & Regs. 560-11-10-.09(4)(c)(1).