



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

February 17, 2015

Purpose

The purpose of this informational bulletin is to provide guidance to county appraisal staffs in assessing the fair market value of property that qualifies for low income housing tax credits (“LIHTC”) for ad valorem tax purposes, particularly in light of recent statutory changes pursuant to HB 954 (2014).

Background

Under Georgia law, the appraisal staff in each county is responsible for the valuation of all real property located within that county.¹ The Georgia Department of Revenue (the “Department”) 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, along with the Official Code of Georgia, direct the appraisal staff in their valuation of real property for ad valorem tax purposes.

Federal law authorizes low-income housing tax credits to be available to owners of residential housing developments that meet the requirements expressed 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 LIHTCs 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. An owner of a property that qualifies for LIHTCs must comply with the occupancy and rent restriction limitations during the 10-year credit period that the LIHTCs are available. A portion of any LIHTCs previously claimed with

¹ O.C.G.A. § 48-5-263(b).

² O.C.G.A. § 48-5-269.1.

³ See Ga. Comp. R. & Regs. 560-11-10, et. seq.

⁴ See 26 U.S.C. § 42.

⁵ 26 U.S.C. § 42(d)(3).

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 Further, the property must continue to comply with low-income occupancy and rent restrictions over a 30-year statutory period.

Section 42 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 the 30-year period, must be binding upon any subsequent purchaser of the property, and must be recorded pursuant to state law as a restrictive covenant.

Due to the unique nature of LIHTC properties, there has been some difficulty in the uniform valuation of these properties from county to county. Recent legislation has attempted to clarify what should and what should not be considered by local appraisal staffs in arriving at a “fair market value” of these types of properties.⁸

Valuing LIHTC Properties

In assessing the fair market value of real property for ad valorem tax purposes, Georgia tax assessors are guided by the definition of “fair market value of property” given in 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;
- ...
- (vi) Rent limitations, 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; and
- (vii) Any other existing factors provided by law or by rule and regulation of the commissioner deemed pertinent in arriving at fair market value.”⁹

⁶ 26 U.S.C. § 42(j).

⁷ 26 U.S.C. § 42(h)(6).

⁸ See HB 954 (2014).

⁹ O.C.G.A. § 48-5-2(3)(B).

Conversely, pursuant to subparagraph (B.1) cited above, a tax assessor *may not* consider any Section 42 income tax credits when determining the fair market value of real property.¹⁰

Prior to the passage of HB 954, there was confusion as to whether paragraph (ii) above would require appraisal staff to consider the rent restrictions on LIHTC properties in the valuation of such properties.¹¹ However, after HB 954 added subsection (vi) above, the law now requires county appraisal staff to include these types of rent restrictions in calculating the fair market value of residential rental properties eligible for state or federal income tax credits or other subsidies.

There remains the question of which valuation approach should be used by county appraisal staff in determining the fair market value of LIHTC and other similar properties. The income approach referenced in the statute is one of three valuation methods laid out in the APM.¹² The paramount concern for appraisers, however, is to place the most emphasis on the valuation method and factors that are “most likely to influence buyers and sellers when those buyers and sellers are determining exchange prices in the market place.”¹³ While the APM states that appraisal staff “shall consider” all three methods of appraisal, the language does not require that any of the three methods be applied.

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.”¹⁴ 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.

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.”¹⁵ This assessment method is widely used, but measuring any value impact resulting from the various restrictions on LIHTC properties may be difficult.

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.”¹⁶ O.C.G.A. § 48-5-2 directs appraisal staff to consider this method in determining the fair market value of income-producing property. The APM

¹⁰ O.C.G.A. § 48-5-2(3)(B.1).

¹¹ No Georgia Appellate Court has ruled on this issue. However, prior to the passage of HB 954, the Superior Court of Toombs County expressed that, in its view, it would be unfair to disregard the tax credits while considering the rent restrictions in valuing these types of properties, at least where the rent restrictions are not recorded on the deed. See Order Granting Motion for Directed Verdict, Lakeview v. Toombs County Board of Tax Assessors, Sup. Ct. of Toombs County (December 7, 2011).

¹² GA. Comp. R. & Regs. 560-11-10-.01(2), 560-11-10-.09(1).

¹³ GA. Comp. R. & Regs. 560-11-10-.01(2), 560-11-10-.09(4).

¹⁴ GA. Comp. R. & Regs. 560-11-10-.09(4)(b).

¹⁵ GA. Comp. R. & Regs. 560-11-10-.09(4)(a).

¹⁶ GA. Comp. R. & Regs. 560-11-10-.09(4)(c).

states that appraisers should consider “typical unit rent,” and not “non-market leases,” when valuing property using the income approach.¹⁷

The statutory definition of “fair market value” indicates that when data is available the income approach shall be considered when valuing income-producing properties such as LIHTC properties.¹⁸ While the APM directs appraisers to use “typical unit rent,” HB 954 specifically addresses rent restricted properties, and directs appraisers to consider rent, operational and other “restrictions imposed upon the property in connection with the property being eligible for any income tax credits.” In the context of LIHTC properties, the “typical unit rent” referenced in the APM should be the “typical unit rent” of a unit in an LIHTC property, not a “typical unit rent” across all types of rental properties.

Note that, regarding the sales comparison approach, HB 954 added language that states 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.”¹⁹ Accordingly, this language provides that the sale of a low-income housing property cannot be used to determine the value of a property that does not have similar rent restrictions. This is because the rent limitation affects the value of property, and using low-income housing properties to assess the value of normal rental properties would lead to inaccurate valuations. However, this clause should not restrict appraisers from using these properties as comparable properties for valuing other similar rent-restricted properties.

Conclusion

The appraisal staffs for the counties of the State of Georgia are guided by both the Official Code of Georgia and the APM when assessing real property for ad valorem tax purposes. The APM directs appraisal staff to consider all three of the aforementioned valuation approaches, but places the most importance on the valuation that would most closely reflect prices in the open marketplace. HB 954 clarifies that appraisal staff must apply rent, use and other restrictions on properties when appraising property eligible for income tax credits or receiving any other state or federal subsidies with respect to the use of the property as residential rental property.

For more information, please visit our website at <http://dor.georgia.gov/>.

¹⁷ GA. Comp. R. & Regs. 560-11-10-.09(4)(c)(1).

¹⁸ O.C.G.A. § 48-5-2(3) (“The income approach, if data is available, shall be considered in determining the fair market value of income-producing property.”)

¹⁹ O.C.G.A. § 48-5-2(3)(B)(vi).