



A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

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MEMORANDUM

TO: Daryl Jones

DATE: July 19, 2006

SUBJECT: Exemption for Organizations Constructing Low-Income Housing

FROM: John C. Shackelford

A non-profit owner of real property is eligible to receive an exemption from its real property taxes if the non-profit owner uses the property for the purpose of constructing or rehabilitating the property for the purpose of providing low-income housing to qualified individuals and meets the requirements set forth in Section 11.1825 of the Texas Property Tax Code. Below is a brief summary of the elements required to qualify for the exemption.

Section 11.1825 of the Texas Property Tax Code provides that “an organization is entitled to an exemption from taxation of real property owned by the organization that the organization constructs or rehabilitates and uses to provide housing to individuals or families meeting the income eligibility requirements set forth in [Section 11.1825 of the Texas Property Tax Code].” If the owner and property meet such requirements, the owner is entitled to an exemption from taxation in the amount of fifty percent (50%) of the appraised value of the property. However, for any of the property’s taxing units located in a county with a population of at least 1.4 million, the owner may not receive the exemption from such taxing unit unless the exemption is approved by the governing body of the taxing unit in the following manner:

1. The owner must submit to the governing body of the taxing unit a written request for approval of the exemption from taxation of the property described in the request.
2. Not later than the sixtieth (60th) day after the date the governing body of the taxing unit receives the written request, the governing body shall:

- (a) approve the exemption in the amount of fifty percent (50%) of the appraised value of the property;
 - (b) approve the exemption in a reasonable amount other than fifty percent (50%) of the appraised value of the property; or
 - (c) deny the exemption if the governing body determines that (i) the taxing unit cannot afford the loss of ad valorem tax revenue that would result from approving the exemption, or (ii) additional housing for individuals or families meeting the income eligibility requirements of this section is not needed in the territory of the taxing unit.
3. Not later than the fifth (5th) day after the date the governing body of the taxing unit takes action, the taxing unit shall issue a letter to the owner, with a copy to the chief appraiser of each appraisal district that appraises the property, which provides the governing body's action and, if its governing body denied the exemption, stating the basis for such determination. If the chief appraiser determines that the property qualifies for an exemption and the governing body of the taxing unit approves the exemption, the chief appraiser shall grant the exemption in the amount approved by the governing body.

The Texas legislature, by enactment of Section 11.1825 of the Texas Property Tax Code, has expressly granted to every taxing unit the statutory authority and ability to grant to a developer, assuming it satisfies the other provisions of Section 11.1825 of the Texas Property Tax Code as hereafter discussed, an exemption of at least fifty percent (50%) of the appraised value of the property. Taxing units of every type throughout Texas have approved and granted similar exemptions.

To be eligible for the fifty percent (50%) exemption set forth in Section 11.1825 of the Texas Property Tax Code, the owner of the property must meet all of the following requirements:

1. For at least the preceding three (3) years, the owner must have (a) been exempt from federal income taxation by being a Section 501(c)(3) exempt entity; (b) had providing low-income housing as one of its purposes; and (c) met the Texas Property Tax Code requirements of a charitable organization. To qualify as a charitable organization, the owner must:
 - (i) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;
 - (ii) except under certain circumstances, be organized as a Texas nonprofit corporation;

- (iii) use its assets in performing the owner's charitable functions or the charitable functions of another charitable organization; and
 - (iv) through its organizational documents, direct that on its discontinuance by dissolution or otherwise:
 - (A) the assets be transferred to the State of Texas, the United States of America, or an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code; or
 - (B) the assets can be transferred directly to the owner's members, each of whom, by application for an acceptance of membership in the owner, has agreed to immediately transfer those assets to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), if such action is necessary for the owner to qualify as a tax-exempt organization under Section 501(c)(12) of the Internal Revenue Code.
2. A majority of the members of the board of directors of the owner must have their principal place of residence in Texas.
 3. At least two of the positions on the board of directors of the owner must be reserved for and held by (a) an individual of low income whose principal place of residence is located in Texas; (b) an individual whose residence is located in an economically disadvantaged census tract in Texas; or (c) a representative appointed by a neighborhood organization in Texas that represents low-income households.
 4. The owner must have a formal policy containing procedures for giving notice to and receiving advice from low-income households residing in the county in which a housing project is located regarding the design, siting, development, and management of affordable housing projects.

If an owner of real property is not an organization described by the factors above, it may still be entitled to the exemption if the property otherwise qualifies for the exemption and the owner is either (1) a limited partnership of which an organization that meets the requirements above controls one hundred percent (100%) of the general partner interest; or (2) an entity the parent of which is an organization that meets the requirements above.

In addition to the aforementioned organizational requirement, for the property to be exempt, the owner must own the property for the purpose of constructing or rehabilitating a housing project on the property and either:

1. rent the housing to individuals or families whose median income is not more than sixty percent (60%) of the greater of (a) the area median family income for the household's

place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development (“HUD”); or (b) the statewide area median family income, as adjusted for family size and as established by HUD; or

2. sell single-family dwellings to individuals or families whose median income is not more than the greater of (a) the area median family income for the household’s place of residence, as adjusted for family size and as established by HUD; or (b) the statewide area median family income, as adjusted for family size and as established by HUD.

The annual total of the monthly rent charged or to be charged for each dwelling unit in the project reserved for an individual or family described above may not exceed thirty percent (30%) of the area median family income for the household’s place of residence. Additionally, the property may not receive an exemption unless at least fifty percent (50%) of the total square footage of the dwelling units in the housing project is reserved for individuals or families described above.

For the rehabilitation of housing projects, the following requirements must also be met:

1. The original construction of the housing project must have been completed at least ten (10) years before the date the owner began actual rehabilitation of the project;
2. The person from whom the owner acquired the project must have owned the project for at least five (5) years, if the owner is not the original owner of the project;
3. The owner must provide to the chief appraiser and, if the project was financed with bonds, the issuer of the bonds a written statement prepared by a certified public accountant stating that the owner has spent on rehabilitation costs at least the greater of \$5,000 or the amount required by the financial lender for each dwelling unit in the project; and
4. The owner must maintain a reserve fund for replacements (a) in the amount required by the financial lender; or (b) if the financial lender does not require a reserve fund for replacements, in an amount equal to \$300 per unit per year (which is increased by an annual cost-of-living adjustment).

II. Tax Abatement Agreements for School Districts

The prohibition against school districts entering into tax abatement agreements with owners of real or personal property in Section 311 of the Texas Tax Code is restricted to only property located in reinvestment zones. Section 311.0125 of the Texas Tax Code provides that, “a taxing unit other than a school district may enter into a tax abatement agreement with an owner of real or personal property in a reinvestment zone...”

A reinvestment zone is a contiguous geographic area in the jurisdiction of the municipality or county designated by the governing body of a municipality by ordinance, or the governing body

of a county by order, to be a reinvestment zone for the purpose of promoting development or redevelopment of the area if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future. Under Section 311 of the Texas Tax Code, a tax increment fund is established to fund the plan for developing or redeveloping the reinvestment zone. To be designated as a reinvestment zone, Section 311.005 of the Texas Tax Code requires an area must:

1. Substantially arrest or impair the sound growth of the municipality or county creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of (a) a substantial number of substandard, slum, deteriorated, or deteriorating structures; (b) the predominance of defective or inadequate sidewalk or street layout; (c) faulty lot layout in relation to size, adequacy, accessibility, or usefulness; (d) unsanitary or unsafe conditions; (e) the deterioration of site or other improvements; (f) tax or special assessment delinquency exceeding the fair value of the land; (g) defective or unusual conditions of title; (h) conditions that endanger life or property by fire or other cause; or (i) structures, other than single-family residential structures, less than ten percent (10%) of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding twelve (12) years, if the municipality has a population of 100,000 or more;
2. Be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality or county;
3. Be in a federally assisted new community located in the municipality or county or in an area immediately adjacent to a federally assisted new community; or
4. Be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least fifty percent (50%) of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

A municipality may not create a reinvestment zone if (a) more than ten percent (10%) of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes; (b) the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds fifteen percent (15%) of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality; (c) the proposed zone or proposed boundaries of the zone contain more than fifteen percent (15%) of the total appraised value of real property taxable by a county or school district.

If the geographic area, for which the municipality or county intends to designate as a reinvestment zone, meets above-referenced qualifications, before adopting an ordinance or order

providing for a reinvestment zone, the governing body of the municipality or county must, among other things:

1. Prepare a preliminary reinvestment zone financing plan. As soon as the plan is completed, a copy of the plan must be sent to the governing body of each taxing unit that levies taxes on real property in the proposed zone.
2. Notify in writing the governing body of each other taxing unit that levies real property taxes in the proposed reinvestment zone that it intends to establish the zone. The notice must contain a description of the proposed boundaries of the zone, the tentative plans for the development or redevelopment of the zone, and an estimate of the general impact of the proposed zone on property values and tax revenues.
3. Hold a public hearing on the creation of the zone and its benefits to the municipality or county and to property in the proposed zone prior to adopting the ordinance or order providing for a reinvestment zone. At the hearing interested parties may speak for or against the creation of the zone, its boundaries, or the concept of tax increment financing.
4. Provide a reasonable opportunity for the owner of property to protest the inclusion of the property in a proposed reinvestment zone.
5. Make a formal presentation to the governing body of each municipality, county, or school district, other than the municipality or county proposing to designate the zone, that levies real property taxes in the proposed reinvestment zone. The presentation must include a description of the proposed boundaries of the zone, the tentative plans for the development or redevelopment of the zone, and an estimate of the general impact of the proposed zone on property values and tax revenues. The governing body of the municipality or county shall notify each other taxing unit that levies real property taxes in the proposed zone of each presentation to be made to a municipality, county, or school district.
6. Must meet with a representative of each taxing unit that levies real property taxes in the proposed reinvestment zone to discuss the project plan and the reinvestment zone financing plan.