

Ad Valorem Tax Exemptions—The Lesser Known Economic Benefits of Affordable Housing

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Commentary provided by David S. Resnick.

Affordable housing offers low-income individuals and families the ability to reside in quality rental properties at price points within their budgets, while also providing developers and investors with the opportunity to give back to impoverished communities, and earn a profit.

Some of the more well-known economic benefits attributable to the acquisition, development/rehabilitation and ownership of affordable rental housing include:

- The developer's ability to acquire and then sell/syndicate low income housing tax credits (LIHTC), the proceeds of which, together with other financing, can be used to pay for the development and/or rehabilitation of affordable rental housing;
- Access to below-market state and federal loans and grants; and
- Lower vacancy rates, due to the demand for affordable rental housing.

In order to realize such economic benefits, affordable housing projects must navigate and satisfy various requirements relating to, and among other requirements, set-asides of rental units to tenants whose income does not exceed certain thresholds. In exchange for such economic benefits, owners of affordable housing typically enter into agreements with Florida Housing Finance Corporation (FHFC), such as a land use restriction agreement and an extended use agreement (FHFC agreements), which agreements are recorded and run with the land for up to 50 years. The purpose of such FHFC agreements is to ensure that projects financed by FHFC remain affordable (with respect to a specified percentage of the total units) by limiting the maximum rent that can be charged and requiring that such units be made available only to households whose income does not exceed certain thresholds.

A lesser known benefit under Florida law enables certain projects to qualify for ad valorem tax (property tax) exemptions. Ad valorem tax exemptions are available in Florida for projects (i) wholly owned by a nonprofit entity that is a corporation not-for-profit (or its wholly owned subsidiary), qualified as charitable under Section 501(c)(3) of the Internal Revenue Code and in compliance with

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other requirements (the “nonprofit exemption” under Florida Statutes Section 196.1978(1)), and used as a home for the aged (the “elderly exemption” under Florida Statutes Section 196.1975). In an effort to further incentivize the development and maintenance of affordable housing, in 2018, a 50% ad valorem tax discount was made available for certain affordable housing projects (the “ad valorem discount” under Florida Statutes Section 196.1978(2)).

The nonprofit exemption allows for a property tax exemption for property owned by certain tax exempt entities that provide affordable housing. The property must be owned entirely by a not-for-profit corporation (or by a wholly owned subsidiary thereof), and must serve “moderate-income,” “low-income,” “very-low-income” or “extremely-low-income” persons (as such terms are defined under Florida Statutes), and shall be exempt to the extent it houses such persons.

The elderly exemption provides for a property tax exemption for projects owned by a corporation not for profit (or a Florida limited partnership, the sole general partner of which is a corporation not for profit), which project qualifies as a “home for the aged” (that is, at least 75% of the occupants are at least 62 years of age or totally and permanently disabled). Apartment units under such exemption (assuming the 75% test is met) shall be exempt from ad valorem tax to the extent that at least one tenant is at least 62 years of age or disabled, and residency in such apartments is reserved for, or occupied by, tenants who permanently reside in Florida and whose gross income does not exceed certain statutory thresholds.

The ad valorem discount provides that the portion of property used to provide affordable housing will be considered to be used for a charitable purpose and qualify for a 50% property tax discount. In order to qualify for the ad valorem discount, the property must (x) offer affordable housing to individuals or families meeting the “extremely low,” “very low,” or “low-income” limits (which limits are defined by Florida Statutes), (y) be a multifamily project in which at least 70 units are set aside to individuals referenced in clause (x) above, and (z) be subject to an FHFC agreement to provide affordable housing to the individuals referenced in clause (x) above, which FHFC agreement must be recorded in the official records of the county in which the property is located. The ad valorem discount will take effect on Jan. 1 of the year following the 15th year of the term of the FHFC agreement, and will be applied against that portion of the affordable housing property that houses income qualifying tenants. Note, however, that the ad valorem discount will terminate when the FHFC agreement is no longer in force and effect; the FHFC agreement may be prematurely terminated upon foreclosure of the property, but typically stays in place upon satisfaction of the corresponding government financing.

The primary economic benefit resulting from the ad valorem discount is the corresponding increase to an affordable housing project’s net operating income, enhancing the value of such property and its ability to obtain refinancing in order to maintain the property’s physical condition. A potential detriment to utilizing the ad valorem discount is that, given the up to 50% reduction to the property’s taxable value, the property tax appraiser may be incentivized to increase the gross assessed value of

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such property by up to the maximum 10% each year (the assessed value of nonhomestead properties in Florida may be increased each year, but not by more than 10%).

David S. Resnick is a Miami partner and a member of Shutts & Bowen's tax and international law practice group. He specializes in structuring the financing and development of affordable housing. Contact him at dresnick@shutts.com.

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