

By: Menendez

H.B. No. 2828

A BILL TO BE ENTITLED

AN ACT

relating to the ad valorem taxation of property used to provide low-income or moderate-income housing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.182, Tax Code, is amended by amending Subsections (b), (e), (h), and (k) and adding Subsections (b-1) and (b-2) to read as follows:

(b) An organization is entitled to an exemption from taxation of improved or unimproved real property it owns if the organization:

(1) is organized as a community housing development organization;

(2) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);

(3) owns the property for the purpose of building or repairing housing on the property to sell without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements or to rent without profit to such an individual or family; and

(4) engages [~~exclusively~~] in the building, repair, and sale or rental of housing as described by Subdivision (3) and related activities.

(b-1) Notwithstanding Subsections (b)(1) and (2), an owner of improved or unimproved real property that is not an organization

1 described by those subdivisions is entitled to an exemption from
2 taxation of the property under Subsection (b) if the owner
3 otherwise qualifies for the exemption and the owner is:

4 (1) a limited partnership 100 percent of the interest
5 of the general partner in which is owned or controlled by an
6 organization described by Subsections (b)(1) and (2); or

7 (2) an entity 100 percent of the interest in which is
8 owned or controlled by an organization described by Subsections
9 (b)(1) and (2).

10 (b-2) A reference in this section to an organization
11 includes a limited partnership or other entity described by
12 Subsection (b-1).

13 (e) In addition to meeting the applicable requirements of
14 Subsections (b) and (c), to receive an exemption under Subsection
15 (b) for improved real property that is [~~includes a housing project~~
16 ~~constructed after December 31, 2001, and~~] financed with qualified
17 501(c)(3) bonds issued under Section 145 of the Internal Revenue
18 Code of 1986, tax-exempt private activity bonds subject to volume
19 cap, or low-income housing tax credits, the organization must:

20 (1) [~~control 100 percent of the interest in the~~
21 ~~general partner if the project is owned by a limited partnership,~~

22 [~~(2)~~] comply with all rules of and laws administered
23 by the Texas Department of Housing and Community Affairs applicable
24 to community housing development organizations; and

25 (2) [~~(3)~~] submit annually to the Texas Department of
26 Housing and Community Affairs and to the governing body of each
27 taxing unit for which the project receives an exemption for the

1 housing project evidence demonstrating that the organization spent
2 an amount equal to at least 90 percent of the project's cash flow in
3 the preceding fiscal year as determined by the audit required by
4 Subsection (g), for eligible persons in the county in which the
5 property is located, on social, educational, or economic
6 development services, capital improvement projects, or rent
7 reduction.

8 (h) Subsections (d) and (e)(2) [~~(e)(3)~~] do not apply to
9 property owned by an organization if:

10 (1) the entity that provided the financing for the
11 acquisition or construction of the property:

12 (A) requires the organization to make payments in
13 lieu of taxes to the school district in which the property is
14 located; or

15 (B) restricts the amount of rent the organization
16 may charge for dwelling units on the property; or

17 (2) the organization has entered into an agreement
18 with each taxing unit for which the property receives an exemption
19 to spend in each tax year for the purposes provided by Subsection
20 (d) or (e)(2) [~~(e)(3)~~] an amount equal to the total amount of taxes
21 imposed on the property in the tax year preceding the year in which
22 the organization acquired the property.

23 (k) Notwithstanding Subsection (j) [~~of this section~~] and
24 Sections 11.43(a) and (c), an exemption under Subsection (b) or (f)
25 does not terminate because of a change in the ownership of the
26 property if the property is sold at a foreclosure sale and, not
27 later than the 30th day after the date of the sale, the owner of the

1 property submits to the chief appraiser evidence that the property
 2 is owned by an organization that meets the requirements of
 3 Subsections (b)(1), (2), and (4) or is owned by a limited
 4 partnership described by Subsection (b-1)(1) or an entity described
 5 by Subsection (b-1)(2) that meets the requirements of Subsection
 6 (b)(4). If the owner of the property submits the evidence required
 7 by this subsection, the exemption continues to apply to the
 8 property for the remainder of the current tax year and for
 9 subsequent tax years until the owner ceases to qualify the property
 10 for the exemption. This subsection does not prohibit the chief
 11 appraiser from requiring the owner to file a new application to
 12 confirm the owner's current qualification for the exemption as
 13 provided by Section 11.43(c).

14 SECTION 2. Section 23.215, Tax Code, is amended to read as
 15 follows:

16 Sec. 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED
 17 FOR LOW-INCOME OR MODERATE-INCOME HOUSING. (a) This section
 18 applies only to real property ~~[owned by an organization]:~~

19 (1) that includes a development, as defined by Section
 20 2306.6702, Government Code:

21 (A) the dwelling units in which are ~~[on the~~
 22 ~~effective date of this section was]~~ rented or offered for rent to
 23 ~~[a]~~ low-income or moderate-income individuals ~~[individual]~~ or
 24 families ~~[family]~~ satisfying the ~~[organization's]~~ income
 25 eligibility requirements of Subchapter DD, Chapter 2306,
 26 Government Code ~~[and that continues to be used for that purpose];~~
 27 and

1 (B) [~~(2)~~] that was financed under the low income
2 housing tax credit program under Subchapter DD, Chapter 2306,
3 Government Code;

4 (2) [~~(3)~~] that does not receive an exemption under
5 Section 11.182 or 11.1825; and

6 (3) [~~(4)~~] the owner of which has not entered into an
7 agreement with any taxing unit to make payments to the taxing unit
8 instead of taxes on the property.

9 (b) In appraising the property, the [~~The~~] chief appraiser
10 shall:

11 (1) estimate the gross income potential of the
12 property by:

13 (A) analyzing data on rental income of the
14 property for the preceding fiscal year contained in the audited
15 statement of income and expenses for the property provided under
16 Subsection (g) to the chief appraiser if the dwelling units in the
17 development were rented or offered for rent to individuals or
18 families described by Subsection (a)(1)(A) for the entire fiscal
19 year;

20 (B) analyzing the potential earnings capacity of
21 the property if the dwelling units in the development were not
22 rented or offered for rent to individuals or families described by
23 Subsection (a)(1)(A) during the preceding fiscal year; or

24 (C) if the dwelling units in the development were
25 rented or offered for rent to individuals or families described by
26 Subsection (a)(1)(A) for only part of the preceding fiscal year,
27 using the method prescribed by Paragraph (A) for the part of the

1 fiscal year in which the dwelling units were rented or offered for
2 rent and using the method prescribed by Paragraph (B) for the part
3 of the fiscal year in which the dwelling units were not rented or
4 offered for rent;

5 (2) estimate the operation and maintenance expenses of
6 the property by:

7 (A) analyzing data on operation and maintenance
8 expenses of the property for the preceding fiscal year contained in
9 the audited statement of income and expenses for the property
10 provided under Subsection (g) to the chief appraiser if the
11 dwelling units in the development were rented or offered for rent to
12 individuals or families described by Subsection (a)(1)(A) for the
13 entire fiscal year;

14 (B) analyzing data on operation and maintenance
15 expenses of comparable properties available to the chief appraiser
16 if the dwelling units in the development were not rented or offered
17 for rent to individuals or families described by Subsection
18 (a)(1)(A) during the preceding fiscal year; or

19 (C) if the dwelling units in the development were
20 rented or offered for rent to individuals or families described by
21 Subsection (a)(1)(A) for only part of the preceding fiscal year,
22 using the method prescribed by Paragraph (A) for the part of the
23 fiscal year in which the dwelling units were rented or offered for
24 rent and using the method prescribed by Paragraph (B) for the part
25 of the fiscal year in which the dwelling units were not rented or
26 offered for rent;

27 (3) determine the appropriate capitalization rate as

1 provided by Subsections (c) and (d); and

2 (4) compute the actual rental income from the property
3 or project the future rental income from the property by
4 considering the restrictions provided by Subchapter DD, Chapter
5 2306, Government Code, on:

6 (A) the income of the individuals or families to
7 whom the property may be rented; and

8 (B) the amount of rent that may be charged for the
9 property [~~appraise the property in the manner provided by Section~~
10 ~~11.1825(q)].~~

11 (c) The chief appraiser shall appraise the property using a
12 capitalization rate of at least 13.5 percent, except as provided by
13 Subsection (d).

14 (d) The chief appraiser may conduct a study of sales of
15 comparable properties described by Subsection (a) that are located
16 in the appraisal district to determine the appropriate
17 capitalization rate to use in appraising the property. If as a
18 result of the study the chief appraiser determines that a
19 capitalization rate of less than 13.5 percent is more appropriate
20 for that purpose, the chief appraiser shall use that lesser rate.

21 (e) Not later than January 31 of each year, the appraisal
22 district shall give public notice in the manner determined by the
23 district, including by posting on the district's website if
24 applicable, of the capitalization rate to be used in that year to
25 appraise property described by Subsection (a) if that rate is a rate
26 of less than 13.5 percent.

27 (f) For purposes of determining the net operating income of

1 the property, the operating income of the property for the
2 preceding fiscal year is reduced by any disbursements made in that
3 fiscal year for the operation and maintenance of the property,
4 including disbursements for:

5 (1) standard property maintenance;

6 (2) debt service;

7 (3) ad valorem and franchise taxes;

8 (4) employee compensation;

9 (5) fees required by government agencies;

10 (6) expenses incurred in satisfaction of the
11 requirements of lenders, including reserve requirements;

12 (7) insurance; and

13 (8) any other justifiable expense related to the
14 operation and maintenance of the property.

15 (g) Not later than April 15 of each year, the property owner
16 must provide to the chief appraiser an audited statement of the
17 income and expenses for the property for the preceding fiscal year
18 that includes data on rental income and operation and maintenance
19 expenses for which disbursements described by Subsection (f) were
20 made. The chief appraiser shall use the audited statement of income
21 and expenses in appraising the property under this section. If the
22 property owner fails to timely provide the audited statement of
23 income and expenses, the chief appraiser shall appraise the
24 property in the manner provided by Section 23.012.

25 (h) An audited statement of income and expenses for property
26 provided to the chief appraiser under Subsection (g) is
27 confidential and not available for public inspection. The chief

1 appraiser may disclose information in the statement only to an
2 employee of the appraisal office who appraises property, except as
3 authorized by Subsection (i).

4 (i) Information made confidential by Subsection (h) may be
5 disclosed:

6 (1) in a criminal proceeding;

7 (2) in a hearing conducted by the appraisal review
8 board;

9 (3) on a judicial determination of good cause; or

10 (4) to a governmental agency, political subdivision,
11 or regulatory body if the disclosure is necessary or proper for the
12 enforcement of the laws of this or another state or of the United
13 States.

14 (j) In connection with an annual study conducted under
15 Section 403.302, Government Code, the value of a property described
16 by Subsection (a) that is selected for appraisal must be determined
17 in the manner required by this section.

18 SECTION 3. This Act applies only to ad valorem taxes imposed
19 for a tax year beginning on or after the effective date of this Act.

20 SECTION 4. This Act takes effect January 1, 2010.