

By: Garza

H.B. No. 3552

A BILL TO BE ENTITLED

AN ACT

relating to the exemption from 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(a), Tax Code, is amended by amending Subdivision (2) and adding Subdivisions (3) and (4) to read as follows:

(2) "Community housing development organization" has the meaning assigned by 24 C.F.R. Section 92.2 [~~42 U.S.C. Section 12704~~].

(3) "Control" means having the power to manage, direct, superintend, restrict, regulate, govern, or oversee. An organization is considered to control a limited partnership if the organization directly or through a wholly controlled subsidiary controls 100 percent of the general partner interest. An organization is considered to control a limited liability company if the organization is the sole manager or managing member of the company.

(4) "Low-income individual or family" means "individuals and families of low income" as defined by Section 2306.004, Government Code.

SECTION 2. Section 11.182, Tax Code, is amended by adding Subsections (a-1), (b-1), (b-2), and (b-3) and amending Subsections (b), (e), (g), (h), and (i) to read as follows:

1 (a-1) An organization is considered to own property for
2 purposes of this section and the provisions of Section 2, Article
3 VIII, Texas Constitution, authorizing the legislature by general
4 law to exempt from taxation property owned by an institution
5 engaged primarily in public charitable functions, if the
6 organization has legal or equitable title to the property. By way
7 of example, an organization has equitable title to property if it
8 has a present right to compel legal title to the property to be
9 conveyed to it in accordance with law, such as by means of an option
10 to acquire the property. For purposes of eligibility for an
11 exemption under this section:

12 (1) property owned by a tax credit partnership or
13 limited liability company is considered to be owned by a community
14 housing development organization if the general partner of the tax
15 credit partnership or the manager of the limited liability company
16 is or is controlled by the community housing development
17 organization; and

18 (2) property owned by a single member limited
19 liability company is considered to be owned by the company's single
20 member.

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

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

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

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

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

9 (b-1) For purposes of determining whether an organization
10 has satisfied the requirements of Subsection (b)(2) in order to
11 qualify for an exemption under this section, an opinion included in
12 an audit of the organization prepared by a person who is licensed by
13 this state as a certified public accountant or a determination of
14 tax-exempt status under Section 501(c), Internal Revenue Code of
15 1986, issued by the United States Internal Revenue Service is prima
16 facie evidence of the facts stated in the opinion or determination.

17 (b-2) Notwithstanding Subsection (b), if the legal owner of
18 property is not an organization described by that subsection, the
19 legal owner is entitled to an exemption from taxation of property
20 under this section if the property otherwise qualifies for the
21 exemption and the legal owner is:

22 (1) an entity 100 percent of the interest in which is
23 owned by an organization that meets the requirements of Subsection
24 (b); or

25 (2) an entity controlled by an organization that meets
26 the requirements of Subsection (b) and the organization or the
27 legal owner initially filed an application for the exemption on or

1 after January 1, 2002, and on or before December 31, 2003.

2 (b-3) A reference in this section to an organization
3 includes an entity described by Subsection (b-2).

4 (e) In addition to meeting the applicable requirements of
5 Subsections (b) and (c), to receive an exemption under Subsection
6 (b) for improved real property that includes a housing project
7 constructed after December 31, 2001, and financed with qualified
8 501(c)(3) bonds issued under Section 145 of the Internal Revenue
9 Code of 1986, tax-exempt private activity bonds subject to volume
10 cap, or low-income housing tax credits, the organization must:

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

13 ~~[(2)]~~ comply with all rules of and laws administered by
14 the Texas Department of Housing and Community Affairs applicable to
15 community housing development organizations if the department has
16 continuing jurisdiction and oversight over the bond financing used
17 to finance the project; and

18 (2) ~~[(3)]~~ submit annually to the ~~[Texas Department of~~
19 ~~Housing and Community Affairs and to the]~~ governing body of each
20 taxing unit for which the project receives an exemption for the
21 housing project evidence demonstrating that the organization spent
22 an amount equal to at least 90 percent of the project's cash flow in
23 the preceding fiscal year as determined by the audit required by
24 Subsection (g), for eligible persons in the county in which the
25 property is located, on social, educational, or economic
26 development services, capital improvement projects, or rent
27 reduction.

1 (g) To receive an exemption under Subsection (b) or (f), an
2 organization must annually have an audit prepared by an independent
3 auditor. The audit must include a detailed report on the
4 organization's sources and uses of funds. A copy of the audit must
5 be delivered to the [~~Texas Department of Housing and Community~~
6 ~~Affairs and to the~~] chief appraiser of the appraisal district in
7 which the property subject to the exemption is located.

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 (i) If any property owned by an organization receiving an
24 exemption under this section has been acquired or sold during the
25 preceding year, such organization shall file [~~by March 31 of the~~
26 ~~following year~~] with the chief appraiser in the county in which the
27 relevant property is located, on a form promulgated by the

1 comptroller of public accounts, a list of such properties acquired
2 or sold during the preceding year. The form must be filed by April
3 30 of the year following the year of the sale or acquisition or on a
4 later date authorized in writing by the chief appraiser.

5 SECTION 3. Section 11.1825, Tax Code, is amended by
6 amending Subsections (a), (c), (d), (i), (j), (k), (l), (p), (t),
7 and (v) and adding Subsections (a-1), (a-2), and (b-1) to read as
8 follows:

9 (a) In this section, "control" means having the power to
10 manage, direct, superintend, restrict, regulate, govern, or
11 oversee. An organization is considered to control a limited
12 partnership if the organization directly or through a wholly
13 controlled subsidiary controls 100 percent of the general partner
14 interest. An organization is considered to control a limited
15 liability company if the organization is the sole manager or
16 managing member of the company.

17 (a-1) An organization is considered to own property for
18 purposes of this section and the provisions of Section 2, Article
19 VIII, Texas Constitution, authorizing the legislature by general
20 law to exempt from taxation property owned by an institution
21 engaged primarily in public charitable functions, if the
22 organization has legal or equitable title to the property. By way
23 of example, an organization has equitable title to property if it
24 has a present right to compel legal title to the property to be
25 conveyed to it in accordance with law, such as by means of an option
26 to acquire the property. For purposes of eligibility for an
27 exemption under this section:

1 (1) property owned by a tax credit partnership or
2 limited liability company is considered to be owned by an
3 organization if the general partner of the tax credit partnership
4 or the manager of the limited liability company is or is controlled
5 by the organization; and

6 (2) property owned by a single member limited
7 liability company is considered to be owned by the company's single
8 member.

9 (a-2) An organization is entitled to an exemption from
10 taxation of real property owned by the organization that the
11 organization constructs or rehabilitates and uses to provide
12 housing to individuals or families meeting the income eligibility
13 requirements of this section.

14 (b-1) For purposes of determining whether an organization
15 has satisfied the requirements of Subsection (b)(1)(B) in order to
16 qualify for an exemption under this section, an opinion included in
17 an audit of the organization prepared by a person who is licensed by
18 this state as a certified public accountant or a determination of
19 tax-exempt status under Section 501(c), Internal Revenue Code of
20 1986, issued by the United States Internal Revenue Service is prima
21 facie evidence of the facts stated in the opinion or determination.

22 (c) Notwithstanding Subsection (b), if the legal ~~an~~ owner
23 of real property ~~that~~ is not an organization described by that
24 subsection, the legal owner is entitled to an exemption from
25 taxation of property under this section if the property otherwise
26 qualifies for the exemption and the legal owner is:

27 (1) an entity 100 percent of the interest in which is

1 owned by [~~a limited partnership of which~~] an organization that
2 meets the requirements of Subsection (b) [~~controls 100 percent of~~
3 ~~the general partner interest~~]; or

4 (2) an entity controlled by [~~the parent of which is~~] an
5 organization that meets the requirements of Subsection (b).

6 (d) If the legal owner of the property is an entity
7 described by Subsection (c) [~~, the entity must~~]:

8 (1) the legal owner must be organized under the laws of
9 this state[+] and

10 [~~(2)~~] have its principal place of business in this
11 state; and

12 (2) the organization that owns 100 percent of the
13 interest in or controls the legal owner as described by Subsection
14 (c) must have equitable title to the property.

15 (i) Property owned for the purpose of constructing or
16 rehabilitating a housing project on the property is exempt under
17 this section only if:

18 (1) the property is used to provide housing to
19 individuals or families described by Subsection (f); or

20 (2) the housing project is under active construction
21 or rehabilitation or other physical preparation.

22 (j) For purposes of Subsection (i)(2), a housing project is
23 under physical preparation if the organization has engaged in
24 architectural or engineering work, soil testing, land clearing
25 activities, or site improvement work necessary for the construction
26 or rehabilitation of the project or has conducted an environmental
27 or land use study relating to the construction or rehabilitation of

1 the project.

2 (k) An organization may not receive an exemption for
3 property owned for the purpose of constructing a housing project
4 [~~constructed by the organization~~] if the construction of the
5 project was completed before January 1, 2004.

6 (1) If the property is owned for the purpose of
7 rehabilitating a housing project on the property:

8 (1) the original construction of the housing project
9 must have been completed at least 10 years before the date the
10 organization began actual rehabilitation of the project;

11 (2) the person from whom the organization acquired the
12 project must have owned the project for at least five years, if the
13 organization is not the original owner of the project, unless the
14 organization acquired the project from a person that acquired the
15 project by foreclosing on the project or receiving a deed or other
16 instrument in lieu of foreclosure that conveyed the project to the
17 person;

18 (3) the organization must provide to the chief
19 appraiser and, if the project was financed with bonds, the issuer of
20 the bonds a written statement prepared by a certified public
21 accountant stating that the organization has spent on
22 rehabilitation costs at least the greater of \$5,000 or the amount
23 required by the financial lender for each dwelling unit in the
24 project; and

25 (4) the organization must maintain a reserve fund for
26 replacements:

27 (A) in the amount required by the financial

1 lender; or

2 (B) if the financial lender does not require a
3 reserve fund for replacements, in an amount equal to \$300 per unit
4 per year.

5 (p) If the organization acquires the property for the
6 purpose of constructing or rehabilitating a housing project on the
7 property, the organization must be renting or offering to rent the
8 applicable square footage of dwelling units in the property to
9 individuals or families described by Subsection (f) not later than
10 the third anniversary of the date the organization acquires the
11 property. For purposes of this subsection, if the organization
12 acquired the property after January 31 of a year, the organization
13 is considered to have acquired the property on January 1 of the
14 following year.

15 (t) Notwithstanding Section 11.43(c), an exemption under
16 this section does not terminate because of a change in ownership of
17 the property if:

18 (1) the property is foreclosed on for any reason and,
19 not later than the 30th day after the date of the foreclosure sale,
20 the owner of the property submits to the chief appraiser evidence
21 that the property is owned by:

22 (A) an organization that meets the requirements
23 of Subsection (b); or

24 (B) an entity that meets the requirements of
25 Subsections (c) and (d); or

26 (2) in the case of property owned by an entity
27 described by Subsections (c) and (d), the organization meeting the

1 requirements of Subsection (b) that owns 100 percent of the
2 interest in or controls the [~~general partner interest of or is the~~
3 ~~parent of the~~] entity as described by Subsection (c) ceases to serve
4 in that capacity and, not later than the 30th day after the date the
5 cessation occurs, the owner of the property submits evidence to the
6 chief appraiser that the organization has been succeeded in that
7 capacity by another organization that meets the requirements of
8 Subsection (b).

9 (v) Notwithstanding any other provision of this section, an
10 organization may not receive an exemption from taxation of property
11 described by Subsection (f)(1) by a taxing unit any part of which is
12 located in a county with a population of at least 1.4 million unless
13 the exemption is approved by the governing body of the taxing unit
14 in the manner provided by law for official action. Approval of the
15 exemption is required only for the tax year for which the initial
16 application for the exemption is filed.

17 SECTION 4. This Act applies only to ad valorem taxes imposed
18 for a tax year beginning on or after the effective date of this Act.

19 SECTION 5. This Act takes effect January 1, 2012.