



AFFORDABLE HOUSING PROPERTY TAX REFORM: A PRIMER

Brief Background

In the wake of Indiana's 2008 property tax reform and a 2009 State Tax Court decision, Prosperity Indiana members are facing the loss of property tax exemptions on properties held and developed by 501(c)3 non-profit organizations for the purpose of providing affordable housing. The following is a brief summary of how we got here.

Tax Caps

Prior to the 2008 property tax reform, local units of government were not directly dependent on overall assessment levels to generate property tax revenues. Under the previous system, the amount of property tax revenue raised was divided by the total assessed value of property to determine the tax rate. Local assessors had an incentive to assess property on the low side or not to question relatively small property tax exemptions.

Property tax reform changed the assessment environment dramatically. Now, when jurisdictions reach the capped level of property taxation, revenues cannot be increased by increasing the property tax rates; the only way tax revenues can increase is an increase in the total assessed value of properties.

2009 Court Case

On July 24, 2009, the Indiana Tax Court, in *Jamestown v. St. Joseph County Assessor*, provided additional fodder for assessors to question exemptions. In this case, the Tax Court determined that an affordable housing complex operating under Sec. 221(d)(3) of Title II of the National Housing Act was not an exempt purpose. The court denied exemption to an organization that rented housing to residents at 95 percent of area median income (AMI) or below under a federal mortgage subsidy program. This property is not representative of the low-income housing provided by our members. While the decision did not prohibit property tax exemption for affordable housing projects developed by 501(c)3 non-profit organizations, it caused many local assessors across the state to paint all housing exemptions with a broad stroke.

Implications for Affordable Housing in Indiana

Despite Indiana statutes affirming that providing low-income housing is both a government burden and public purpose that is considered charitable, Prosperity Indiana members across the state began experiencing a disconcerting trend of receiving a property tax bill for properties which have until that time been treated as exempt.

Communities regularly encourage these providers to assume the costs of acquiring vacant properties, rehabilitating them and renting them to low-income families at below market rates. These organizations do so despite the administrative and operations losses they incur in order to benefit their communities, but increasingly they are getting out of that line of work entirely due to punitive tax bills and costly legal challenges.

In order to seek clarity on this issue, Prosperity Indiana filed an amicus curiae brief in the Indiana Supreme Court on December 6, 2014 in the case Housing Partnerships Inc. (HPI) vs. Bartholomew County Assessor. The brief sought relief on behalf of HPI and nonprofit owned affordable housing. We argued that current practice involves applying ambiguous standards to determine exemption and organizations dealing with differing assessment environments from county to county resulting in contradictory results at the state and local level.

The Indiana Supreme Court declined 3-2 to hear the case, leaving HPI with more than \$300,000 in back taxes on top of \$230,000 in penalties and late fees incurred while appealing this case through the court system. The failure to recognize the charitable role these organizations provide could bankrupt the local affordable housing and human service infrastructure at a time when there is still a critical need for such services.