

Property Tax Exemption for Housing Agencies with Controlled Affiliates

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Purpose

This Directive will provide information to county assessors regarding requirements that a Housing Agency with Controlled Affiliates must satisfy to receive the property tax exemption contained in [Neb. Rev. Stat. § 71-1590](#) after being amended by [LB 1326](#) in 2024.

Statutory Authority

[Neb. Rev. Stat. § 71-1590\(1\)](#) provides the requirements that must be met in the relevant part:

The real and personal property of a local housing agency and any controlled affiliate thereof used solely (a) for the administrative offices of the housing agency or controlled affiliate thereof, (b) to provide housing for persons of eligible income and qualifying tenants, and (c) for appurtenances related to such housing shall be exempt from all taxes and special assessments of any city, any county, the state, or any public agency thereof, including without limitation any special taxing district or similar political subdivision. . . . Property owned jointly by a housing agency or its controlled affiliates with other nongovernmental persons or entities shall be exempt from such taxes and assessments to the extent the property is used solely to provide housing for persons of eligible income and qualifying tenants. Such housing agency or controlled affiliate shall provide notice of the exemption to the county assessor of the county in which the property is located on or before December 31 of the year preceding the year for which the exemption is first sought. . . .

Terms

Affiliate. Any corporation, entity, partnership, venture, syndicate, or arrangement in which a local housing agency participates by holding an ownership interest or participating in its governance, including both controlled and noncontrolled affiliates. See [Neb. Rev. Stat. §71-1575\(1\)](#).

Controlled Affiliate. Any affiliate of a local housing agency (a) in which commissioners, officers, employees, and agents of such agency constitute a majority of the governing body of such entity or (b) in which such agency holds a majority of the ownership interests. See [Neb. Rev. Stat. § 71-1575\(8\)](#).

Local Housing Agency (Agency). A public body, corporate and politic, previously established or to be established by a city or a county pursuant to the authority provided by the [Nebraska Housing Agency Act](#). A local housing agency is a political subdivision of this state under [Neb. Rev. Stat. §71-1575\(16\)](#).

Project Entity. An entity which is used by the Agency and Tax Credit Investors to structure a Low-Income Housing Tax Credit (LIHTC) Project. This entity is usually a limited partnership or limited liability company (LLC). It is the Project Entity that must be deemed to be a Controlled Affiliate in order for the property tax exemption to be granted.

Tax Credit Investors. Investor entities that provide the upfront financing to LIHTC projects. In exchange, these investors receive federal tax credits and the benefit of depreciation deductions. Tax Credit Investors are usually limited partners in a limited partnership or non-managing members in an LLC.

Exemption Requirements

An Agency and its Controlled Affiliates will receive an exemption of real and personal property taxes on certain property if the following conditions are met:

1. The property in question is owned by a Project Entity, with an Agency being a general partner in a limited partnership or a managing member in an LLC.
2. The Project Entity meets the statutory definition of being a Controlled Affiliate because either:
 - a. The commissioners, officers, employees or agents of the Agency constitute a majority of the governing body of the Project Entity; OR
 - b. The Agency holds a majority of the ownership interests of the Project Entity.
3. The property must be used solely for:
 - a. The administrative offices of the Agency or its Controlled Affiliates; OR
 - b. To provide housing for people of eligible income and qualifying tenants or appurtenances related to the housing (i.e. maintenance buildings, parking lots, etc.).
4. The Agency or its Controlled Affiliates have provided notice of the exemption to the county assessor on or before December 31 of the year preceding the year for which exemption is first sought.

Once notice of the exemption is provided, the property is treated as a governmental exemption and should be exempt without any further application or approval. Accordingly, if the county assessor determines the affiliate is not a Controlled Affiliate or has reason to believe the use of the property is not for public purpose, the county assessor shall send a notice to the Agency on or before March 1 of each year, informing the Agency of the county assessors intent to tax the property pursuant to [Neb. Rev. Stat. §77-202.12](#).

Analysis of Delegated Responsibility

Due to the expertise and investment of the limited partners, certain responsibilities are delegated to the limited partners or non-managing members by the Agency as the general partner or managing member. This delegation is negotiated by the parties to protect the limited partners' or non-managing members' investment and financial guarantees. These responsibilities include core competencies of the limited partners or non-managing members such as development, construction, finance, property management, and accounting. Although this delegation of responsibility may call into question whether the limited partnership or LLC is actually a Controlled Affiliate, generally, the exemption can apply under the following conditions:

1. The Agency is the sole general partner of the limited partnership or the managing member of an LLC;
2. The majority of the decision-makers of the limited partnership's general partner or the LLC's managing member are commissioners, officers, employees, and agents of the Agency; and
3. The Project Entity's structure as stated in #1 and #2 is not changed by subsequent amendment to the limited partnership agreement or LLC operating agreement.

Common Examples of Controlled Affiliates

Limited Partnership

It is common for housing agencies to enter into limited partnership agreements with limited partners for purposes of managing the construction and financing of housing projects. Generally, at least one partner has liability for the debts of the partnership and manages the business of the partnership. This partner or partners are known as "general partners".

It is important to note that limited partnership agreements are contracts and as a result terms will vary between projects.

Within a limited partnership, typically the Agency is the general partner of the limited partnership which owns the housing units and its supporting property.

The Agency, in its individual capacity, separately owns the land underlying the housing units and leases the land to the limited partnership via a long-term lease (often a duration of 99 years or more). At the expiration of the lease, the housing Agency as general partner will acquire legal title to the project's buildings and accordingly, the Agency will have ownership of both the buildings and the underlying land.

Limited Liability Company (LLC)

Limited Liability Companies (LLCs) are another common structure of Project Entities utilized to facilitate LIHTC Projects. With an LLC, an Agency is usually the managing-member with the Tax Credit Investors filling non-manager-member roles. As the managing-member, the Agency has management responsibilities regarding the project.

Like a limited partnership, the LLC owns the housing units and its supporting property, while the Agency owns the land underlying the housing units and leases the land to the limited partnership via a long-term lease. Here too, the Agency will acquire legal title to the project's buildings.