

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

**SEVIERVILLE SENIOR APARTMENTS,
LP**

PROPERTY ID: 061 049.02

Tax years 2012-2013

Sevier County

AR#78602 & 86669

HICKORY RIDGE APARTMENTS, LP

PROPERTY ID: 031 00 0 153.00

Tax years 2011-2012

Davidson County

AR#72150 & 80460

HOLSTON RIDGE, LP

PROPERTY ID: 081H B 012.03

Tax Year 2012

Knox County

AR# 80230

FINAL DECISION AND ORDER

Statement of the case

These are consolidated appeals by the taxpayers from the consolidated initial decision and order dated October 25, 2013. The Knox County Assessor appealed the consolidated initial decision and order as to Holston Ridge Apartments. The consolidated initial decision and order recommended the following values and assessments:

Sevierville Senior Apartments (061-049.02)

<u>Tax Year</u>	<u>Land Value</u>	<u>Improvement</u>	<u>Total Value</u>	<u>Assessment</u>
2012	\$470,100	\$3,936,700	\$4,406,800	\$1,762,720
2013	\$470,100	\$5,497,400	\$5,967,500	\$2,387,000

Hickory Ridge Apartments (031 00 0 153.00)

<u>Tax Year</u>	<u>Land Value</u>	<u>Improvement</u>	<u>Total</u>	<u>Assessment</u>
2011	\$45,900	\$4,059,100	\$4,105,000	\$1,642,000
2012	\$364,000	\$3,531,000	\$3,985,000	\$1,558,000
<u>Holston Ridge Apartments (081H B 012.03)</u>				
2012	N/A	N/A	\$5,780,100	\$2,303,505

The appeal was heard in Nashville on October 7, 2014 before Commission members Michael Wills (presiding), Keith Kyles, Tim Proffitt, Robert Walker and Jim Creecy.¹ Appearances were as follows: for taxpayers, attorney David Kleinfelter; for Davidson County Assessor, Metro Attorney Jason Bobo ; for Knox County Assessor, Deputy Law Director Daniel Sanders; and for Sevier County Assessor Johnny King and the intervenor state Division of Property Assessments, Comptroller's General Counsel Robert Lee. Based on the evidence and arguments of counsel, the Commission finds and concludes the Consolidated Initial Decision and Order should be affirmed except as noted.

Findings of Fact and Conclusions of Law

The Commission adopts the findings and conclusions of the Consolidated Initial Decision and Order, except as specifically modified in the following summary findings.

1. Each of the subject properties was constructed in 2011 as part of the Low Income Housing Tax Credit ("LIHTC") Program under Section 42 of the Internal Revenue Code.

¹ Mr. Creecy and Mr. Walker sat as alternates for absent regular members, per Tenn. Code Ann. §4-5-302. Pursuant to Tenn. Code Ann. §4-5-301, a Board attorney sat with the Commission as administrative judge.

2. The LIHTC Program generates construction funding for low income housing in a two-step process in which federal income tax credits are awarded to a general partner/developer, who in turn transfers the credits to limited partner/investors to use over a ten year period. The general partner/developer receives a negotiated cash amount which largely funds construction.²

3. With each of the subject properties here, the credits were returned because of marketing difficulties attributed to the Great Recession. The credits were returned in exchange for a new funding vehicle, to wit, loans to be forgiven over time, under Section 1602 of the American Recovery and Reinvestment Act of 2009.

4. The loans are governed by written agreements and restrictive covenants and secured by deeds of trust. The incremental repayments are forgiven over time, as long as the owners abide by rent and eviction restrictions comparable to the LIHTC Program. The assumed rights and obligations of the owners are assignable with consent of the Tennessee Housing Development Agency ("THDA").³

5. Taxpayers are appealing the consolidated initial decision and order in this matter and bear the burden of proving error in the administrative judge's findings and recommendations. The Knox County Assessor of Property bears the burden in this proceeding of proving error in the value recommended in the consolidated initial decision and order for the Holston Ridge property.

² See, generally, *Spring Hill LP v. Tenn. State Bd. of Equalization*, 2003 Tenn. App. LEXIS 952; 2003 WL 23099679.

³ Copies of the governing documents are part of Exhibit 5 admitted in evidence at the hearing (Stipulation).

6. The Sevierville Apartments property, known as Dogwood Apartments, is a 9.24 acre tract improved with a 54 unit apartment complex for seniors, located on Smithwood Road in Sevierville about a mile off the Parkway. It was constructed for a total cost of \$5,811,795, and the owners received \$5,190,276 as a forgivable loan to be applied to the cost of the project. The Sevier County Board of Equalization valued the property at \$3,737,800 for 2012 and 2013. The parties agreed the property value attributed to the restricted rents alone was \$374,000 for 2012 and \$1,788,500 for 2013.

7. The Hickory Ridge Apartments consist of a 17 acre tract improved with a 54 unit apartment complex located at 585 Hickory Hills Boulevard near the Old Hickory Blvd. and I-40 interchange in Davidson County. The total cost of the property does not appear in the record, but the owners received a forgivable loan in the amount of \$5,185,512. The Metro (Davidson) County Board of Equalization valued the property at \$4,641,400 for 2011 and \$4,453,200 for 2012. The parties agreed the property value attributed to the restricted rents alone was \$1,460,655 for 2011 and \$1,330,007 for 2012.

8. Holston Ridge Apartments consist of a 20.27 acre tract improved with a 72 unit apartment complex located at 1203 Mystic River Way in Knoxville. The total cost of the property was \$8,439,580 and the owners received a forgivable loan in the amount of \$7,038,000. The Knox County County Board of Equalization valued the property at \$5,780,100 for 2012.

9. The sole issue in these appeals, comparable to the issue in *Spring Hill, supra*, is whether the Section 1602 funding program adds value for property tax purposes

beyond the rent-restricted income approach value stipulated by the parties.⁴ Taxpayers contend the Section 1602 program differs in relevant respects from the Section 42 program because the Section 1602 loan is received when the property is constructed and, in the view of their expert appraiser James Lamb, neither the owner nor owner's assigns receive any economic benefit thereafter.

10. The assessors, and the administrative judge in the Consolidated Initial Decision and Order, were generally of the view the loan proceeds were comparable to rent prepaid by the federal government to reach its goal to expand affordable housing. For the most part, they attributed value to the loans either by treating the annual forgiven amounts as a cash flow to the owner, discounted at what they considered an appropriate rate⁵ or by discounting the remaining loan balance over the life of the loan. For example, Sevier County expert Ryan Cavanah discounted the 2012 loan balance of \$4,498,239 at a discount rate of 8.28% to arrive at a value of \$4,154,266 for the forgiven loan balance.⁶ Davidson County expert witness Derrick Hammond estimated the present worth of the remaining loan balance of \$5,185,512 to be \$3,377,357 as of January 1, 2011.⁷

11. Taxpayers' expert witness offered two alternate opinions of value in the event the Commission was unpersuaded by his argument that taxable value should be

⁴ The taxpayers and Knox County Assessor did not stipulate to a rent-restricted value for the Holston Ridge property. Instead, the assessor offered an appraisal that attributed substantial value to the Section 1602 funding (Ex. 6), and taxpayers offered proof challenging the assessors' Section 1602 assumptions and asserting alternative values of their own.

⁵ Compare to *Spring Hill, supra*, in which remaining available tax credits were discounted over time to present value as of the year of assessment.

⁶ Exhibit 11, p. 12.

⁷ Exhibit 12, p. 6.

limited to that indicated by the restricted rent alone.⁸ In the first instance, Mr. Lamb contended the forgiven loan should be accounted for only in the first year of ownership, since that was the only year in which the funding was received. Thus, goes this argument, Section 1602 funds contribute value only in the year they are expended to defray cost of construction, and nothing thereafter. In the second instance, Mr. Lamb would limit the value of the Section 1602 funding to the hypothetical savings the owners might have experienced with a zero interest, zero payment loan compared to amortization of a conventional loan at interest of 6.5%. For reasons not readily apparent, Mr. Lamb viewed taxpayers' favorable financing premium as being measured by a hypothetical conventional loan at 75% of the *restricted rent value* rather than the actual forgivable loan for a particular property.⁹

12. Tennessee law requires that taxable property be assessed at the value of the fee simple estate.¹⁰ The actual price anticipated for an encumbered property may not measure the value of the fee simple estate.¹¹ Here, assuming the encumbrances remain in effect, the owners might well anticipate a price limited by the restricted rents, but the law requires the taxable value of the property be measured by the hypothetical value of the fee simple interest, not the leased fee interest.¹² The low-income lessees, favorable lease in hand, essentially own a valuable leasehold, but of course they are not

⁸ Exhibit 10, pp. 7-11 and Addenda.

⁹ For Holston Ridge, Mr. Lamb's alternate value assumed a conventional loan (with no obligation to repay) in the amount of only \$1,671,000 rather than the actual loan (with no obligation to repay) of \$7,038,000.

¹⁰ *Hoover v. State Board of Equalization*, 579 S.W. 2d 192 (Tenn. App. 1978).

¹¹ *Hoover, supra*; *Appeal of First American National Bank Building Partnership* (Assessment Appeals Commission Final Decision and Order dated May 27, 1988).

¹² The assessors, of course, argue the owners effectively received substantial prepaid rent in the form of the forgivable loan.

the assessable owner of the property.¹³ Instead the owners hold the assessable (fee simple) interest, and the taxable value of the property is measured by the full fee simple interest, including both the leased fee and the leasehold interest.

13. The Commission finds the discounted cash flow method utilized by the assessors in this case more persuasive than the arguments and alternatives offered by the taxpayers and their expert. In the first instance, witness Lamb limited the value of the forgiven loan entirely to the first year of the arrangement,¹⁴ while his second alternative ignores the value of the forgiven loan almost entirely, limiting the measure of its value to a hypothetical conventional mortgage on the restricted rent value only. On the other hand, the methods used by the assessors here compare favorably with those endorsed in the *Spring Hill* case. Those methods effectively measure the real property value contributed by the forgiven loans, similar to the tax credits' value acknowledged in the *Spring Hill* case.

14. The Knox County Assessor by his expert witness Dean Lewis offered proof that the Holston Ridge property should be valued at \$7,800,000 using appraisal methods that recognized the benefit of the §1602 funding. Lewis offered alternate measures, one treating the benefit of the §1602 funding as received only in the year the loan was made (like Mr. Lamb) and the second attributing value over the term in which the loan was to be forgiven.

¹³ Leasehold estates are separately assessed only when the leased fee is exempt. TCA 67-5-502.

¹⁴ Thus the forgiven loan would have no value for later years, including most of the years at issue in this appeal.

15. Mr. Lewis' second method most closely approximates the method approved in the *Spring Hill* case. In that case §42 tax credits provided immediate funding when the credits were assigned (and transferred between partners), but the approved value method attributed value to the credits over time. Here §1602 loans take the place of the credits and their value as a source of funding should appropriately be recognized not just when the loan is made. A majority of the Commission finds the assessor has met his burden of proving a value different than adopted by the county board of equalization.¹⁵

16. The Commission finds the consolidated initial decision and order of the administrative judge should be otherwise affirmed except in those instances where the the assessor's witness testified to a value lower than provided in the consolidated initial decision and order.

ORDER

By reason of the foregoing, it is ORDERED that the consolidated initial decision and order of the administrative judge is affirmed except as noted above, and that the following values be adopted for the years at issue.

Sevierville Senior Apartments (061-049.02)

<u>Tax Year</u>	<u>Land Value</u>	<u>Improvement</u>	<u>Total Value</u>	<u>Assessment</u>
2012	\$470,100	\$3,936,700	\$4,406,800	\$1,762,720
2013	\$470,100	\$5,153,100	\$5,623,200	\$2,249,280

¹⁵ The consolidated initial decision and order concluded no compelling proof had been offered by either party to warrant disturbing the decision of the Knox County Board of Equalization.

Hickory Ridge Apartments (031 00 0 153.00)

<u>Tax Year</u>	<u>Land Value</u>	<u>Improvement</u>	<u>Total</u>	<u>Assessment</u>
2011	\$45,900	\$4,059,100	\$4,105,000	\$1,642,000
2012	\$364,000	\$3,531,000	\$3,985,000	\$1,558,000

Holston Ridge Apartments (081H B 012.03)

2012	\$825,400	\$6,974,600	\$7,800,000	\$3,120,000
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This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion.

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization**, in the Board's discretion.

This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date the final result in this matter has been posted indicating no possibility of further administrative review.

Requests for stay of effectiveness will not be accepted.

DATED: December 5, 2014

Mike Willis
Presiding Member *City of Upper...*

ATTEST:

Kelsie Jones
Executive Secretary

- cc: Mr. David L. Kleinfelter, Esq.
- Mr. Daniel A. Sanders, Knox Co. Dep. Law Director
- Mr. Phil Ballard, Knox County Assessor
- Mr. Jason Bobo, Metro Dept. of Law
- Mr. George L. Rooker, Jr., Metro Assessor
- Mr. Johnny D. King, Sevier Co. Assessor
- Mr. Robert T. Lee, Comptroller's General Counsel