Re: 10% exemption for portions of qualified rental units - 32 VSA Sec. 5404a(a)(6) -

This last week there has been a series of e-mails and conversations about § 5404a(a)(6) – a provision that allows "an exemption of a portion of the value of a **qualified rental unit building**". (Qualified rental units are certain units subject to rent restriction under state or federal law.)

There has been discussion that this "exemption" might expire and cannot be renewed. It is VHFA's clear understanding that the exemption does not expire, and I you hope the Department can agree and confirm this.

This "exemption" was adopted as part of Act 68 to compensate for the fact that rent restricted affordable housing units were to taxed under the higher non-homestead rate. In the Tax Dept publications that summarize this provision, that it says that "**applies to fiscal years 2005 and after**"; with **no mention of expiration**.

At time of Act 60 and 68, the affordable housing community did not ask for an exemption, but wanted to be put in a residential rate category that more appropriately reflected the use of the property. It was the Tax Dept. that suggested that a 10% "exemption" on value would get the projects to a fairer rate. **I am not aware of any discussions about a onetime exemption or non-renewal as a fix for the impact of the split rate.**

The original Act that passed in 2003 with this provision had no timelines, and a requirement that "the commissioner of taxes shall issue a certificate of education tax reduction upon presentation by the taxpayer of information which the commissioner shall require." It was presumed this would be done annually.

However, the Tax Dept. (Bob Gross and Terry Knight) raised concerns that they did not have the knowledge to issue the certificates, nor the capacity to issue what was presumed to be annual certificates.

VHFA was asked by the Tax Dept. to assist with this. We all agreed that annual certifications might not be necessary because most projects receiving the certifications would be subject to long term rent contracts and subsidy covenants.

The Tax Dept. did express a concern about what to do if a project changed or was no longer affordable. The majority of our projects have permanent subsidy covenants that run with the land; we agreed those did not need annual certifications. Those would receive a renewal notice every 10 years. If the project is transferred in that term or had a shorter term subsidy contract they must notify us and we would issue a new certification. In 2004, Act 68 was amended to reflect these changes.

Since 2004, VHFA has sent out renewal notices and certifications to project owners based on the information we have received. **The form of the letter that identifies the renewal process has been approved by the Tax Dept. every year, and VHFA and the projects have never been told that an "exemption" certification cannot be renewed.**

I have reviewed this with three VHFA staff involved with program, as well Erhard Manke and Karen Lafayette, who were involved with the original legislation, and their recollection is the same.

This year, we sent renewals to 287 projects for an additional ten year certification, and in addition we sent out another 54 renewal certifications to those with shorter terms due to their rental restrictions ending or having to be renewed in less than ten years. **These 341 certifications were to be filed with the towns by April 1.**

The statute that clearly states that upon receipt of the required taxpayer information **VHFA "shall" issue a certificate, and upon receipt of the certificate the municipality "shall" grant the exemption**. All that is required is that the town gets the certificate by April 1 of a year. The expiration language only relates to the exemption granted by the municipality on the basis of the certificate. If the municipality gets a new certificate, they must issue a new exemption. We regularly have had new certificates issued as projects have transferred ownership, so we see renewals as same situation.

I have been through every bit of paper and electronic information in this office on this issue, and have found no reference of non-renewal, anywhere.

I want to also point out that this discussion has nothing to do with other pieces of law which outline the process for long term tax stabilization agreements that are sometimes required for affordable housing to receive some federal funds, or that outline the process the use of the income approach to value for the municipal assessment of subsidized housing. As I mentioned this language was to compensate for the fact that rent restricted affordable housing units are taxed under the higher non-homestead rate.

Thanks,

Sarah

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