

October 2, 2009

Assessment of Low-Income Housing – UPDATE

The purpose of this Special Notice is to provide an update on the status of [Property Tax Advisory \(PTA\)15.1.2009](#) on Low-Income Housing Valuation.

Due to the volume of inquiries regarding the impact of several State Board of Tax Appeals (BTA) decisions on low-income housing property, including *Alpine Ridge Associates v. Mark Leander, Skagit County Assessor*, BTA Docket Number 07-355 dated February 6, 2009, and *Naha Hilltop Associates LP v. Pam Rushton, Clallam County Assessor*, BTA Docket Number 08-074 dated August 20, 2009, we determined there was a need for clarification about how to proceed with respect to valuing this type of property.

What You Need To Do

The *Alpine Ridge* decision has been appealed to superior court. Pending a decision from the superior court or a decision from an appellate court, the Department of Revenue recommends that assessors continue to follow *Cascade Court* as set out in the Department's PTA15.1.2009 and apply it and the 2007 amendments to RCW 84.40.030 to all valuations of low-income housing.

Does the Department of Revenue intend to rescind PTA 15.1.2009 in light of the recent BTA rulings on the impact of restrictions on valuation of low-income housing?

The Department does not intend to rescind the PTA.

PTA 15.1.2009 was the culmination of more than a year-long study of the issues involved with all parties represented. The PTA was crafted to carefully follow Washington statutory and appellate court case law and generally accepted appraisal practice. It emphasizes that all relevant factors, including government restrictions contained in agreements, must be considered when determining market value in this context and recommends using the income capitalization approach to value.

In the context of valuing restricted rent and restricted use housing, there is currently only one Washington appellate court decision, *Cascade Court Limited Partnership v. Noble*, 105 Wash. App. 563, 20 P.3d 997 (2001). That decision affirms the importance of the willing buyer and willing seller concept in Washington law when determining market value. The decision goes on to conclude that the restricted rents of property in a low-income housing program, as opposed to the market rents of conventional housing, are to be taken into account by the assessor when valuing the rent-restricted property.

Also, in 2007, RCW 84.40.030 (the statute requiring valuation at 100 percent of true and fair value and describing valuation methods) was amended to add clarifying language that stated, "...consideration should be given [in valuing real property] to any agreement, between an owner of rental housing and any government agency, that restricts rental income, appreciation, and liquidity; and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing." The legislative history of the bill clearly shows that the intent of the clarifying language was to "establish guidelines for determining the true and fair value of a multifamily rental housing property subject to government restrictions on use including rent-restrictions." In other words, the amendatory language was specifically intended to deal with the valuation of low-income housing.

The BTA issued its *Alpine Ridge* and *Naha Hilltop* decisions without any discussion or analysis of the PTA. Additionally, although the BTA discusses the 2007 statutory amendments noted above, those amendments were not in effect on the assessment date under consideration in those two cases.

Questions

If you have questions or need additional information about this Special Notice, please contact the Property Tax Division at 360-705-6705.