

# PUBLICATION

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## Mississippi Supreme Court Upholds the Net Operating Income Method for Determining True Value of Affordable Housing

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In a much anticipated decision, on October 17, 2013, the Mississippi Supreme Court upheld the Income Approach to Valuation of Affordable Housing, which is a significant victory for affordable housing developers and the larger affordable housing community in Mississippi. As the Court noted, "it will have a marked impact statewide." The Court's opinion in *Willow Bend Estates, LLC v. Humphreys County*, confirms the constitutionality of Mississippi Code Section 27-35-50(4)(d) and the Income Valuation Approach provided in the Mississippi Department of Revenue's Appraisal Manual (Appraisal Manual).

Willow Bend Estates and Woodyard Gardens (Willow Bend) are two privately-owned housing complexes developed, in part, using federal low income housing tax credits (LIHTCs) under Section 42 of the Internal Revenue Code. In order to receive the LIHTCs, Willow Bend agreed to restrict the amount of rent it may charge its tenants and to only rent to tenants whose incomes are at or below a certain level. In short, Willow Bend is an affordable rental housing development.

Local tax assessors are required by statute to assess all the lands in their respective counties, to appraise the lands according to the "true value," and to assess the land in proportion to the true value. Mississippi Code Section 27-35-50(d) directs assessors to utilize the appraisal procedure set forth in the Appraisal Manual to arrive at the true value of an affordable rental housing development. The statute dictates that the procedure must require the appraisal be made according to actual net operating income attributable to the affordable rental housing development. The Appraisal Manual provides a model Income Approach to Value calculation and then states, "the monies received from the sale of the tax credits (subsidy) shall not be used in determining the true value of the property for ad valorem tax purposes."

Beginning in 2006, Humphreys County, despite the Appraisal Manual, included the value of the LIHTCs awarded to Willow Bend to determine its value for ad valorem tax purposes. This resulted in annual property tax bills of \$70,000 over the amount due when calculated according to the Appraisal Manual's formula. Humphreys County alleged the Income Valuation Method was an unconstitutional tax, citing Section 112 of the Mississippi Constitution: "Taxation shall be uniform and equal throughout the state." The County asserted that "Section 42 developments would be . . . in Class II along with completely private, multi-unit properties." The argument followed that affordable housing developments should be taxed the same as privately-owned market rate housing developments.

The Court recognized and defined fundamental differences between Willow Bend and completely private, multi-unit properties. "It has a different financing scheme, a restricted clientele, minimal liquidity, and very few financing avenues." The Court held that Willow Bend and traditional market rate multi-unit housing can and should be valued differently.

The case was reversed and remanded to the Humphreys County Circuit Court with instructions to refund all taxes erroneously collected since 2006. *Willow Bend* offers much needed relief for many affordable housing developments in Mississippi, and it provides some assurance that these developments, which operate with scarce resources, are viable going forward. Developers and owners of affordable housing should consult with local taxing authorities, tax collectors and tax assessors to ensure their developments are properly taxed. If

property was assessed incorrectly in a prior year, the owner should consult with its advisors to determine if the assessment can be challenged.

If you have questions about this decision or if you have any questions related to affordable housing and community development generally, please contact Jerry Johnson.