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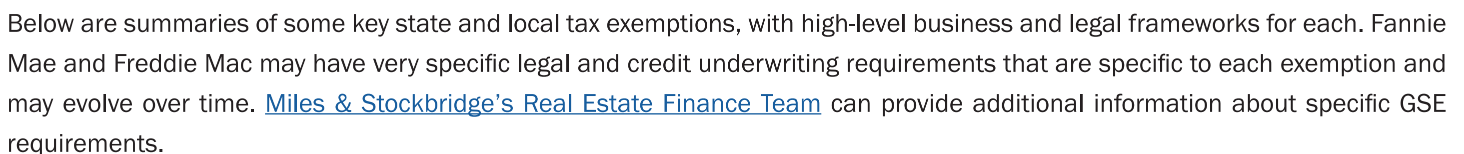
UNLOCKING VALUE: A MULTISTATE OVERVIEW OF AFFORDABLE HOUSING TAX EXEMPTIONS



Below are summaries of some key state and local tax exemptions, with high-level business and legal frameworks for each. Fannie Mae and Freddie Mac may have very specific legal and credit underwriting requirements that are specific to each exemption and may evolve over time. Miles & Stockbridge's Real Estate Finance Team can provide additional information about specific GSE requirements.

California

The statewide California Welfare Exemption creates a real estate tax exemption for eligible properties primarily based upon nonprofit ownership in the owner; receiving a subsidy/loan from a public agency; and recording a regulatory agreement restricting the property to low-income households. The exemption is calculated based on the percentage of units that are at or below 80% AMI and rent-restricted in accordance with TCAC guidelines.

The California Welfare Exemption is co-administered by the Board of Equalization, which validates the nonprofit eligibility status of the owner, and the local county assessors that validate the eligibility of the specific project. The California Welfare Exemption is commonly seen on LIHTC deals, but it is also utilized on non-LIHTC deals. Several public agencies will participate with owners on both preservation and new construction projects to satisfy the eligibility requirements of the California Welfare Exemption, including the California Municipal Housing Authority (CMHA), the Bay Area Housing Finance Authority (BAHFA) and the Housing Authority of the City of Los Angeles.

For non-LIHTC deals utilizing one of the aforementioned agencies, the agency will issue a minimal subordinate loan to satisfy the eligibility criteria of receipt of a direct subsidy or insured loan from a public agency, typically as small as $10,000. As an example, CMHA requires a $10,000 subordinate loan with a 30-year deed restriction, and BAHFA requires a $5,000 grant with a 55-year deed restriction. Because some of the area median incomes in California are so high, the rent restriction on an 80% AMI unit is not really viewed as creating affordable units, so there is a substantive review/feasibility process that these agencies will require to participate with an owner to create the applicable welfare exemption. BAHFA, for example, requires a rent study to show that rents are at a 10% discount to market rents.

Eligibility Criteria

a. Ownership must be through a nonprofit organization, or a nonprofit organization must be a partner in the owner.
b. Owner must receive a direct subsidy or an insured loan from a public agency.
c. Owner must record regulatory agreement restricting units to income and rent restrictions at 80% AMI.

Administration. Administered together by the BOE and county assessor. Annual filings required. The BOE will issue a clearance certificate confirming owner eligibility and the BOE will issue a supplementary clearance certificate confirming project eligibility. The county assessor determines use qualifications. Annual reporting is required.

Florida

Florida has created several tax exemption programs to encourage the development of affordable and workforce housing. The three most popular exemptions are summarized below.

FHFC 99 Year Abatement FS 196.1978(4)

Originally enacted in 2024, this exemption created a statewide exemption available to new projects that receive financing from Florida Housing Finance Corporation (FHFC) that are subject to a regulatory agreement with FHFC for 99 years. The exemption is proportional to the number of units that are restricted to tenants at or below 80% AMI, with a minimum of 70 units restricted to 80% AMI and 20% at or below 120% AMI. The most typical forms of FHFC financing used to qualify the property are bonds or subordinate debt financing, such as the SAIL Program.

It is important to note that an allocation of LIHTCs from FHFC is not sufficient to qualify the property. FHFC counsel is familiar with the requirements of the exemption program and will draft LURAs to comply with the minimum requirements of the program. Owners must apply with the Florida Department of Revenue each year.

Eligibility Criteria

a. Property must be either new construction, where a structure did not previously exist, or construction of a new improvement where the old structure was removed, all of which were completed within two years of the first application for the abatement.
b. Contain at least 70 units affordable to tenants at or below 80% AMI.
c. Be financed by and subject to a Restrictive Agreement with FHFC for a term of 99 years. The LURA must contain a penalty requiring repayment of the financing multiplied by the number of years remaining in the LURA if the affordability is not maintained. The LURA must restrict occupancy for some level of tenants at or below 120% AMI. FHFC's current regulations on implementing the penalty require zero affordability to be provided before levying the penalty.

Affordable Housing on Governmental Property – FS 196.19782

Enacted in 2025, this created a statewide exemption available to new projects which are developed on government-owned land subject to a ground lease with a private developer to create affordable housing. The exemption creates a 100% exemption to all ad-valorem taxes for the leased property.

Ground leases are becoming a popular avenue for larger municipalities in Florida, particularly Miami and Tampa, to redevelop urban areas but allows the city to retain ultimate control over the parcel to ensure the affordability remains. Owners must make apply with the Florida Department of Revenue each year.

Eligibility Criteria

a. Property must be new construction where a structure did not previously exist completed within five years of the first application for the abatement.
b. Contain at least 70 units affordable to tenants between 20% and 120% AMI.
c. Located on real property owned by a government entity and subject to a lease or restrictive agreement requiring the property to be leased for at least 30 years for the purposes of and predominately used for affordable housing.

Multifamily Project Exemption for Recorded Agreement with the Florida Housing Finance Corporation - FS 196.1978(2)

This exemption created a statewide tax abatement proportional to the number of units restricted for existing projects subject to a LURA with FHFC, up to a complete exemption for 100% affordable properties. The most common type of property eligible for this exemption is former LIHTC properties that received an FHFC subordinate loan entering their extended use period. Owners must apply with the Florida Department of Revenue each year.

Eligibility Criteria

a. Be constructed and occupied for at least 15 years prior to the initial application.
b. Contain at least 70 units affordable for tenants below 80% AMI.
c. Be subject to a recorded agreement with FHFC that restricts occupancy to tenants at or below 80% AMI.

Homes for the Aged/Permanently Disabled – FS 196.1975

This exemption created a statewide tax abatement proportional to the number of units restricted for existing projects that provide housing to seniors and are controlled by a nonprofit corporation. The exemption is well-known in the market, and there are a number of nonprofit corporations that partner with developers to meet the structuring requirements of the statute but allow the private developers sufficient control over the underlying investment. The exemption can reach 100% if all units meet the requirements. Nonprofits must apply with the Florida Department of Revenue each year.

Eligibility Criteria

a. Property must be owned by a nonprofit corporation or a limited partnership whose sole general partner is a nonprofit corporation.
b. At least 75% of the units are occupied by tenants who are 62 years or age or older, or totally and permanently disabled, each as of January 1 of the applicable tax year.
c. Tenants must meet income limits set in the statute. The limits have not been updated for inflations, but Florida Department of Revenue publishes an annual schedule with the applicable limits.
d. Tenants must provide income certifications. Department of Revenue provides a form of tenant affidavits for owners to use.

Each of these exemptions provides avenues for developers to maximize their ability to support affordable housing in the state for a wide variety of projects but can present unique challenges for various financing partners.

North Carolina

North Carolina (N.C. Gen Stat. §105-278.6(a)(8)) grants a statewide exemption from ad valorem property taxes to an owner who is a nonprofit organization providing housing that is actually and exclusively used by low- or moderate-income residents. Notwithstanding the exclusive-use requirements of the statute, a local assessor may grant partial exemption to the portion of the property that meets the statutory requirements.

Low-income households are defined in other portions of the North Carolina statutes as persons at or below 60% of AMI. While “moderate income households” is not defined anywhere in statute, localities in North Carolina have historically used the HUD definition of "moderate income", which is persons at or below 80% AMI.

A regulatory agreement is a typical feature. Similar to South Carolina, owners will often joint venture with a nonprofit to satisfy the nonprofit ownership requirement. Local legal precedent shows that this test can be met when a nonprofit entity, or a wholly owned subsidiary, exhibits sufficient levels of control and ownership as laid out in *In re Appeal of Blue Ridge Housing of Bakersville LLC*, 226 N.C. App. 42 (2013). If a nonprofit serves as a managing member of a limited liability company and the governing documents grant such nonprofit a meaningful level of control, precedent indicates that this will satisfy the nonprofit requirement.

The governing agreement additionally should contain statements that the purpose of the entity is to further the provision of affordable housing. Ordinarily, there also will be a right of first refusal for the nonprofit to purchase the property. Like South Carolina, an owner will need to demonstrate continued compliance with the North Carolina statute for the exemption to continue. Once the eligibility criteria are met, an application and supporting documentation are filed with the local county assessor.

Eligibility Criteria

a. Owner is a nonprofit organization or an entity qualifying under applicable legal interpretations.

b. Property provides housing to individuals or families with low or moderate incomes.

c. Property must be actually and exclusively used for charitable purposes.

Ohio

The Ohio Community Reinvestment Area program is an economic development tool administered by municipal and county governments that provides real property tax exemptions for property owners who renovate existing or construct new buildings. Community Reinvestment Areas are areas of land in which property owners can receive tax incentives for investing in real property improvements.

The program is delineated into two distinct categories – those created prior to July 1994 (pre-1994) and those created after law changes went into effect after July 1994. The Community Reinvestment Area (CRA) Program is a direct incentive tax exemption program benefiting property owners who renovate existing or construct new buildings. The program permits municipalities or counties to designate areas where investment has been discouraged as a CRA to encourage revitalization of the existing housing stock and the development of new structures.

Local municipalities or counties can determine the type of development to be supported by the CRA Program by specifying the eligibility of residential, commercial and/or industrial projects. The exemption level is 100% for pre-1994 properties and up to 100% for post-1994 properties. For post-1994 properties, the local school district consent is required if the exemption exceeds 75%.

The exemption is for a term of up to 15 years for new construction for projects that are pre-1994 and up to 12 years for rehabilitation projects that are pre-1994. For new construction and rehabilitation projects that are post-1994, the exemption is up to 15 years. A city must petition the Ohio Department of Development for confirmation that the geographical area is an area in which investment in housing has traditionally been discouraged. It is important to check the CRA Agreement to confirm there are no other requirements such as an affordability component.

An amendment to the CRA legislation was adopted in 2024 that allows an owner to pay to exempt out of any affordability requirements in a written agreement. The CRA abatement runs with the land. Some CRA Agreements require the consent of the city to inure to the benefit of a successor owner. In our experience, such consent requirements are purely administrative and, therefore, the lender can still underwrite to the CRA abatement.

South Carolina

South Carolina (SC Code Section 12-37-220(B)(11)(e)) granted a statewide 100% exemption from ad valorem property taxes to an owner who is a nonprofit housing corporation, or an instrumentality of such corporation, that owns property devoted to providing housing to low or very low-income residents. In addition, the property must satisfy the safe-harbor requirements of Revenue Procedure 96-32, set forth below.

A nonprofit does not have to own 100% of the property to satisfy the nonprofit ownership requirement. Rather, owners will often joint venture with a nonprofit corporation and demonstrate that the ownership entity is an "instrumentality" under the statute. The South Carolina Department of Revenue (DOR) has historically determined that if a nonprofit housing corporation is the sole member of the general partner or managing member of an owner, such owner would be an eligible instrumentality, so long as the nonprofit has control over the owner. In addition, the property must be affordable and meet the safe harbor requirements, but a regulatory agreement is not technically required to satisfy the criteria of the statute.

Once an owner meets the criteria set forth in the statute, an application is filed with the DOR, the agency that administers the exemption. The exemption does not expire or need to be refiled each year. However, DOR may request information to confirm ongoing compliance with the statutory criteria, and many nonprofit owners submit a self-certification to demonstrate compliance.

Eligibility Criteria

a. Owner is a nonprofit housing corporation or instrumentality of a non-profit housing corporation.
b. Property is devoted to providing housing to low or very low-income residents. (Note that a mixed-use property with commercial or retail space may not qualify as "devoted" to affordable housing).
c. Satisfaction of the safe-harbor provisions of Revenue Procedure 96-32
   (i) At least 75 percent of the units are occupied by residents that qualify as low-income: and (ii) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit.
   (ii) Property is occupied by poor and distressed residents.
   (iii) Property is affordable to its residents, which would be satisfied by rents that do not exceed 30% of the tenant's income; and
   (iv) If a property consists of multiple buildings, either each building must share the same grounds, or each must separately satisfy the requirements above.

Texas

Chapter 392 of the Texas Local Government Code

Chapter 392 of the Texas Local Government Code (Local Code) allows for exemption from ad valorem real estate taxes provided that certain criteria are met as outlined below. There is no formal application needed to qualify for the exemption. It is given as a matter of right provided the criteria are met.

Eligibility Criteria

The property must be used for a sufficient "public purpose." Section 392.005 explicitly provides that the property of a housing authority is public property used for an essential public and governmental purpose. Therefore, to satisfy this part of the criteria for the exemption, the fee title is typically conveyed to the applicable local housing authority. The housing authority then immediately ground leases the property back to the borrower.

Texas courts have ruled that if the housing authority owns sufficient "equitable title" to the property, then the "public purpose" requirement will be satisfied notwithstanding the ground lease to the borrower. In addition to the ground lease, the housing authority or a nonprofit entity controlled by the housing authority typically serves as the managing member of the borrower to satisfy the "equitable title" test.

At least 50% of the units must be reserved for occupancy by individuals and/or families earning less than 80% of AMI. This requirement is typically reflected in either the ground lease or a stand-alone regulatory agreement.

No more than 20% of the units may be used as a unit for which the owner receives a public housing operating subsidy but does not include a unit for which payments are made to the borrower under the Section 8 Housing Choice Voucher Program.

The exemption could theoretically be perpetual so long as the criteria continue to be met.

Chapter 394 of the Texas Local Government Code (HFC)

Chapter 394 of the Local Code allows for exemption from ad valorem real estate taxes provided that certain criteria are met as outlined below. This chapter deals specifically with Housing Finance Corporations (HFCs), which are public, nonprofit corporations.

Eligibility Criteria

a. The property must be located in an area where the HFC is authorized to own real property, typically within the municipality or county that sponsored the creation of the HFC.
b. The property must be owned by the HFC and then be ground leased or master leased to the borrower. There is a similar equitable title consideration as noted above, and the HFC will be the managing member or general partner of borrower in addition to being the ground lessor.
c. Additionally, either:
   (i) 10% of units must be reserved for individuals or families earning not more than 60% of AMI, and 40% of units must be reserved for individuals or families earning not more than 80% of AMI; or
   (ii) 10% of units must be reserved for individuals or families earning not more than 50% of AMI, and 40% of units must be reserved for individuals or families earning not more than 100% of AMI.
d. Rents must be restricted as follows:
   (i) for units restricted to 50% or lower AMI tenants, 30% of 50% of AMI
   (ii) for units restricted to 60% or lower AMI tenants, 30% of 60% of AMI
   (iii) for units restricted to 80% or lower AMI tenants, 30% of 80% of AMI
   (iv) for units restricted to 100% or lower AMI tenants, 30% of 100% of AMI
e. There are also certain administrative matters that must be satisfied, such as the board of the HFC approving resolutions for the development of the property; completion of an underwriting assessment to confirm; affirmative marketing of available units to individuals and families participating in the housing choice voucher program; and other similar type administrative matters.
f. A one-time application on a form promulgated by the comptroller must be made to the Texas Department of Housing and Community Affairs and to the chief appraiser for the applicable appraisal district.

Chapter 303 of the Texas Local Government Code (PFC)

Chapter 392 of the Texas Local Government Code (Local Code) allows for exemption from ad valorem real estate taxes provided that certain criteria are met as outlined below. There is no formal application needed to qualify for the exemption. It is given as a matter of right provided the criteria are met.

Chapter 303 of the Local Code allows for exemption from ad valorem real estate taxes provided that certain criteria are met as outlined below. This chapter deals specifically with Public Finance Corporations (PFC), a corporation created by a municipality, county, school district, housing authority or special district that can issue bonds under Chapter 303, finance public facilities or loan the proceeds of the obligations to other entities to accomplish the purpose of the sponsor. A nonprofit that is created by a housing authority is also considered to be a PFC under Chapter 303. A public facility is any real, personal or mixed property or an interest in property devoted or to be devoted to public use.

Eligibility Criteria

a. 10% of units must be reserved for individuals or families earning not more than 60% of AMI, and 40% of units must be reserved for individuals or families earning not more than 80% of AMI.
b. There must be a recorded restriction agreement which memorializes the income restrictions noted above and ensures that the restrictions are in effect for at least 10 years.
c. Rents must be restricted as follows:
   (i) for units restricted to 60% or lower AMI tenants, 30% of 60% of AMI
   (ii) for units restricted to 80% or lower AMI tenants, 30% of 80% of AMI
d. Annual compliance audit reports are required to be submitted to the Texas Department of Housing and Community Affairs and to the chief appraiser for the applicable appraisal district.

e. For an occupied multifamily development that is acquired by a PFC, the exemption lasts for 30 years. Otherwise, the exemption lasts for 60 years from the date the property receives final approval for the exemption.
f. There are also certain administrative matters that must be satisfied, such as providing notice to the governing body of the applicable taxing authority at least 30 days before development/acquisition or a public hearing; the affirmative marketing of available units to individuals and families participating in the housing choice voucher program; notifying local housing authorities of the property's acceptance of tenants in the housing choice voucher program; and other similar-type administrative matters.

Bonds for Title

Multiple states, including Georgia, Kentucky and Missouri, statutorily create tax exemptions for projects that are ground leased from a municipal entity and developed with bond financing. In many of these jurisdictions a cottage bonds-for-title industry has sprung up. While implementation is jurisdiction-specific, the overall structure is consistent.

To benefit from the exemption, the project owner transfers fee title to the municipal entity. Depending on the jurisdiction, fee title may be vested in a city, county or a development authority. The project is immediately leased back to the project owner. The municipal entity simultaneously issues tax exempt industrial revenue bonds. The project owner purchases the bonds, becoming both the beneficiary of and holder of the bonds. The ground lease will provide that the monthly bond payment is also the ground lease base rent payment. As both the beneficiary of and holder of the bonds, the project owner would pay the monthly bond payment to itself. The structure is a fiction; there is no flow of funds.

The only payments the project owner is typically expected to make are amounts equal to the fees and charges due to the bond trustee, which is usually a third-party bank. When the bonds are redeemed, the ground lease is terminated. The ground lease will provide that when the lease is terminated the fee estate reverts to the project owner either automatically or for a nominal sum.

Municipalities often use this structure to encourage development or rehabilitation of projects located in economically distressed areas. It is important that the loan documents are modified to have the borrower assign its interest in the bonds to the lender as collateral for the loan so that in the context of a foreclosure the lender is permitted to foreclose into the leasehold estate and simultaneously become holder of the bonds, keeping the tax exemption in place.

Each issuer typically has their own preference for acceptable form documents, so it is beneficial for lender counsel to have prior experience with the issuer and Fannie Mae or Freddie Mac to facilitate a timely approval of the applicable documents.

Eligibility Criteria

a. New construction or moderate rehabilitation.
b. Located on real property owned by a municipal entity subject to a ground lease.
c. Industrial revenue bonds issued to and purchased by the project owner.

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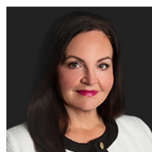

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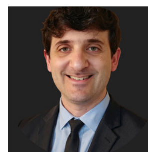

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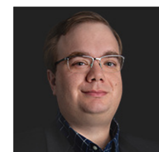

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