

From: Daniel Wolfe <dwolfe@rvmrlaw.com>
Sent: Monday, September 11, 2023 4:13 PM
To: DORPTO <DORPTO@floridarevenue.com>
Cc: Julie Schwartz, <jschwartz@rvmrlaw.com>
Subject: PTO Rule Development Workshop - Form DR-504AFH - attorney comments

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Hello,

My name is Dan Wolfe and I am an ad valorem tax attorney representing clients all across the state of Florida. I work at Rennert Vogel Mandler & Rodriguez, P.A. and our group has nine attorneys working solely in ad valorem taxation with over 30 years of experience. On behalf of our group, I wanted to propose the following comments/changes to form DR-504AFH. Please see the attached marked up form DR-504AFH with our comments in **RED**.

I am happy to discuss these comments at your convenience.

Best,
Dan

Daniel Wolfe, Esq.



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**AD VALOREM TAX EXEMPTION APPLICATION AND RETURN
FOR MULTIFAMILY PROJECT AND
AFFORDABLE HOUSING PROPERTY**

DR-504AFH
R. xx/xx N. 11/24
Rule 12D-16.002, F.A.C.
Effective xx/xx 11/24
Page 1 of 7

Sections Section 196.1978 and 196.1979, Florida Statutes

FLORIDA

This application is for use by owners of affordable housing for persons or families with certain income limits, as provided in sections (ss.) section (s.) 196.1978 and 196.1979, Florida Statutes (F.S.), to apply for a (select one):

- Affordable Housing Property Exemption for Non-Profit, section 501(c)(3) Qualified Owners:
Complete page 2 and attach with signature page 1 and attach required documentation from page 7. Ref: 196.1978(1) (a)
- Affordable Housing Land Exemption for Non-Profit, section 501(c)(3) Qualified Owners:
Complete page 3 and attach with signature page 1 and attach required documentation from page 7. Ref: 196.1978(1)(b)
- Multifamily Project Exemption for Recorded Agreement with the Florida Housing Finance Corporation:
Complete page 4 and attach with signature page 1. Ref: 196.1978(2)
- Newly Constructed Multifamily Project Exemption:
Complete page 5 and attach with signature page 1. Ref: 196.1978(3)
- County & Municipal Affordable Housing Exemption on Multifamily Properties:
Complete page 6 and attach with signature page 1. Ref: 196.1979

This completed application, including all required attachments, must be filed with the county property appraiser on or before **March 1 of the current tax year.**

General Information (ALL applicants must complete this section)			
Applicant name			
Mailing address		Physical address, if different	
Business phone		County where property is located	
Parcel identification number or legal description			

Signature (ALL applicants must complete this section.)		
<p>Florida law requires property appraisers to determine whether an organization uses the identified property for exempt purposes before granting an ad valorem tax exemption. Property appraisers will notify you if additional information or documentation is needed to determine eligibility for the exemption requested.</p> <p>I certify all information on this application, including any attachments, is true, correct, and in effect on January 1 of the tax year.</p>		
<p>_____</p> <p>Signature</p>	<p>_____</p> <p>Title</p>	<p>_____</p> <p>Date</p>

For use by property appraisers	<u>Application Number</u>
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COMMENTS: It would be helpful to include the Florida Statute references for the various exemption types.

Affordable Housing Property Exemption for Non-Profit, section 501(c)(3) Qualified Owners

(Complete this section if you are applying for an exemption from ad valorem tax on affordable housing property.) (See section 196.1978(1)(a), F.S., for requirements)

1. On January 1 of the current year, was the applicant a not-for-profit corporation, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, and in compliance with Revenue Procedures 96-32, 1996-1 C.B. 717? Yes No

If **yes**, attach a copy of the determination letter issued by the Internal Revenue Service, a copy of the Articles of Incorporation, as amended, and a copy of the Bylaws, as amended.

If **no**, attach a copy of the applicant's Articles of Organization, as amended, and other organizing documents evidencing the organization's purpose.

2. **On January 1 of the current year, was the property owned entirely by the applicant?**

Yes No

3. Does the property provide affordable housing to eligible persons as defined by s. 159.603, F.S.?

Yes No

4. Does the property provide affordable housing to persons or families meeting the income limits specified in s. 420.0004, F.S.? Yes No

5. **Florida law provides for exemption of property where affirmative steps are being taken to prepare the property to provide affordable housing. The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to providing affordable housing. [s. 196.196(5)(a)] I am claiming affirmative steps.** Yes No

If yes, attach a copy of documentation of the affirmative steps.

Affordable Housing Land Exemption for Non-Profit, section 501(c)(3) Qualified Owners
(Complete this section if you are applying for an exemption from ad valorem tax on land owned but leased and used for affordable housing.) (See s. 196.1978(1)(b), F.S., for requirements)

1. On January 1 of the current year, was the applicant a not-for-profit corporation, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, and in compliance with Revenue Procedures 96-32, 1996-1 C.B. 717? Yes No

If **yes**, attach a copy of the determination letter issued by the Internal Revenue Service, a copy of the Articles of Incorporation, as amended, and a copy of the Bylaws, as amended.

If **no**, attach a copy of the applicant's Articles of Organization, as amended, and other organizing documents evidencing the organization's purpose.

2. On January 1 of the current year, was the land owned entirely by the applicant and leased for a minimum of 99 years for the purpose of, and predominantly used for providing affordable housing to persons or families meeting the income limits specified in ~~s. 420.0004, F.S.?~~ s. 196.1978(1)(b)

(s. 196.1978(1)(b)) For qualifying purposes the square footage of the improvements used to provide the affordable housing must be greater than 50% of the square footage of all improvements on the land.

Yes No

If **yes**, state the square footage of the improvements used to provide the affordable housing:

State the square footage of all improvements on the land:

3. Florida law provides for exemption of property where affirmative steps are being taken to prepare the property to provide affordable housing. The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to providing affordable housing. [s. 196.196(5)(a)] I am claiming affirmative steps. Yes No

If **yes**, attach a copy of documentation of the affirmative steps.

Comment: Regarding change in subsection 2 above, this should reference the income limits in s. 196.1978(1)(b), which then references 420.0004

Multifamily Project Exemption for Recorded Agreement with the Florida Housing Finance Corporation

(Complete this section if you are applying for an exemption for a multifamily project for affordable housing to persons or families with certain income limits.)

(See s. 196.1978(2), F.S., for requirements)

1. On January 1 of the current year, how many units of the multifamily project are used to provide affordable housing? _____

2. Is the property subject to an agreement with the Florida Housing Finance Corporation which provides the property will be used for affordable housing property for extremely-low-income, very-low-income, or low-income limits? Yes No

3. Is the agreement with the Florida Housing Finance Corporation recorded in the official records of the county where the property is located? Yes No

4. On January 1 of the current year, has at least 15 years of the recorded agreement been completed? Yes No

DRAFT

Newly Constructed Multifamily Project Exemption

Complete this section if you are applying for an exemption from ad valorem tax on a newly constructed Multifamily Project substantially completed within the earlier of 5 years before this application or the first application for certification from Florida Housing Finance Corporation, that contains more than 70 units. On January 1 of the current year:
(See s. 196.1978(3), F.S., for requirements)

1.* Were the affordable housing units rented for an amount that does not exceed either the rent limit chart published by the U.S. Department of Housing and Urban Development or 90 percent of fair market rent as determined by a rental market study, whichever is less? Yes No

Rent on multifamily units cannot exceed the amount specified by the most recent multifamily rental programs income and rent limit chart.

The rental market study must identify the fair market value rent of each unit for which a property owner seeks an exemption. (S. 196.1978(3)(m), F.S.)

2. How many of the units were occupied by tenants with an income greater than 80% but not more than 120% of the median annual adjusted gross income for households within the metropolitan statistical area or the county in which the person or family resides?

Qualified property receives an ad valorem property tax of 75% of the assessed value.

of the unit and proportionate land

3. How many of the units were occupied by tenants with an income that does not exceed 80% of the median annual adjusted gross income for households within the metropolitan statistical area or the county in which the person or family resides?

Qualified property is exempt from ad valorem property taxes.

units and the proportionate land are

4. How many of the units were vacant but, in the previous year were occupied by a tenant, qualified for the exemption, otherwise qualify, and the use of the units is restricted to providing affordable housing, and reasonable effort is being made to lease the units to eligible persons or families.

5. Attach a certification notice determined by the Florida Housing Finance Corporation.

Replace with item 7 from p. 6

***Item #1: Submit copies of either:**

- Most recent multifamily rental programs income and rent limit chart posted by the Corporation and derived from the Multifamily Tax Subsidy Projects Income Limits Published by the United States Department of Housing and Urban Development

Or,

- A rental market study of the fair market value rent as determined by a rental market study conducted by an independent, certified General appraiser. The appraiser must follow standards of professional practice and use comparable property within the same geographic area and of the same type as the property for which the exemption is sought.

County & Municipal Affordable Housing Property Exemption on Multifamily Properties

(See s. 196.1979, F.S.) Complete this section if you are applying for an exemption from ad valorem tax based on a county/municipality ordinance.

- Qualified ~~property~~ ^{units and their proportionate land} may receive 75% ad valorem tax exemption of the assessed value if fewer than 100% of the multifamily units are used to provide affordable housing.
- Qualified ~~property~~ ^{units and their proportionate land} may receive 100% ad valorem tax exemption if 100% of the multifamily units are used to provide affordable housing.

On January 1 of the current year:

1. How many of the units were occupied by tenants with an income greater than 30% but not more than 60% of the median annual adjusted gross income for households within the metropolitan statistical area or the county in which the person or family resides?

3. How many of the units were occupied by tenants with an income that does not exceed 30% of the median annual adjusted gross income for households within the metropolitan statistical area or the county in which the person or family resides?

4. How many of the units were vacant but, in the previous year were occupied by a tenant, qualified for the exemption, otherwise qualify, and the use of the units is restricted to providing affordable housing, and reasonable effort is being made to lease the units to eligible persons or families.

5. What is the total number of residential units contained within the multifamily project?

The multifamily project must contain 50 or more units.

6. What percent of the total residential units were used for affordable housing?

The multifamily project must have at least 20% of the total units used to provide affordable housing.

7. Were the affordable housing units rented for an amount that does not exceed either the rent limit chart published by the U.S. Department of Housing and Urban Development or 90 percent of fair market rent as determined by a rental market study, whichever is less? Yes No

Units must be rented for an amount no greater than the rent limit chart.

8. Has the property had any of the following:

- Cited for code violations on three or more occasions in the past 24 months before submission of this application? Yes No
- Any code violations that have not been property remedied by the property owner before the submission of this application? Yes No
- Any unpaid fines or charges relating to the cited code violations? Yes No

9. Attach a copy of the certification of qualified property from the local entity with this application for exemption. Applications for certification are determined by the local entity. If you are applying for both a county and a municipal exemption, attach both certifications.

Affordable Housing Property Exemption - Information and Documentation Required

1. Provide a copy of the organization's most recent financial statement.
2. Provide a copy of the organization's most recent federal tax return (if filed).
3. Provide the following fiscal and other records showing in reasonable detail the financial condition, record of operation, and exempt and nonexempt uses of the property, where appropriate, for the immediately preceding fiscal year:
 - a. A schedule of payments or advances, directly or indirectly, by way of salaries, fees, loans, gifts, bonuses, gratuities, drawing accounts, commissions or other compensation (except for reimbursements for reasonable out-of-pocket expenses incurred on behalf of the applicant) to
 - any officer, director, trustee, member, or stockholder, or
 - any person, company, or other entity directly or indirectly controlled by the applicant.
 - b. An explanation for the guarantee of any loan to or obligation of any officer, director, trustee, member, or stockholder of the applicant or any entity directly or indirectly controlled by the applicant.
 - c. Any contractual arrangement by the applicant or any officer, director, trustee, member, or stockholder of the applicant regarding the
 - rendition of services;
 - provision of goods or supplies;
 - management of the applicant;
 - construction or renovation of the property;
 - procurement of the real, personal, or intangible property; and
 - other similar financial interest in the affairs of the applicant.
 - d. A schedule of payments or amounts for
 - salaries for operation;
 - services received;
 - supplies and materials;
 - reserves for repair, replacement, and depreciation of the property;
 - any mortgage, lien, and other encumbrances; and
 - other purposes (explain).
 - e. A schedule of charges for services rendered by the applicant. If the charges for services rendered exceed the value of the services rendered, information on whether the excess is used to pay maintenance and operational expenses furthering its exempt purpose or to provide services to persons unable to pay for the services.
 - f. An affirmative statement that no part of the property, or no part of the proceeds of the sale, lease, or other disposition of the property, will inure to the benefit of its members, directors, or officers, or to any person or firm operating for a profit or for a nonexempt purpose.

Need Help?

In Florida, local governments are responsible for administering property tax. The best resource for assistance is the property appraiser in the county where the property is located. Find websites for county property appraisers at:

FloridaRevenue.com/Property/Pages/LocalOfficials.aspx

From: Llerena, Victoria (PA) <vml@mdcpa.net>

Sent: Tuesday, September 12, 2023 8:57 AM

To: DORPTO <DORPTO@floridarevenue.com>

Cc: Solis, Lazaro (PA) <SolisL@mdcpa.net>

Subject: Public comments from the Miami-Dade County Property Appraiser's Office

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Included below are public comments from the Miami-Dade County Property Appraiser's Office for the 9/12/2023 PTO Rule Development Workshop:

On page 3 of 7, the Department is implementing the provisions of s. 196.1978(1)(b) into its application. For purposes of calculating the exemption under this subsection, "the square footage of the improvements used to provide affordable housing must be greater than 50% of the square footage of all improvements on the land." However, if the property is undergoing affirmative steps and there is no improvement yet, how does the property appraiser confirm and calculate the exemption amount? Although s. 196.196 allows for affirmative steps, s. 196.1978(1)(b) seems to contemplate that there is an improvement.

On page 4 of 7, the Department is implementing the provisions of s. 196.1978(2). I would suggest in #3 that the application be required to attach a copy of the recorded agreement or identify the OR book and Page where the agreement is recorded. For #4, to implement the legislative changes from the 2022 session, the question should be amended to include if it has been 15 years of the recorded agreement or the certificate of occupancy has been issued.

On page 6 of 7, question #7 should clarify what rent limit chart is being referred to in the question. For the state wide exemption, the applicant is required to provide either the rent limit chart or the rental market study. For the county/municipal exemption the application does not include the requirement to attach the rent limit chart or rental market study. Is there a reason for the difference? Prompt #8 appears to have a typo- "property" should be "properly."

Thank you for your time.

Victoria Llerena, Esq., CFE



P.A. Legal Manager

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September 12, 2023

COMMENT FROM MEGHAN POSKEY (Leon County Property Appraiser office)

Question on DR-504AFH - I think a guide or chart of the various affordable housing exemptions may be helpful. Applicants do not always know how to navigate or choose the appropriate application. See DR-501 eligiblity requirements and IRS 1040 Guide, <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf>

From: Llerena, Victoria (PA) <vml@mdcpa.net>

Sent: Thursday, September 14, 2023 6:24 PM

To: DORPTO <DORPTO@floridarevenue.com>

Cc: Solis, Lazaro (PA) <SolisL@mdcpa.net>

Subject: Follow up public comments from the Miami-Dade County Property Appraiser's Office

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During Tuesday's PTO Rule Development Workshop, a question arose regarding whether the language in SB 102 contemplates that land was included within the exemptions created by s. 196.1978(3) and s. 196.1979, Fla. Stat. It is clear that land is not included within the framework of these statutes. Specifically, section 196.1978(3) exempts "[q]ualified property used to house natural persons," while section 196.1979(1)(b) exempts the qualifying percentage of the assessed value of the project's "residential unit(s)." Therefore, a plain reading of these statutes makes clear that the Legislature only intended for these exemptions to apply to the "units," as the portion of the property that houses natural persons.

Conversely, common areas, including land and shared amenities such as pools and recreational spaces (which may also be used by persons who do not meet the AMI requirements within the scope of these new affordable housing exemptions) are not included as part of the units used to house natural persons, and thus cannot be exempted from taxation.

The failure to include common areas (including land) from the scope of these two statutes was not a mere oversight. Indeed, there are at least two concrete examples of different assessment statutes within which the Legislature expressly included land within the scope of the statutory framework.

First, section 196.1975(12) relating to Homes for the Aged, expressly provides that "[w]hen it becomes necessary for the property appraiser to determine the value of a unit, he or she shall include in such valuation the proportionate share of the common areas, including the land, fairly attributable to such unit, based upon the value of such unit in relation to all other units in the home, unless the common areas are otherwise exempted by subsection (8)." Second, section 193.0237(3) relating to the assessment of multiple parcel buildings provides that "[t]he property appraiser, for assessment purposes, must allocate all of the just value of the land among the parcels in a multiple parcel building in the same proportion that the just value of the improvements in each parcel bears to the total just value of all the improvements in the entire multiple parcel building."

Thus, the fact that the Legislature has expressly provided for the inclusion and calculation of land within the scope of the assessment and/or exemption of real property in the above-referenced statutes, but failed to do so within the language of either sections 196.1978 and 196.1979 conclusively demonstrates that the Legislature did not intend for the land to be included in the exempt value for these statutes.

Finally, the intent to exclude common areas (including land) from the scope of these statutes is corroborated by the lack of any statutory guidance for property appraisers on how to calculate their exempt value.



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