

# Don't Be Afraid to Protest Property Tax Assessments

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***“Analyze the costs and potential tax savings associated with an appeal to ensure that the protest makes economic sense... .”***

By **Gilbert D. Davila, Esq.** - as published by Affordable Housing Finance - News Headlines Online, April 2010

Low-income housing tax credit (LIHTC) property owners must monitor their tax valuations without fail, especially given the current economic climate. When they receive their property tax assessments, owners should ask themselves the following questions:

## Should I appeal?

LIHTC owners should familiarize themselves with valuation laws and the definition of market value in their taxing jurisdiction before deciding whether to appeal an assessment. Taxable value can hinge on how the assessor treats tax credits.

Analyze the costs and potential tax savings associated with an appeal to ensure that the protest makes economic sense. Most successful valuation appeals consist of attacking errors made by the assessor, so consider the time, resources, and documents that will be required to make an effective case.

## Is my data correct?

Assessors' records frequently misstate a property's age, square footage, net leasable area, number of rental units, unit mix, and amenities. Such errors can significantly increase an assessment.

Providing a current rent roll and perhaps a site plan to the assessor can help to correct these common inaccuracies. Improving the accuracy of the assessor's records is the simplest path to a lower tax assessment.

How did the assessor arrive at my valuation?

Owners must question the assessor's approach to determining value and help the assessor appreciate the unique challenges facing LIHTC owners. The most common mistake an assessor will make when deriving an LIHTC property's market value is to treat the asset like a traditional multifamily complex.

The following are talking points to help property owners and their assessors to distinguish LIHTC properties from a typical apartment complex:

- **Restrictions:** The Land Use Restriction Agreement (LURA) and LIHTC regulations limit the property's income potential, and penalties for violations are severe. Rental restrictions cap rent per unit at much lower rates than comparable conventional properties are able to charge. Resident restrictions increase vacancy risk and complicate marketing efforts.

- **Expenses:** Overhead is higher for LIHTC owners because they must meet certain reporting, record-keeping, and documentation edicts beyond conventional practice. The median income growth rate dictates rental rates, so when expenses growing at the rate of inflation rise faster than median incomes, a property's net operating income can decrease.

- **Iliquidity:** Tax credits come with many restrictions. An owner cannot sell, transfer, or exchange the property unless they obtain government approval and meet certain conditions. In addition, the LURA dictates who the property can be sold to, and the property's restrictions survive a sale.

The income tax benefits associated with the tax credits expire after 10 years, but the transferability restrictions may continue for another 20 years. These factors make for an extremely illiquid asset especially in today's economic environment.

- **Intangible value:** Tax credits are not a benefit attributable to the real estate and are thus intangible value that should not be a component of the market value assessment. Owners should be prepared to provide the assessor with a copy of the LURA for the property and argue that the unique characteristics of the LIHTC project warrant a deviation from conventional appraisal methods.

Did the assessor consider equality and uniformity? Most jurisdictions require that assessments among comparable properties be equal and uniform. The fact that assessors often value LIHTC properties without considering the assessment of like projects presents an additional opportunity for owners to argue for a reduced value.

A tax credit property should fall within a uniform range of values when compared with other LIHTC properties and not with conventional apartment projects. Owners should compare their property's assessment to other LIHTC properties on a square-footage basis. If an owner's property is assessed disproportionately higher, then the owner can argue for a value reduction based on equality and uniformity, regardless of the assessor's "market value" claims.

The decision to appeal a tax assessment can yield significant tax savings when owners ask themselves the appropriate questions, identify inaccuracies, and show assessors the error of their ways.



**Gilbert Davila** is a partner with the Austin, Texas, law firm **Popp, Gray & Hutcheson**. The firm devotes its practice to the representation of taxpayers in property tax disputes and is the Texas member of the American Property Tax Counsel, the national affiliation of property tax attorneys. Davila can be reached at [gilbert@property-tax.com](mailto:gilbert@property-tax.com).

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