

February 3, 2015

**To: House Ways and Means Committee**  
**Re: Miscellaneous Tax Bill Proposed revision to 32 VSA Sec. 5404a (a)(6)**  
**10% exemption for portions of qualified rental units**  
**From: Sarah Carpenter, Executive Director.**

In the proposed Miscellaneous Tax Bill, the Tax Department is suggesting an amendment to § 5404a (a)(6) – a provision that allows “an exemption of a portion of the value of a **qualified rental unit building**”. (Qualified rental units are certain units subject to rent restriction under state or federal law.) The Tax Dept. maintains that, unless the current statutory language is changed, this “exemption” might expire and cannot be renewed. We had this discussion last year with the Tax Dept. and thought this issue had been clarified. **It is VHFA’s clear understanding that the exemption does not expire**, and I hope the General Assembly can agree and confirm this.

This “exemption” was **adopted as part of Act 68 to compensate for the fact that rent restricted affordable housing units were to be taxed under the higher non-homestead rate**. The Tax Dept. publications that summarize this provision, say that it “**applies to fiscal years 2005 and after,**” with **no mention of expiration**.

At the time of Act 60 and 68, the affordable housing community did not ask for an exemption, but wanted to be put in a residential rate category that more appropriately reflected the use of the property. It was the Tax Dept. that suggested that a 10% “exemption” on value would get the projects to a fairer rate. **I am not aware of any discussions about a onetime exemption or non-renewal as a fix for the impact of the split rate.**

The original Act that passed in 2003 with this provision had no timelines, and a requirement that “the commissioner of taxes shall issue a certificate of education tax reduction upon presentation by the taxpayer of information which the commissioner shall require.” It was presumed this would be done annually. However, the Tax Dept. (Bob Gross and Terry Knight) raised concerns that they did not have the knowledge to issue the certificates, nor the capacity to issue what was presumed to be annual certificates. VHFA was asked by the Tax Dept. to assist with this. We all agreed that annual certifications might not be necessary because most projects receiving the certifications would be subject to long term rent contracts and subsidy covenants.



The Tax Dept. did express a concern about what to do if a project changed or was no longer affordable. The majority of our projects have permanent subsidy covenants that run with the land; we agreed those did not need annual certifications. Those would receive a renewal notice every 10 years if the covenants or restrictions ran longer than 10 years. If the restrictions are less than 10 years they would receive a shorter term certification. If the project is transferred in that term the new owner must notify us and we would issue a new certification. In 2004, Act 68 was amended to reflect these changes.

Since 2004, VHFA has sent out renewal notices and certifications to project owners based on the information we have received. **The form of the letter that identifies the renewal process has been approved by the Tax Dept. every year, and VHFA and the project owners have never been told that an "exemption" certification cannot be renewed.** I have reviewed this with three VHFA staff involved with program, as well as with Erhard Mahnke of the Vermont Affordable Housing Coalition and Karen Lafayette of the Vermont Low Income Advocacy Council who were involved with the original legislation and their recollection is the same.

Last year, we sent renewals to 341 projects for an additional ten year certification. This year we expect to receive renewals for another 92 projects. **The Tax Dept. has given us the date of 2/27/2015 as the deadline for the FY 16 recertification.** Over the next five years we expect to see about 150 requests for renewals plus any new properties brought on line.

The statute clearly states that upon receipt of the required taxpayer information VHFA "shall" issue a certificate, and upon receipt of the certificate the municipality "shall" grant the exemption. All that is required is that the town gets the certificate from the owner by April 1 of a given year. The expiration language only relates to the exemption granted by the municipality on the basis of the certificate. If the municipality gets a new certificate, they must issue a new exemption. We regularly have had new certificates issued as projects have transferred ownership, so we see renewals as the same situation. **I have been through every bit of paper and electronic information in this office on this issue, and have found no reference of non-renewal, anywhere.**

I want to also point out that this discussion has nothing to do with other pieces of law which outline the process for long term tax stabilization agreements that are sometimes required for affordable housing to receive certain federal funds, or that require the use of the income approach to value for the assessment of subsidized housing.

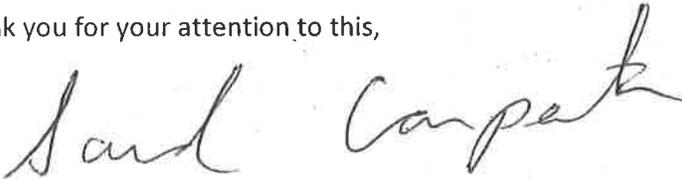
The bottom line for us and the property owners of these publicly subsidized, rent-restricted developments is that they cannot absorb an across-the-board 10 per cent Education Property Tax increase if the exemption goes away, which it most likely would if left up to municipalities to decide. And it would certainly be a hardship for the low-income tenants to absorb the increase, even if the owners were able to pass it on to them.

If the existing statute requires clarification, we suggest that something like the following language be substituted for what the Tax Dept. has proposed:

**Sec. 10. 32 V.S.A. § 5404a (a)(6) is amended to read:**

(6) An exemption of a portion of the value of a qualified rental unit parcel. An owner of a qualified rental unit parcel shall be entitled to an exemption on the education property tax grand list of 10 percent of the grand list value of the parcel, multiplied by the ratio of square footage of improvements used for or related to residential rental purposes to total square footage of all improvements, multiplied by the ratio of qualified rental units to total residential rental units on the parcel. "Qualified rental units" means residential rental units which are subject to rent restriction under provisions of state or federal law, but excluding units subject to rent restrictions under only one of the following programs: Section 8 moderate rehabilitation, Section 8 housing choice vouchers, or Section 236 or Section 515 rural development rental housing. A municipality shall allow the percentage exemption under this subsection upon presentation by the taxpayer to the municipality, by April 1, of a certificate of education grand list value exemption, obtained from the Vermont Housing Finance Agency (VHFA). VHFA shall issue a certificate of exemption upon presentation by the taxpayer of information which VHFA and the Commissioner shall require. A certification issued by VHFA ~~An exemption granted by a municipality~~ under this subsection shall expire upon transfer of the building, upon expiration of the rent restriction, or after 10 years, whichever first occurs. The exemption shall be renewed if VHFA finds that the property continues to meet the requirements of this section.

Thank you for your attention to this,

A handwritten signature in cursive script that reads "Sarah Carpenter".

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