



# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations

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## MEMORANDUM

TO: Commission Members

FROM: *Lynnise* Lynnise Roehrich-Patrick  
Executive Director

DATE: 19 November 2014

SUBJECT: Valuing Low-Income Housing Tax Credit Properties in Tennessee—Draft Report  
for Review and Comment

Interpreting state law and the state constitutional requirement of uniformity in assessment and tax rates, Tennessee courts recognize federal low-income-housing tax-credits (LIHTCs) as an indicator of property value that is properly considered when assessing the value of LIHTC properties (*Spring Hill, L.P., et al. v. Tennessee State Board of Equalization, et al.* (2003)). Since these decisions, bills have been introduced three times in the last 15 years to exclude those tax credits from property assessments. The latest were Senate Bill 1671 by Senator Steve Southerland and House Bill 1390 by Representative Jeremy Faison, which were sent by the Senate Finance, Ways, and Means Committee and the House Finance, Ways, and Means Subcommittee of the 108th General Assembly to the Commission for further study and analysis. These bills would have prohibited considering the tax credits when valuing LIHTC properties.

Although most courts in other states where this issue has been litigated agree with the courts in Tennessee, 22 state legislatures, including five in states whose courts agree with Tennessee's, have chosen to explicitly exclude the tax credits from the valuation process. Another two states exclude taxation of these properties altogether, and a third—Montana—excludes them from taxation unless they are owned by a for-profit entity. The legislature in Idaho, a state whose courts also agree with Tennessee's, has established a special formula for including the tax credits in the assessed value of LIHTC properties, one that helps mitigate the cash flow problem created by including the tax credits directly in the assessed value but spreading that amount evenly over the life of the rent-restriction agreements associated with those properties.

Because there are almost no unused tax credit allocations in other states, it is unlikely, as suggested by proponents of the legislation, that private investment in low-income housing in Tennessee could be shifted to other states regardless of how or whether it is taxed, but the

assessment method currently used could affect the pattern of investment within the state, shifting it from rural areas where the return is already marginal to suburban or urban areas. While the Idaho method is an option, it adds very little to the tax bill. An alternative that retains the full value of the tax credits but evens out the annual tax bill to eliminate the cash-flow problem would be to spread their *present value* evenly over the restricted rent period. This does not change the total amount paid in comparison to the current Tennessee valuation method, but it reduces the annual amount by spreading it over a longer period and smoothing it out.

A final report reflecting your guidance will be submitted for approval at the January 2015 Commission meeting.