

## MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on March 5, 2009, in Room 535-N of the Capitol.

All members were present.

## Committee staff present:

Gordon Self, Office of the Revisor of Statutes  
Scott Wells, Office of the Revisor of Statutes  
Hank Avila, Kansas Legislative Research Department  
Chris Courtwright, Kansas Legislative Research Department  
Kathy Beavers, Committee Assistant

## Conferees appearing before the Committee:

Robin S. Martinez, Counsel for H.O.P.E., Incorporated  
Ron Pasmore, Kansas Elks Training Center for the Handicapped  
Cathy Northrup, President, Board of Directors, Interfaith Ministries  
Michael Marsh, Consultant for H.O.P.E., Incorporated

## Others attending:

See attached list.

**HB 2269 - Property tax exemption for certain housing for the elderly, persons with disabilities or low income housing owned by certain organizations.**

The Chairman opened the hearing on **HB 2269**.

Chris Courtwright, Legislative Research Department, briefed the committee on **HB 2269**. He stated this bill is the same version of 2008 **SB 383**.

Robin S. Martinez, Counsel for H.O.P.E., Incorporated, testified in support of **HB 2269** (Attachment 1). Mr. Martinez stated that the current statute has limited utility. It limits tax exemptions to real and personal property "solely owned" by not-for-profit corporations recognized as community housing development organization (CHDO) by Kansas Housing Resource Corporation (KHRC). He described the terms of Section 42 of the U.S. Tax code and its eligibility requirements and the difficulties it makes for the project owners. He stood for questions.

Ron Pasmore, Kansas Elks Training Center for the Handicapped (KETCH), testified in support of **HB 2269** (Attachment 2). The organization provides housing and residential services to 150 persons with developmental disabilities. During the 1990's, due to the transfer of persons out of all State institutions and the closure of Winfield State Hospital, there was a big demand for housing for persons with developmental disabilities. He discussed the funding used to purchase these facilities. **HB 2269** would allow the Court of Tax Appeals to grant tax exemptions for properties such as Richmond Place and would allow the organization to participate in the Low Income Housing Tax Credit to meet future demands.

Cathy Northrup, President, Board of Directors, Interfaith Ministries, Wichita, Kansas, testified in support of **HB 2269** (Attachment 3). Ms. Northrup testified in place of Patricia Dengler, Counsel for Interfaith Development Corporation and Interfaith Ministries Wichita, Incorporated. Mrs. Northrup stated that **HB 2269** will update Kansas statutes to recognize changes in affordable housing, both as to the financial aspect of construction and operations and the organizational structure of the project sponsor.

Ms. Northrup stated that **HB 2269** accomplishes three things:

- Expand the types of legal entities allowed to benefit from the exemption to include limited partnerships, limited liability companies and corporations in addition to CHDOs but will retain the requirement of the "low income housing" purpose to distinguish the use from other housing developments.
- Will describe the type of financing that must be used by these entities to acquire tax exempt status.
- Specifies the sole limited partner or the sole managing member of the owner-operator or the entity

CONTINUATION SHEET

Minutes of the House Taxation Committee at 9:00 a.m. on March 5, 2009, in Room 535-N of the Capitol.

itself must be not-for-profit and recognized as a 501(c)(3) tax exempt by the IRS.

Ms. Northrup stated that safe and affordable shelter is a basic need for all citizens and the passage of **HB 2269** will help developers of affordable housing receive funding for these projects. She stood for questions.

Michael Marsh, Consultant for H.O.P.E., Incorporated, testified in support of **HB 2269** (Attachment 4) and provided answers to previous questions from the committee members to the earlier testimonies.

The Chairman called attention to the written testimony in support of **HB 2269**:

Randall Hrabec, Northwest Kansas Housing, Incorporated (Attachment 5)

Carolyn Risley-Hill, Starkey Incorporated, Wichita, KS (Attachment 6)

Jean Carter-Boniface, Executive Director of H.O.P.E., Incorporated (Attachment 7)

Kirk McClure, Professor, University of Kansas School of Architecture & Urban Planning (Attachment 8)

Michelle Sweeney, Association of Community Health Centers of Kansas (Attachment 9)

Chris Wilson, Kansas Building Industry Association (Attachment 10)

Ashley Jones, Director of State Policy, Local Incentives Support Corporation (Attachment 11)

Rebecca Buford, Tenants to Homeowners Incorporated (Attachment 12)

The Chairman called attention to the written testimony of Gary Post, Lyon County Appraiser, (Attachment 13) in opposition to **HB 2269**.

The Chairman closed the hearing on **HB 2269**.

Chairman Carlson requested the committee members to respectfully restrict original motions to pass out without amendment. Amendments will be made as independent subsidiary motions.

Representative Goyle introduced his parents, Vimal and Krishan Goyle, Wichita, Kansas and his brother, Sanj Goyle visiting from California.

Representative King, Sub-committee Chair, **HB 2150**, stated there will be meetings Tuesday, March 10 and Thursday, March 12, 2009 at 2:30 p.m. in room 785-DSOB.

The next meeting is scheduled for March 9, 2009.

The meeting was adjourned at 10:25 a.m.



WRITTEN TESTIMONY

TO THE HOUSE TAXATION COMMITTEE

BY ROBIN S. MARTINEZ, COUNSEL FOR H.O.P.E., INC.

PRESENTED ON MARCH 5, 2009

*Support for H.B. 2269, which proposes to amend K.S.A. 79-201z*

Thank you, Representative Carlson and committee members, for allowing me the opportunity to present written testimony regarding H.B. 2269. This bill is important because I believe it will enhance the ability of not-for-profit organizations to develop affordable housing for residents of Kansas. H.B. 2269 amends K.S.A. 79-201z, which exempts certain real and personal property from *ad valorem* taxation. I serve as legal counsel for H.O.P.E., Inc. (HOPE), a Kansas not-for-profit corporation that is recognized as a community housing development organization (CHDO) by the Kansas Housing Resource Corporation (KHRC). I am submitting this written testimony on behalf of HOPE in support of H.B. 2269.

Over the past four years, HOPE has developed three affordable housing projects in Wichita. These projects, known as HOPE Village, Legacy Square and Mullen Court Apartments, were developed using a combination of conventional loans, low-income housing tax credits and historic preservation tax credits. Under Federal law and land use restrictive covenants entered into as a condition of KHRC's support for these projects, occupancy at these projects is targeted to low and very low-income individuals.

Ostensibly, HOPE should be able to obtain relief from *ad valorem* taxation on the real and personal property utilized in its projects pursuant to K.S.A. 79-201z. However, the current statute has limited utility because it limits tax exemption to real and personal property "solely owned" by not-for-profit corporations recognized as CHDOs by KHRC. We believe this limitation is problematic in light of the manner in which affordable housing projects are generally financed.

According to the U.S. Government Accountability Office (GAO), the low income housing tax credit authorized under Section 42 of the U.S. Tax Code is the largest federal program used to fund the development and rehabilitation of affordable housing in the United States. The program, which was created in 1986 and made permanent in 1993, is an indirect federal subsidy used to finance the construction and rehabilitation of affordable rental housing for low and very low-income persons. Congress created the program as an incentive to encourage the development of more low-income housing because affordable housing projects typically generate insufficient profits to warrant investment by private developers.

The low income housing tax credit gives investors a reduction in their federal tax liability in exchange for financing the development of affordable rental housing. Investors' equity contributions subsidize low-income housing development, thus allowing units to rent at below-market rates. In return, investors receive tax credits paid in annual allotments, generally over 10 years.

Under the terms of Section 42 of the U.S. Tax Code, projects must meet eligibility requirements for at least 30 years after completion of the project. In effect, this means that project owners must keep the units rent restricted and available to low-income tenants.

However, even with the incentives provided by the low income housing tax credit program, economics create barriers to the development of affordable housing. This is particularly the case in urban or developing areas where land costs are generally higher and low-income rents tend to be substantially below market-rate. While I do not have data to support this supposition, I am of the opinion that these economics are also present in rural areas based on studies that have underscored the income disparity between rural communities and urban or metropolitan areas.

Due to these difficulties, development of affordable housing has increasingly been undertaken by not-for-profit organizations. The conundrum lies in that by virtue of their tax-exempt not-for-profit

status, these organizations cannot utilize the federal income tax credits provided by the low income housing tax credit program. Consequently, not-for-profit corporations financing affordable housing projects through utilization of low income housing tax credits will generally form limited partnerships or limited liability companies that allow for equity investment on the part of private investors who receive a special allocation of tax credits in exchange for their investment in the project. When creating such an ownership structure, the not-for-profit corporation generally maintains control of the project by serving as either the general partner or managing member of the entity.

H.B. 2269 is important because it facilitates the development of affordable housing in Kansas by recognizing the realities of the marketplace. Critically, the amendment allows limited partnerships and limited liability companies to obtain exemption from *ad valorem* taxation of real and personal property, yet it specifies that such entities must be formed for the purpose of developing affordable housing utilizing the federal low income housing tax credit, and most importantly, that such entities have a not-for-profit corporation as their general partner or managing member. This last element is significant, in that it ensures that not-for-profit organizations will retain legal and operational control of affordable housing projects developed in such a manner.

As previously noted, HOPE has developed three affordable housing projects in Wichita. HOPE's projects were partially financed through the low income housing tax credit program. Two of the projects were organized as limited partnerships and one as a limited liability company, with HOPE serving as the general partner or managing member, and private investors admitted as limited partners.

In 2006, two of HOPE's projects (HOPE Village and Legacy Square) applied for exemption from *ad valorem* taxation under K.S.A. 79-201z. These applications were supported by Sedgwick County. However, in early 2007 the Board of Tax Appeals denied the applications because each applicant had a

for-profit limited partner, which precluded it from satisfying the statute's current requirement that projects be "solely owned" by not-for-profit CHDOs recognized by KHRC.

While we recognize the desire of the Board of Tax Appeals to strictly construe current law, there continues to be a shortage of affordable housing that is available to very low-income and, more significantly, extremely low-income renters. Nationally, according to the U.S. Department of Housing and Urban Development (HUD), in 2005 there were only 77 rental units affordable and available to very low-income renters for every 100 such households, but only 40 units affordable and available for extremely low-income renter households.<sup>1</sup> According to HUD, the geographical distribution of this shortage covers all areas of the country, including the Midwest, and the estimated number of households with worst case housing needs increased significantly from 2003 to 2005 – an analysis which did not take into account the effect of the current economic crisis and rise in foreclosure rates.

As K.S.A. 79-201z is currently written, HOPE's projects, and those of similar organizations throughout Kansas that are undertaking the critical mission to provide affordable, safe and sanitary housing for low-income and very low-income residents of the state, are not able to obtain exemption from *ad valorem* taxation for real and personal property used to provide such affordable housing. The need for development and rehabilitation of affordable housing clearly exists. Other than food, nothing is more basic than shelter. While adoption of H.B. 2269 is not a magic bullet that will in and of itself solve the need for more affordable rental housing for our low-income citizens, we believe it will help. Consequently, we urge you to pass H.B. 2269 in order to assist not-for-profit organizations such as HOPE in their mission to provide affordable, safe and sanitary housing to meet the real needs of our communities.

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<sup>1</sup> U.S. Department of Housing and Urban Development, *Affordable Housing Needs: A Report to Congress on the Significant Need for Housing* (2005).



**To:** Taxation Committee  
**From:** Ron Pasmore, KETCH, Wichita, KS  
**RE:** Support for HB 2269  
**Date:** March 4, 2009

Thank you, Representative Carlson and committee members, for the opportunity to speak with you this morning in support of HB 2269. My organization, Kansas Elks Training Center for the Handicapped, Inc. (KETCH), was started 45 years ago by parents of adult children who had mental retardation. Today we provide comprehensive rehabilitation services to approximately 300 persons with developmental disabilities in the areas of day habilitation, vocational training, employment, and residential services.

KETCH provides housing and residential services to 150 persons with developmental disabilities. Each has very low income. Most are limited to the Social Security income of \$674 a month. From this they must pay for their rent, utilities, food, transportation, clothing, community recreational activities, and personal needs. Finding affordable housing, particularly housing that is also accessible and in safe areas of the city, is always a challenge for us.

During the 1990's we were under pressure to expand housing for persons with developmental disabilities due to the transfer of persons out of all State Institutions, including the closure of Winfield State Hospital which also resulted in new resources to end the waiting list. We used rental housing as our primary method to meet our housing needs. Rental housing at market rates severely limits the quality of housing that can be provided due to the limited resources of our consumers.

Last year, KETCH developed a small apartment complex through the Section 42 Low Income Housing Tax Credit program called Richmond Place. For those familiar with Wichita, it is located near Riverside. It consists of 20 apartments specially designed around the needs of persons with developmental disabilities. Each resident has their own studio apartment and there are common living and kitchen areas. The design allows persons at all levels of physical and mental disabilities to be supported. The rent at Richmond Place is \$345 a month, which includes utilities.

In addition to the tax credits, we used funding from the Affordable Housing Program through the FHL Bank Topeka, donation of the land from our developer, and a capital contribution from KETCH. The property has a mortgage of \$195,000. The total cost of the facility was about \$2 million. The property is structured with KETCH as its Managing Partner. At the end of its tax credit compliance period of 15 years, KETCH has the right to purchase the property for \$100.



The operating budget was developed under the assumption that the property would be exempt from property tax. We have applied for this, but have not received a ruling on our application. We have learned from other organizations that the Court of Tax Appeals has denied their applications for similar Low Income Housing Tax Credit projects. If Richmond Place is not allowed to be exempt from property taxes, the project will operate at a loss. We do not have the ability or desire to make up that difference through increased rents as this negates the purpose of the program.

In Sedgwick County there are 186 persons with developmental disabilities receiving day or employment services on a waiting list for residential services. Another 271 adults are on our waiting list who have no services. On top of this, the Governor recently convened a commission to study the potential state facilities including state hospitals for persons with developmental disabilities. Planning to increase community capacity to serve the waiting list and to close state institutions needs to consider the availability of appropriate affordable housing. The Low Income Housing Tax Credit program is an ideal mechanism for organizations like KETCH to develop this needed housing. This bill would allow the Court of Tax Appeals to grant tax exemptions for properties such as Richmond Place and allow us to participate in the Low Income Housing Tax Credit program to meet our future housing needs. I urge the committee to support HB 2269.

WRITTEN TESTIMONY

TO THE HOUSE TAXATION COMMITTEE

BY PATRICIA DENGLER, COUNSEL FOR INTER-FAITH DEVELOPMENT CORPORATION AND INTER-FAITH MINISTRIES WICHITA, INC.

PRESENTED ON MARCH 5, 2009

*Support for H.B. 2269 which proposed to amend K.S.A. 79-201z*

Thank you, Representative Carlson and committee members, for allowing this hearing on H.B. 2269. This bill amends K.S.A. 79-201z, a statute that exempts certain real and tangible personal property from *ad valorem* taxation. I am counsel for Inter-Faith Development Corporation and Inter-Faith Ministries Wichita, Inc., Kansas not-for-profit tax-exempt corporations and I am here to testify in support of H.B. 2269.

The current statute has limited application. It only assists not-for-profit community housing development organizations (CHDO) recognized by the Kansas Housing Resource Corporation that provide housing for the elderly, persons with disabilities or persons with limited or low income. My clients and other projects around the state would not presently qualify for the exemption even though these organizations serve the specified populations since most CHDOs join with for-profit entities to utilize income tax credits as one method for financing the development. This amendment will update Kansas statutes to recognize the changes in affordable housing, both as to the financial aspect of construction and operations, and the organizational structure of the project sponsor.

The effort to amend K.S.A. 79-201z began with the 2007 legislative session when similar language to H.B. 2269 was introduced as S.B. 383. In early 2008 we worked with the Department of Revenue, Property Valuation Division (PVD) and the Kansas Housing

Resource Corporation (KHRC) to develop the language that is found in H.B. 2269 to satisfy concerns that the initial proposed amendment, S.B. 383, was too expansive with respect to the types of projects granted *ad valorem* tax-exempt status. In 2008 the Senate unanimously passed S.B. 383. We did appear before this committee last year but a vote was not taken in this Committee or the House on the legislation.

The language in H.B. 2269 allows more entities to qualify for the *ad valorem* tax exemption, however, restrictions as to the control of the entities in a not-for-profit, 501(c)(3) tax-exempt organization and the limitation on the use of the property helps to preserve a credible *ad valorem* tax exemption. The fact that a for-profit entity could be a limited partner or a member of a limited liability company that owns and operates the property merely recognizes the reality of these types of affordable housing projects. Most low income housing projects, or affordable housing, are developed by not-for-profit, tax-exempt organizations and funded, in part, by federal or state loans or grants which restrict the amount of rent charged and/or limit the income of the tenants.

H.B. 2269 does three things to solve the dilemma faced by not-for-profit entities that develop affordable housing projects but are not presently eligible for *ad valorem* tax exemption under current statutes. First, it expands the types of legal entities allowed to benefit from the exemption to include limited partnerships, limited liability companies and corporations in addition to CHDOs but retains the requirement of the “low income housing” purpose to distinguish the use from other housing developments. The requirement that the resident’s income must be “at or below 80% of area median income” is a standard used by federal programs, so it is familiar to those in the industry, at both public and private levels. Generally, federal programs will use the standard included in

H.B. 2269 while state programs will use the standard of 120% of area median income. Most people who reside in this type of housing earn minimum wage. Secondly, it describes the type of financing that must be used by these entities to acquire the tax exempt status for the property. The possible financing mechanisms include Section 42, HOME investment partnership funds, or other sources, public or private, available only for low income housing. Finally, the amendment specifies that the sole limited partner or the sole managing member of the owner-operator or the entity itself must be not-for-profit and recognized as a 501(c)(3) tax exempt entity by the IRS. In other words, legal and operational control will be retained by a not-for-profit organization.

This amendment will continue to assist not-for-profit organizations involved in affordable housing developments but it will expand the number of eligible entities and thus, the number of projects. We believe this is an appropriate and beneficial solution to the affordable housing problem faced by senior citizens, disabled and low income Kansans. Based upon the controls that are included in this amendment, we believe that developments for higher income residents will not qualify for an exemption.

Let me explain why the current statute and other exemption statutes inhibit the development of affordable housing for these populations. My client's situation will serve as one example.

Inter-Faith Ministries has existed in Wichita for over 120 years. One of its ministries works on solutions to the homeless and chronic homeless problem in Sedgwick County. It owns and operates a temporary shelter for the homeless or jobless, and another shelter which provides temporary housing and care for the chronically mentally ill

homeless population. Both of these shelters received *ad valorem* exemptions based on humanitarian services which serve a community need, K.S.A. 79-201 Ninth.

The most recent phase of Inter-Faith Ministries' homeless ministry is what brings us here today in support of H.B. 2269. Within the past six years IFM opened two permanent apartment housing developments with supportive services, Villa Central and Villa North. One property, Villa Central, has 37 units. It is owned by a limited partnership which is operated by IFM as the general partner but the limited partner is a for-profit entity. Its funding sources were the acquisition of Section 42 low income tax credits, supportive services housing grants under the McKinney-Vento Homeless Assistance Act, a HUD grant, a conventional loans and donor contributions. The Villa North, a 24 unit building, is owned by Inter-Faith Development Corporation, a Kansas not-for-profit corporation which is a controlled subsidiary of IFM. This project was financed with HUD funding through the HOME Investment Partnership program administered by the City of Wichita, HUD supportive services and housing grants and donor contributions.

The residents of both of these apartment projects are chronic homeless disabled due to mental illness, drug and alcohol abuse or physical disabilities. The residents include the elderly, men, women and families with children. What distinguishes both of these projects from other apartment developments is that IFM provides supportive services, or case management, to steer residents to a productive existence. The residents do not pay for the supportive services but they do pay below market rent, which includes utilities. Many receive assistance through Section 8 vouchers for housing. Safe and affordable housing stabilizes one aspect of a low income person's existence so he or she

can devote attention to job training, health care and other needs while becoming a productive member of the community.

Beginning in 2004, IFM applied for exemptions from *ad valorem* taxation based on two statutes and one Article in the Kansas Constitution:

- K.S.A. 79-201b Fourth, which exempts housing for limited or low income elderly and handicapped persons or cooperative housing with financing received under two specific federal statutes which are part of the National Housing Act;
- K.S.A. 79-201 Ninth, which exempts property used predominantly for humanitarian services that meet a demonstrated community need; and,
- Article 11, Section 1(b) of the Kansas Constitution, which exempts property used exclusively for charitable purposes.

Sedgwick County supported these applications.

In 2006, the Board of Tax Appeals denied both applications. BOTA viewed both projects as housing rather than charitable or humanitarian. As housing projects, based on an earlier Kansas Court of Appeals decision, BOTA determined that if the applications did not satisfy the exemption statute that specifically addressed low income housing, K.S.A. 79-201b Fourth, then the property could not receive an exemption from *ad valorem* taxation. The housing exemption had to be considered as it was written at that time regardless of the fact that the funding program mentioned in that statute may have been replaced or supplemented by new programs since K.S.A. 79-201b Fourth was last substantively amended in 1988. My client appealed these decisions but in June 2008 the

Kansas Court of Appeals affirmed the decision of BOTA (now known as the Court of Tax Appeals).

When IFM first appeared before the Board of Tax Appeals, the members of BOTA suggested that if the applications were not successful based on the current statutes and cases interpreting those statutes then maybe IFM should consider seeking a legislative solution by getting new legislation adopted or amending existing statutes. IFM has followed through on that suggestion with its support of H.B. 2269.

We are aware that other not-for-profit organizations that develop and operate affordable, or low income, housing projects have experienced the same difficulty in obtaining *ad valorem* tax exemption for their real estate which inhibits the continuing operations of these housing projects. Several of these organizations are present today and have submitted written testimony for your consideration. To further explain the financing mechanisms included in H.B. 2269, which are some of the limitations in this legislation developed with PVD and KHRC, Robin Martinez is here today to present his testimony.

In closing, as K.S.A. 79-201z is currently written, these projects of my clients, and others around the state that are organized to solve the affordable housing problem for low income citizens, are not able to receive exemption from *ad valorem* taxation. If these projects are only going to be considered housing, there are no other statutory housing exemptions for which they would qualify. That inhibits the development of affordable housing for low income and very low income residents which is normally undertaken by not-for-profit organizations. These not-for-profits, on their own, normally do not have the available money to fund the construction of new projects or rehabilitation of existing buildings and continue to operate them with sound financial management. For that

reason, it is common to join with for-profit organizations which will enable access to Section 42 income tax credits for financing purposes. H.B. 2269 addresses these issues with the limitations I described previously. The need for the development of affordable housing clearly exists throughout Kansas. Safe and affordable shelter is a basic need for all citizens. This situation can be corrected with the proposed amendment in H.B. 2269.

Thank you for your consideration of this request.



WRITTEN TESTIMONY

TO THE HOUSE TAXATION COMMITTEE

BY MICHAEL L. MARSH, C.P.A./CONSULTANT FOR H.O.P.E., INC.

PRESENTED ON MARCH 5, 2009

*Support for H.B. 2269, which proposes to amend K.S.A. 79-201z*

Thank you, Representative Carlson and committee members, for allowing me the opportunity to present written testimony regarding H.B. 2269. This bill is important because I believe it will enhance the ability of not-for-profit organizations to develop affordable housing for residents of Kansas. H.B. 2269 amends K.S.A. 79-201z, which exempts certain real and personal property from *ad valorem* taxation. I serve as the CPA/Consultant for H.O.P.E., Inc. (HOPE), a Kansas non-profit corporation that is recognized as a community housing development organization (CHDO) by the Kansas Housing Resource Corporation (KHRC). I am submitting this written testimony on behalf of HOPE in support of H.B. 2269.

Over the past four years, HOPE has developed three affordable housing projects in Wichita. These projects, known as HOPE Village, Legacy Square and Mullen Court Apartments, were developed using a combination of conventional loans, low-income housing tax credits and historic preservation tax credits. Under Federal law and land use restrictive covenants entered into as a condition of KHRC's support for these projects, occupancy at these projects is targeted to low and very low-income individuals.

Therefore, HOPE should be able to obtain relief from *ad valorem* taxation on the real and personal property utilized in its projects pursuant to K.S.A. 79-201z. However, the current statute has limited utility because it limits tax exemption to real and personal property "**solely owned**" by not-for-profit corporations recognized as CHDOs by KHRC. We believe this limitation is problematic in light of the manner in which affordable housing projects are generally financed.

According to the U.S. Government Accountability Office (GAO), the low income housing tax credit authorized under Section 42 of the U.S. Tax Code is the largest federal program used to fund the development and rehabilitation of affordable housing in the United States. The program, which was created in 1986 and made permanent in 1993, is an indirect federal subsidy used to finance the construction and rehabilitation of affordable rental housing for low and very low-income persons. Congress created the program as an incentive to encourage the development of more low-income housing because affordable housing projects typically generate insufficient profits to warrant investment by private developers.

The low income housing tax credit gives investors a reduction in their federal tax liability in exchange for financing the development of affordable rental housing. Investors' equity contributions subsidize low-income housing development, thus allowing units to rent at below-market rates. In return, investors receive tax credits paid in annual allotments, generally over 10 years. **In HOPE's most recent development, Mullen Court Apartments, 86 percent of the development costs were financed by tax credit equity, over \$3.3 million, and the balance was financed through loans from the Federal Home Loan Bank \$256,000 and KHRC for \$285,000. A significant portion of the development cost are paid for by the tax credits, and they are essential to providing affordable housing in Kansas.**

Under the terms of Section 42 of the U.S. Tax Code, projects must meet eligibility requirements for at least 30 years after completion of the project **and the properties usually revert back to not-for-profit organization at the end of the tax credit period, which is generally 10 to 15 years.**

Due to the difficulties, development of affordable housing has increasingly been undertaken by not-for-profit organizations. The conundrum lies in that by virtue of their tax-exempt not-for-profit status, these organizations cannot utilize the federal income tax credits provided by the low income housing tax credit program. Consequently, not-for-profit corporations financing affordable housing projects through utilization of low income housing tax credits will generally form limited partnerships or limited liability companies that allow for equity investment on the part of private investors who receive

a special allocation of tax credits in exchange for their investment in the project. When creating such an ownership structure, the not-for-profit corporation generally maintains control of the project by serving as either the **“sole general partner”** or **“sole managing member”** of the entity.

H.B. 2269 is important because it facilitates the development of affordable housing in Kansas by recognizing the realities of the marketplace. Critically, the amendment allows limited partnerships and limited liability companies to obtain exemption from *ad valorem* taxation of real and personal property, yet it specifies that such entities must be formed for the purpose of developing affordable housing utilizing the federal low income housing tax credit, and most importantly, that such entities have a not-for-profit corporation as their **“sole general partner”** or **“sole managing member”**. This last element is significant, in that it ensures that not-for-profit organizations will retain legal and operational control of affordable housing projects developed in such a manner.

As previously noted, HOPE has developed three affordable housing projects in Wichita. HOPE's projects were partially financed through the low income housing tax credit program. Two of the projects were organized as limited partnerships and one as a limited liability company, with HOPE serving as the **“sole general partner”** or **“sole managing member”**, and private investors admitted as limited partners.

In 2006, two of HOPE's projects (HOPE Village and Legacy Square) applied for exemption from *ad valorem* taxation under K.S.A. 79-201z. These applications were supported by Sedgwick County. However, in early 2007 the Board of Tax Appeals denied the applications because each applicant had a for-profit limited partner, which precluded it from satisfying the statute's current requirement that projects be **“solely owned”** by not-for-profit CHDOs recognized by KHRC.

While we recognize the desire of the Board of Tax Appeals to strictly construe current law, there continues to be a shortage of affordable housing that is available to very low-income and, more significantly, extremely low-income renters. Nationally, according to the U.S. Department of Housing and Urban Development (HUD), in 2005 there were only 77 rental units affordable and available to very

low-income renters for every 100 such households, but only 40 units affordable and available for extremely low-income renter households.<sup>1</sup> According to HUD, the geographical distribution of this shortage covers all areas of the country, including the Midwest, and the estimated number of households with worst case housing needs increased significantly from 2003 to 2005 – an analysis which did not take into account the effect of the current economic crisis and rise in foreclosure rates.

As K.S.A. 79-201z is currently written, HOPE's projects, and those of similar organizations throughout Kansas that are undertaking the critical mission to provide affordable, safe and sanitary housing for low-income and very low-income residents of the state, are not able to obtain exemption from *ad valorem* taxation for real and personal property used to provide such affordable housing. The need for development and rehabilitation of affordable housing clearly exists. Other than food, nothing is more basic than shelter. While adoption of H.B. 2269 is not a magic bullet that will in and of itself solve the need to create more affordable rental housing for our low-income citizens, we believe it will help. Consequently, we urge you to pass H.B. 2269 in order to assist not-for-profit organizations such as HOPE in their mission to provide affordable, safe and sanitary housing to meet the real needs of our communities.

<sup>1</sup> U.S. Department of Housing and Urban Development, *Affordable Housing Needs: A Report to Congress on the Significant Need for Housing* (2005).



***Northwest Kansas Housing, Inc.***

*Serving 18 Northwest Counties*

*P.O. Box 248*

*319 N. Pomeroy*

*Hill City, Kansas 67642*

*Telephone (785)421-2151 Fax (785)421-3496*

*Email: [nwkpdc@ruraltel.net](mailto:nwkpdc@ruraltel.net)*

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I am Randall Hrabe, the Executive Director of the Northwest Kansas Planning & Development Commission and board member of the Northwest Kansas Housing, Inc., a 501(c)3 non-profit, Community Housing Development Organization (CHDO).

The NWKHI was formed in 1998 and have built 92 single family housing units in 10 different rural communities throughout northwest Kansas. Except for two of the homes, all of the properties were built with IRS Section 42 Low Income Housing Tax Credit funds along with other funding resources, such as HOME, FHLB Affordable Housing Funds and bank loans. The mission of NWKHI, and the only reason it was formed, was to provide affordable decent housing to northwest Kansas residents.

The first two homes we built are solely owned and managed by the CHDO, therefore are tax exempt from property tax under KSA 79-201z. Since those first two homes, the next 90 were built with partial funding from the Low Income Housing Tax Credit program. Because the tax credits are sold to investors (generating the construction cash needed by the CHDO), a Limited Partnership or a Limited Liability Company/Corp. is formed. Which, makes the CHDO ineligible for the property tax exemption as originally intended under KSA 79-201z. Even with the use of the LIHTC funds and the subsequent formation of each LP or LLC, the CHDO continues to be the sole operating manager of the properties and is expected to provide funds for any operating deficits. The investors in the LIHTC's, make their profit on the Federal Income Tax credits and not on the operations profitability of the housing properties.

Because of program guidelines, the rent charged to tenants is limited. Thus, the real estate taxes become a large factor in the expense of operating the housing units. In 2008, the Northwest Kansas Housing, Inc.'s management fee only amounted to approximately \$100 per unit for the whole year (not even coming close to paying for travel time and payroll expenses). Once the initial 15 year compliance period ends on these LIHTC properties, they could theoretically be transferred to the CHDO (being solely owned and operated) and become tax exempt under KSA 79-201z. The inequity part of this example is the tax exemption is most needed during the first 15 years vs. thereafter. Actually, the last 16 homes we have built have a buyout provision at year 15 for the current tenant and the property would be on the normal property tax roll at that point in time, because they would be owned by a private individual and not the CHDO.

In summary, I would ask you to please consider passing HB 2269 and thank you for allowing me to present this testimony in support of the bill.

Sincerely,

*Randall Hrabe*



March 5, 2009

TO: Members of the House Taxation Committee

FR: Carolyn Risley Hill, CEO  
Starkey, Inc., Wichita, Kansas

RE: HB 2269

Chairman Carlson and members of the committee, I regret that I cannot join you in person today, but appreciate the opportunity to provide testimony in support of HB 2269 regarding property tax exemption for low income housing tax credit projects.

I am Carolyn Risley Hill, CEO of Starkey in Wichita. We currently serve 435 individuals with intellectual and other developmental disabilities. The people we serve have very low incomes, typically relying on Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) on a deceased or retired parent's account. Finding appropriate housing in a safe neighborhood that they can afford is a big challenge.

In 2005, Starkey opened its first tax credit project, an apartment project with 15 apartments designed for people to live as independently as possible with support from Starkey and their families. The Kouri Place apartments are located at 140 S. Anna on the west side of Wichita. Starkey made application and was approved by the Kansas Housing Resources Corporation under the set aside for housing tax credits for nonprofit organizations. Starkey is the general partner and responsible for the day-to-day operations of the project. The investors are the Kansas Equity Fund and the Midwest Housing Equity Group. The project was structured similar to other projects around the state with an expectation that the project would be exempt from property taxes.

The Court of Tax Appeals denied our request for property tax exemption despite the precedents which had been set earlier and the wholehearted support of Sedgwick County. We appealed their decision and one finding was reversed as a result. One issue remains. The Court found that the project was not a single purpose project as required under the law. They found that the purpose was two-fold—low income housing and tax credits (and losses) for the investors.

The challenge for us is that the project does not "cash flow" without the tax exemption. It will mean that Starkey cannot receive management fees for operating the project. Since the tax credits were approved under the set aside for nonprofit organizations, it appears that property tax exemption should follow as it does for our other housing.

We recently made application for a second tax credit project to meet the unique needs of people with both dementia (Alzheimer's disease) and developmental disabilities. We hope to enable the people we serve to maintain their skills as long as possible.

The passage of HB 2269 would assist us with both of these projects. We urge your support of the bill.

House Taxation Committee  
3-5-09

Attachment 6

WRITTEN TESTIMONY

TO THE HOUSE TAXATION COMMITTEE

BY JEAN CARTER-BONIFACE, EXECUTIVE DIRECTOR OF H.O.P.E., INC.

PRESENTED ON MARCH 5, 2009

*Support for H.B. 2269, which proposes to amend K.S.A. 79-201z*

Thank you, Representative Carlson and committee members, for allowing me the opportunity to present written testimony regarding House Bill 2269, an important bill for the organization I work for. I am the founder and Executive Director of H.O.P.E., Inc. (hereinafter, "HOPE"), a non-profit community housing development organization based in Wichita. HOPE is a non-profit corporation organized in 1974 and is recognized as a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code.

HOPE's original mission involved delivery of social services to disadvantaged communities in Wichita in order to help people escape from poverty and improve their lives. In 1994-95 HOPE received a donation of 74 units of affordable HUD housing which we used to enhance the human services components of our agency's mission. This donation gave HOPE an opportunity to meet the critical need for affordable, decent and safe housing in our community. Consequently, HOPE's mission has grown to:

1. Empower Wichita and its communities to meet local affordable housing needs;
2. Assist Wichita and its communities to establish a full continuum of housing and services designed to assist homeless individuals and families in achieving permanent housing and self-sufficiency;
3. Increase the availability of affordable housing in standard condition to families and individuals, particularly the working poor, disadvantaged, low-income, chronic homeless, persons with AIDS, and the elderly;

4. Reduce the isolation of low-income groups within Wichita and its communities and geographical area;
5. Provide empowerment and self-sufficiency opportunities for low-income, chronic homeless, disabled, elderly, individuals and families – particularly the poor and disadvantaged;
6. Increase homeownership opportunities through a variety of tools, such as expanding access to mortgage credit, and government housing financial assistance;
7. Promote equal housing opportunities for those protected by law.

Going beyond this core housing mission, HOPE's activities include nutrition counseling, budgeting, family planning, health, education and assisting our tenants and constituents with behavioral changes. These services are an essential extension of HOPE's comprehensive housing program. All these services are available to HOPE's tenants at their request at no charge. As we assist in our tenants' development and their ability to participate as productive members of society, they must have tools to work with, and a strong determination to succeed. We realize that not all the individuals we serve are able to become homeowners; however by providing affordable housing and supportive services, and insisting on responsibility and accountability through specialized counseling, we are able to give an opportunity for people to have a second chance and a new beginning.

As an example of the work we perform, I would point to a recent arrangement between HOPE, the Kansas Housing Resources Corporation and the Kansas Department of Corrections, where HOPE has agreed to make units in its apartment projects available to certain prisoners being released into the community from Kansas prisons. HOPE provides affordable housing to these persons as they are being reintegrated into the community and provides additional support services to help them succeed, with the goal of reducing recidivism rates. We believe this pilot project will be a great benefit to Kansas.



Developing and managing affordable housing is not an easy task, particularly when combined with the supportive services we provide. Because our properties are rent-restricted, we can only develop affordable housing by using subsidies, which significantly reduces the amount of debt that could be serviced if we were developing similar market-rate properties. One of our key tools we have for financing affordable housing is through the use of Federal Low Income Housing Tax Credits, which are allocated by the Kansas Housing Resources Corporation.

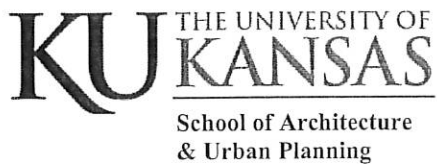
HOPE has three affordable housing projects in Wichita that were financed using Federal Low Income Housing Tax Credits – HOPE Village, Legacy Square and Mullen Court Apartments. Under current Kansas law, if HOPE develops and owns affordable housing directly, those properties would be exempt from property tax. However, if we use Federal Low Income Housing Tax Credits to finance affordable housing, under current Kansas law, our properties are not exempt from property tax. In our view, this is a distinction that does not make any sense.

In 2006 HOPE filed an application for tax exemption on our HOPE Village and Legacy Square apartment projects. Even though Sedgwick County supported our application for property tax exemption, the Board of Tax Appeals applied a strict interpretation of Kansas law and, on appeal, denied our application. So while HOPE has been paying taxes on its projects since that unfavorable ruling, the lack of tax exemption has placed an additional burden on our agency in an environment where our operating costs, such as insurance and maintenance, continue to rise at the same time our properties are rent-restricted.

Current Kansas law only provides for a tax exemption to affordable housing properties that are “solely owned” by non-profit corporations recognized as community housing development organizations (CHDO). While any relief is welcome for agencies such as HOPE, this does not take into account the requirements imposed by the Internal Revenue Service for financing development of affordable housing

with Low Income Housing Tax Credits. Federal tax law requires any investor receiving Low Income Housing Tax Credits to be a partner in the project during the fifteen-year period during which the project must comply with the applicable tax rules. This requirement means that no project developed by CHDOs using Federal Low Income Housing Tax Credits will ever qualify for tax exemption in Kansas because using the federal credits will no longer make it "solely owned" by a CHDO.

This is why passage of HB 2269 is important for our agency. Exemption from property tax will provide us with the additional operating safety net we need in order to maintain our properties, will help enhance our mission, and allow us to continue to meet the needs of the populace we currently serve.



February 26, 2009

Committee on Taxation  
Kansas House of Representatives

Re: **House Bill 2269**  
**An Act concerning property taxation; relating to exemptions; certain housing for the elderly, persons with disabilities or persons with low income**

Mr. Chairman and Members of the House Committee on Taxation:

This act will provide critical support for an underserved from of affordable housing.

As a nation, we have decided that the production of affordable housing will be left to a specialized set of developers and non-profit organizations assisted through the Low-Income Housing Tax Credit (LIHTC) program. This program awards federal tax credits to selected affordable rental housing developments where some or all of the units are restricted to low-income households. The rents on these units are capped by the regulations of the program to make the housing affordable to the typical low-income household in the marketplace. While these tax credits are adequate in some housing markets to bring the development to financial feasibility, they are inadequate in many other settings. In many markets, the non-profit developers struggle to keep the rents low enough that the tenants do not suffer from a high housing cost burden. This is nowhere more true than in the impoverished neighborhoods served by non-profit community development corporations.

In the absence of additional federal assistance needed to help these developments attain financial feasibility, state and local governments can, and should, make a contribution. This bill facilitates this contribution in the form of a property tax exemption for LIHTC developments owned and operated by non-profit community development corporations.

Graduate Program in Urban Planning  
Marvin Hall | 1465 Jayhawk Boulevard, Room 317 | Lawrence, KS 66045-7614  
(785) 864-4184 | Fax (785) 864-5301 | [www.saud.ku.edu/UBPL](http://www.saud.ku.edu/UBPL)

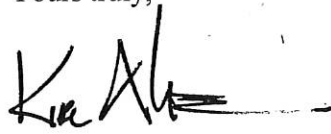
McClure letter on House Bill 2269

February 26, 2009

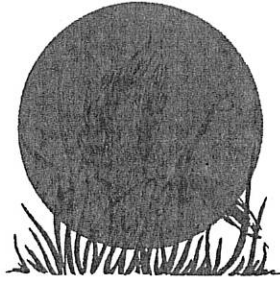
This is a much needed additional form of assistance that can help to reduce the operating expenses on this affordable rental housing and keep this housing affordable to households of low income.

I urge you to support this bill.

Yours truly,

A handwritten signature in black ink, appearing to read "Kirk McClure", with a horizontal line extending to the right.

Kirk McClure, Professor  
Voice telephone: (785) 864-3888  
Electronic mail: [mcclure@ku.edu](mailto:mcclure@ku.edu)



*Association of Community Mental Health Centers of Kansas, Inc*  
*720 SW Jackson, Suite 203, Topeka, Kansas 66603*  
*Telephone: 785-234-4773 / Fax: 785-234-3189*  
*Web Site: [www.acmhck.org](http://www.acmhck.org)*

## **House Taxation Committee**

**Testimony on  
House Bill 2269**

March 5, 2009

Presented by:

Michelle Sweeney, Policy Analyst  
Association of CMHCs of Kansas, Inc.

Mr. Chairman and members of the Committee, my name is Michelle Sweeney, I am the Policy Analyst for the Association Community Mental Health Centers of Kansas, Inc. The Association represents the 27 licensed Community Mental Health Centers (CMHCs) in Kansas who provide home and community-based, as well as outpatient mental health services in all 105 counties in Kansas, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. The CMHC system is state and county funded and locally administered. Consequently, service delivery decisions are made at the community level, closest to the residents that require mental health treatment. Each CMHC has a defined and discrete geographical service area. With a collective staff of over 4,500 professionals, the CMHCs provide services to Kansans of all ages with a diverse range of presenting problems.

Together, this system of 27 licensed CMHCs form an integral part of the total mental health system in Kansas. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the "safety net" for Kansans with mental health needs, collectively serving over 123,000 Kansans with mental illness.

I stand before you today to discuss House Bill 2269--a bill on tax exemption for certain low income housing for elderly and disabled persons in Kansas. According to a study by the Urban Institute<sup>1</sup>; *"The current housing crisis and corresponding recession will hit the poorest Americans the hardest. Many families and the most vulnerable citizens—those growing older, those living with disabilities, low-income children, and youth—will fall through the cracks into homelessness. As they struggle to get by, the systems set up to help them are strained beyond measure: state and local budgets are reporting large deficits; foundations are watching their endowments and the stock market; nonprofits are feeling the squeeze as donors tighten their belts."*

It is important to note that one in four adults—approximately 57.7 million Americans— experience a mental health disorder in a given year.<sup>2</sup> Five of the top ten leading causes of disability world wide are mental disorders--such as depression, schizophrenia, bipolar disorders, alcohol use and obsessive compulsive disorders.<sup>3</sup> When people suffer from these illnesses, they may struggle with functions of daily living. However, with treatment and care, they are able to live and work in their communities. The first step must be adequate housing. Kansans with serious mental illness would greatly benefit from expansion of low income housing. The truth is, if an individual with a severe mental illness can become stabilized with treatment and medication and can find adequate housing, they are much more likely to make progress, find employment, and continue their lives successfully.

The Association rises in support of this bill for several reasons:

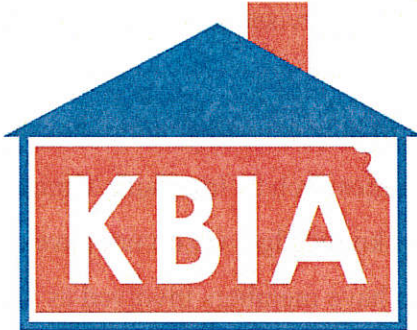
- Some CMHCs would and do have limited housing options for this severely disabled population. CMHCs will be encouraged to expand housing options for those individuals they serve with severe mental illness,
- It may also assist with rent stabilization--which is a problem in some fast growing communities in Kansas, and
- It would incentivize other landlords to rent to consumers with a mental illness--since such housing would be exempt from property taxes.

The Association supports HB 2269 and we believe it provides opportunity for new low income housing initiatives for the future. Thank you for your support of mental health care and treatment for all Kansans, including basic needs like housing. Thank you for allowing me to appear before you today.

<sup>1</sup> Urban Institute, *Preventing and Ending Homelessness —Next Steps*; <http://www.urban.org/url.cfm?ID=411837> ; February 2009.

<sup>2</sup> U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General* . Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services,1999, pp. 408, 409, 411.

<sup>3</sup> *Regional Strategy for Mental Health* , World Health Organization Western Pacific Region, 7 August 2001; Read at <http://www.wpro.who.int/NR/rdonlyres/02421D66-3336-4C76-8D59-6ADA8B53D208/0/RC5214.pdf> on 2-2-09.



**STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION  
TO THE HOUSE TAXATION COMMITTEE  
REPRESENTATIVE RICHARD CARLSON, CHAIR  
REGARDING H.B. 2269**

**March 5, 2009**

Chairman Carlson and Members of the Committee, I am Chris Wilson, Executive Director of Kansas Building Industry Association (KBIA). KBIA is the statewide trade and professional organization of the home building industry. We appreciate your introduction and hearing of H.B. 2269 and the opportunity to submit comments in support of this bill.

H.B. 2269 corrects a problem with housing for the elderly, persons with disabilities or persons with limited or low income being eligible for property tax exemptions. This type of housing is very important to Kansas and is the type that has been exempted under current statutes. However, the legal structure for these projects does not qualify under the current language in the statute. H.B. 2269 corrects that by expanding the types of legal entities allowed to benefit from the exemption, but retains the requirement of the purpose for the housing developments. These projects have the support of their community and county for the exemption – they just don't quite fit the current statute.

This bill was originally introduced in the Senate in response to encouragement from Sedgwick County and the Board of Tax Appeals to Interfaith Ministries of Wichita to seek a

change in the statute to correct this situation. When the bill was heard in the Senate Committee, there was strong support for the intent of the bill but concern that the language be narrowly crafted to provide the exemption for this type of entity. Interfaith Ministries worked with the Revisor, PVD, and KHRC to craft the revised language in the bill you have before you. That language passed the Senate 40-0.

It is envisioned that this bill can help encourage more housing for the very needy, as is being very successfully provided by entities such as Interfaith Ministries. KBIA supports this bill for that reason as well. While, to my knowledge, we do not have member companies involved in the building of these facilities, we do have members involved as volunteers with these charitable entities and are supportive of these entities for providing this needed housing. We urge the Committee to recommend H.B. 2269 favorable for passage.

####





Ashley Jones  
Director of State Policy  
Local Initiatives Support Corporation  
913.375.7264  
[www.lisc.org/KansasCity](http://www.lisc.org/KansasCity)

**Testimony  
Before the House Taxation Committee  
House Bill No. 2269  
March 5, 2009**

Mr. Chairman and Members of the House Taxation Committee,

I want to thank you for the opportunity to submit written testimony. My name is Ashley Jones and I am Director of State Policy at Greater Kansas City LISC. Greater Kansas City LISC is a program area of the Local Initiatives Support Corporation, the nation's largest community development organization, dedicated to revitalizing urban core and rural neighborhoods.

Greater Kansas City LISC started the Kansas Housing Policy Network about a year and a half ago. Although it began with only a hand-full of individuals from across the state interested in the creation of community development and affordable housing tools, it has grown to include over 400 members to date. The Kansas Housing Policy Network includes representations from the Homebuilders, Realtors, Homeless Providers and Advocates, Community Development Corporations, and many other interested entities.

Greater Kansas City LISC works with local CDC's (Community Development Corporations) and CHDO's (Community Housing Development Organization) by funding them directly, and the Policy Network represents over thirteen CHDO's and CDC's across the state. While CDC's and CHDO's are small in number in Kansas, the work that they do allows thousands of Kansans to access affordable housing.

Currently, CHDO's are exempt from paying property taxes under KSA 79-201z. The issue is, if the CHDO needs to use low income housing tax credits to partially fund the project, an LLC must be formed which means that the property is no longer solely owned by the CHDO and is not exempt from paying property taxes as originally intended under KSA 9-201z. We feel that HB 2269 makes a minor change that will allow CHDO's to keep rents affordable for their disabled, elderly and low-income tenants.

Affordable housing has been an issue in Kansas for quite some time now, and the current economic situation and foreclosure crisis have only increased the need to address this issue, as it affects both urban and rural parts of Kansas. As the Policy Network traveled across the state last year, we heard in southeast Kansas, to find affordable housing to work at the Amazon.com and Cessna plants, 72 busloads of workers were being driven across the Oklahoma border to Kansas because the employees could not find homes or apartments at affordable rates in our state. We also heard numerous other stories across the state about the need for community development tools to address each regions unique housing needs.

While House Bill 2269 will not solve all of the states affordable housing issues, it will begin to address housing issues that some of our states most disadvantaged citizens face.

We urge you to support House Bill 2269 for the purpose of ensuring all Kansans have access to safe, affordable and decent housing.



*Tenants to Homeowners, Inc.*  
*The Lawrence Community Housing Trust Program*  
*2518 Ridge Court, Suite 209, Lawrence, Kansas 66046*  
842.5494 ♦ FAX 785.842.7570 ♦ [lawrencelandtrust@yahoo.com](mailto:lawrencelandtrust@yahoo.com) ♦ [www.tenants-to-homeowners.org](http://www.tenants-to-homeowners.org)

Written Testimony in Support of Kansas House Bill 2269:  
A Bill to allow reasonable property tax exemptions on housing specifically used for the elderly, persons with disabilities or persons with low incomes in Kansas, before the House Committee on Taxation, 3.5.2009

By Rebecca Buford  
Executive Director  
Tenants to Homeowners, Inc.

I urge the Taxation Committee and the Kansas House of Representative members to support House Bill No. 2269. This bill extends opportunities for the creation of affordable housing across the state of Kansas through partnerships, like the nonprofit and for-profit partnerships created by the IRS Section 42 Low Income Housing Tax Credit (LIHTC) Program and the unique partnership between the city of Lawrence and Tenants to Homeowners, a nonprofit Community Housing Development Organization (CHDO), in the Lawrence Community Housing Trust Program.

As a director of TTH, Inc. working to develop affordable housing through the economic swings of the last decade, I fully support this bill as an efficient use of community tax exemptions to ensure Kansans have affordable housing. Although this legislation amends the language of an already existing law exempting nonprofit CHDOs from property taxes on property owned for these purposes, the amended language expands the use of this exemption to worthy programs while specifically limiting the exemptions use on all but those programs that are truly creating affordable housing opportunities in our communities.

Due to the directing of significant federal housing resources through Section 42 of the IRS tax code, the LIHTC Program is one of the few ways that nonprofit housing organizations can access construction capital for new affordable housing projects. The strings attached to these funds include the fact that the project's owner is required to be a limited partnership during the tax credit compliance period. Although the housing units are being used by low-income households and usually managed by a nonprofit whose mission is affordable housing for a community, these projects have for-profit investors and developers. These programs were specifically designed this way so that nonprofit projects could leverage for-profit resources. Investors get tax breaks, developers make money on the construction and the nonprofit manages the units and ultimately retains the asset.

Since Bill 2269 requires that the sole general partner or managing partner of the limited partnership must be a not-for-profit recognized as a charitable tax exempt organization by the IRS (House Bill No. 2269, Sect. C) the exemptions cannot be used by a for-profit



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developer without a nonprofit partner who has a charitable housing purpose. Typically the nonprofit housing organization manages these affordable housing projects, ensuring that the tax exemption is directed at the charitable purpose of the low-income housing project. The tax credit investors are involved to receive the tax credits and often donate any profit of the limited partnership to the nonprofit partner. In fact, the tax incentives in Section 42 make it less beneficial for the for-profit investor to claim a taxable profit if they want the maximum tax benefit on the depreciation of the property each year. Because these projects purposefully set very low maximum rents, the tax exemptions over time benefit the rental managers who have the unenviable task of maintaining a slightly positive cash flow against the background of inflating costs and increased rental maintenance as the buildings age. The rental managers are most often the nonprofits that are doing the challenging daily work of managing low-income rental properties and treating the people that live there with dignity.

The other direct beneficiaries are the low income families, some who are elderly and some with disabilities, who have no other options for affordable housing. The social costs of not housing these citizens would arguably be more than the requested exemption and would be paid out of the same community resources. There is no question that the need for affordable housing will continue to grow in Lawrence and across the state as the economy worsens.

Tenants to Homeowners, as a CHDO, supports this legislation because we are currently applying for tax credit financing and hope to rehabilitate 20 fully accessible rental homes in the coming years. The lower rents that can be obtained by not having to budget for property taxes will help us reach lower income families with disabilities that have very few other housing choices in Lawrence. The need is great as the Lawrence-Douglas County Housing Authority, one of the few remaining options, has a 2 year waiting list and accessibly designed rental housing is virtually nonexistent. This request is not competing with market rate units as these tenants, often on extremely fixed incomes due to their disabilities, have no ability to afford market rate units. Many times their only option is to live in substandard units that are not modified for accessibility. The property exemption will also help the nonprofit properly maintain the units over time and make needed accessible accommodations. Although reserves are budgeted and required in these projects, the very low rents make a large cushion hard to sustain. When not-for-profits juggle funding cuts elsewhere, deferred maintenance can be the end result. Deferred maintenance hurts the nonprofit, the tenant, and the community that needs a durable stock of permanently affordable housing.

For-profit and nonprofit developers have a responsibility to structure these projects effectively and build them to meet high quality standards. To ensure that builders are developing quality housing, to be eligible for this exemption a project must use a required



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funding source, such as Section 42 or the Home Investment Partnership Program (House Bill No. 2269, Section B). All of these funding sources have strict guidelines for building standards and processed for review during development. These funds will not be allocated to a project that fails to meet high quality standards. This bill also states that the property shall meet housing quality standards as defined by HUD, ensuring that exempt housing is meeting the needs of its low-income tenants and no developer building substandard housing will be rewarded by this exemption.

Tenants to Homeowners, Inc. is also interested in this legislation as it relates to the tax appraisal of property with a restricted use for housing for the elderly, persons with disabilities or persons with low-income (defined in this bill as those under 80% of area median income, House Bill No. 2269, Line 33). TTH, Inc. in a unique partnership with the city of Lawrence, has chosen to use our local Home Investment Partnership Program funds from the federal government in a very efficient way to create homeownership opportunities for low-income families. Our Program, The Lawrence Community Housing Trust, joins more than 300 other trusts across the country and is the first in the state of Kansas. This innovative program uses federal funds to subsidize the initial cost of a home developed by TTH, Inc. To bridge the gap between what working families can afford and what land acquisition and development costs in Lawrence, we must subsidize each home by at least \$50,000 (The average price of a home in Lawrence in 2008 was \$195,900 from LJWorld.com, 2.3.09). To ensure that this large subsidy remains in the community and creates permanently affordable housing when the market appreciates over time, the homeowners buy the improvements but the Housing Trust maintains title to the land and gives the homeowners a 99-year ground lease with the right to use the land like any other homeowner. However, when the homeowner wishes to sell, the trust wants that home to stay affordable and ensures this with a restricted resale price in the ground lease. Not only does the home have to be sold to an income-eligible buyer, but it can only be sold for a formula price that allows the first buyer to receive a reasonable return on their investment, yet allows the home to meet the community's future needs for affordable housing.

With each home put in trust, the community subsidy is locked into the home, appreciates over time, and is passed from buyer to buyer. Tenants to Homeowners, Inc., the nonprofit steward of these affordable homes, much like a nonprofit tax credit rental manager, cannot liquidate these community resources. The city of Lawrence and the home partnership funding sources attached to this program, require affordability retention in perpetuity—even longer than the 15 year tax credit compliance period. TTH would argue that this is the most efficient use of community resources in homeownership housing and that the funds never leave the community, but serve more low income families. Given all the benefits of a subsidy retention mechanism like the Lawrence Community Housing Trust, TTH hopes that legislators see the value in allowing this legislation to apply a



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*842.5494 ♦ FAX 785.842.7570 ♦ [lawrencelandtrust@yahoo.com](mailto:lawrencelandtrust@yahoo.com) ♦ [www.tenants-to-homeowners.org](http://www.tenants-to-homeowners.org)*

similar tax exemption for the land value in housing trust homes. This land is being rented far below market value under our homes in trust (currently 33 homes stewarded by the not-for-profit). Douglas County has refused to consider a reasonable tax reduction on these properties, even though low-income families in these programs are being taxed on equity they can never get out of the home because of the restricted resale price and limits on who can purchase the home. TTH has always argued that we do not want a full tax exemption for these properties, as the homebuyers use the same schools and services in the community as other property owners. But unlike other homeowners, their equity is permanently limited and they can never legally sell the home for anywhere near the value they are being taxed on. Much like LIHTC, the intent of these units is to provide housing for low income families. Once in trust, these properties meet every intent and restriction laid out in this legislation.

The Lawrence Community Housing Trust is trying to reduce the burden of government to create affordable housing by ensuring that subsidies are recycled rather than repaid. We hope that this bill and the light it sheds on the need for fair tax assessments on nonprofit-developed housing will provide state legislative guidance to Douglas County and the Kansas Court of Tax Appeals. We currently are arguing for this at the state level at COTA and hope that, in light of the intent of this legislative amendment, the state will find it consistent to assess the homes in trust at the improvement value only by exempting the land. This land tax exemption determination would make sense in light of this legislation as the land is owned solely by the nonprofit, rented at a reduced market rate, uses home investment partnership program or other funding sources available for low-income housing, and continuously creates housing whose use and occupancy is permanently restricted to low-income families.

Lawrence is a great example of a Kansas community that is committed to the most efficient use of our affordable housing funds. We are creating rental opportunities by leveraging private investment through the tax credit program and state rental funding sources and we lock home investment partnership program dollars in the community with the Lawrence Community Housing Trust Program. This program develops workforce housing that serves one buyer after another and insulates them from the dramatic peaks and valleys of the market. This combination of programs is creating a permanent stock of affordable rental and homeownership housing for the benefit of Lawrence's low income families and the entire community. It does not make any fiscal sense to tax these not-for-profit affordable housing efforts like other development projects. They only serve a charitable communal purpose and they are the reason that 311 low-income families in Lawrence have attained homeownership and over 150 households have had affordable and safe rental housing in our community over the last decade under TTH's stewardship. Our community housing programs would be improved dramatically by the passage of this bill. Thank you.



*Tenants to Homeowners, Inc.*  
*The Lawrence Community Housing Trust Program*  
*2518 Ridge Court, Suite 209, Lawrence, Kansas 66046*  
*842.5494 ♦ FAX 785.842.7570 ♦ [lawrencelandtrust@yahoo.com](mailto:lawrencelandtrust@yahoo.com) ♦ [www.tenants-to-homeowners.org](http://www.tenants-to-homeowners.org)*

Contact Information

Rebecca Buford

Executive Director

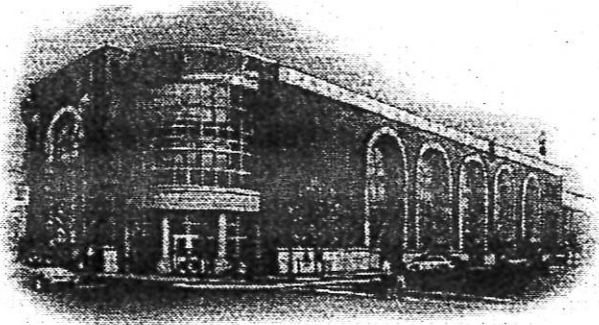
Tenants to Homeowners, Inc.

The Lawrence Community Housing Trust Program

2518 Ridge Court, Suite 209

Lawrence, KS 66046

(785)760-2058/ [rbufordefird@yahoo.com](mailto:rbufordefird@yahoo.com)



## Lyon County Appraiser Lyon County Courthouse

430 Commercial  
Emporia, KS 66801  
(620) 341-3302  
Fax: (620) 341-3360

Good Day,

My name is Gary Post. I am the County Appraiser for Lyon County, Emporia. There are three Section 42 Apartment projects in Lyon County. I wish to address concerns in House Bill 2269.

The Court of Tax Appeals is very quick to advise property owners seeking any form of property tax exemption that taxation is the rule and exemption is the exception. When you put an exemption in place you have only helped the particular group in front of you, and you have added to the burden on the other folks who are paying their bills.

The Legislative Post Audit Committee reported on Section 42 Housing Tax Credit Program in August 2007. Chairman Mast's committee reported that Section 42 is a voluntary project by the owners who agree to meet certain IRS regulations. Investors paid to developers about \$42.5 million to get a total of \$50 million in tax credits. According to records maintained by the Housing Recourses Corporation, the amount of money a developer receives from the sale of the credits on average covers more than 58% of the housing development's costs.

And now HB 2269 wants to exempt these properties from all property taxes? Like my Grandmother out in Western Kansas used to say, "That just ain't right!"

Thank you for you attention.

Gary Post  
Lyon County Appraiser  
Emporia KS  
620.341.3378