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TO: All County Auditors
Through: Carol Mahaffey, Deputy Tax Commissioner for Real Property
FROM: Edward C. Samsel, Legal Counsel for the Tax Equalization Division
RE: Valuation Update – Woda Ivy Glen Limited Partnership
DATE: June 26, 2009

This memo is a brief explanation of the Supreme Court's holding in Woda Ivy Glen Ltd. Partnership v. Fayette County Bd. of Revision, 121 Ohio St.3d 175 (2009). The opinion addresses the valuation of real property subject to a federal low-income housing tax credit (LIHTC).

The property in Woda Ivy Glen consists of 60 parcels with 60 single-family houses, 59 of which are rental units and one of which is the manager's unit with adjoining community building/office. The board of revision and the BTA valued the 60 parcels separately using the cost approach, since the units were two years old. The property owner maintained that the highest and best use of the 60 parcels was as a single economic unit and should be valued under the income approach utilizing the LIHTC program's use and rent restrictions.

The Supreme Court pointed out: (1) that the 60 parcels were part of the LIHTC development; (2) the LIHTC program imposes serious rent restrictions, which are binding on any successor owners and must be recorded in the chain of title to the property; and (3) violations of the restrictions lead to recapture of the tax credits with penalties and interest.

The Court explained Alliance Towers Ltd. v. Stark County Bd. of Revision, 37 Ohio St.3d 16 (1988), which held that the fee simple estate should be valued as if it were unencumbered, and upon which the BTA incorrectly relied in its decision in Woda Ivy Glen. First, Alliance Towers stands for the proposition that the fee simple estate should be valued free from all private encumbrances, but not involuntary governmental actions. See Muirfield Ass'n, Inc. v. Franklin County Bd. of Revision, 73 Ohio St.3d 710 (1995). Second, the use and rent restrictions under the federal LIHTC program are governmental limitations imposed for the general welfare. Moreover, Alliance Towers was concerned with preventing the affirmative benefit of governmental subsidies from inflating the value of property for tax purposes. That precept would prevent the federal income tax credits from being used in the valuation of LIHTC property. Besides, those credits are intangible interests separable from the real property itself. However, Alliance Towers would not prevent the assessor from considering the effect of the use and rent restrictions that run with the land when valuing property for tax purposes.

Therefore, the Supreme Court remanded the case to the BTA to determine the effect of the LIHTC program's use and rent restrictions on the property's value, to redetermine the highest and best use of the property, and to reconsider the income studies presented to the board of revision. As a result, we read Woda Ivy Glen as requiring the use of rent restrictions and prohibiting the consideration of the intangible tax credits in valuing LIHTC real property with the income approach for tax purposes.