



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE MARK GOTTLIEB

FROM: Mary Matthias, Senior Staff Attorney

RE: LRB-1145/2, Relating to a Tax Exemption for Low-Income Housing

DATE: October 17, 2007

This memorandum, prepared at your request, describes LRB-1145/2, an Assembly amendment to Senate Substitute Amendment 1 to 2007 Senate Bill 40 (the 2007-08 Biennial Budget Bill).

CURRENT LAW

The Rent Use Requirement

Section 70.11 (4), Stats., exempts from the property tax several types of property including property owned and used exclusively by churches and religious, educational, and benevolent associations.

Prior to the enactment of 2003 Wisconsin Act 195 (2003 Act 195), s. 70.11 (intro.) provided that if property that was exempt from the property tax was leased, the property retained its tax exemption only if the following two requirements were met:

- The lessee (the person to whom the property is leased) would be exempt from paying property tax if the lessee owned the property. This requirement is commonly referred to as the “**lessee identity**” requirement.
- The lessor (the person who owns the property) uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property, or both. This requirement is commonly referred to as the “**rent use**” requirement.

In 2003, the Wisconsin Supreme Court decided *Columbus Park Housing Corporation v. City of Kenosha*, 267 Wis. 2d 59, 671 N.W.2d 633 (2003) (“*Columbus Park*”). That case involved a dispute over whether the Columbus Park Housing Corporation (the Housing Corporation), a benevolent

association that provided apartment housing to low-income families, was entitled to a property tax exemption under s. 70.11 (4), Stats.

The City of Kenosha argued that because the Housing Corporation owned the apartments and leased them to low-income families, it was required under s. 70.11 (intro), Stats., to meet the rent use and lessee identity conditions in order to be exempt from the property tax.

The Court agreed that the rent use and lessee identity conditions do apply to tax-exempt property leased to individuals. The Court stated that property owned by the Housing Corporation that is leased to low-income families was not entitled to the property tax exemption because the property did not meet the “lessee identity” requirement. In other words, because the low-income tenants would not be entitled to the property tax exemption if they owned the property themselves, the property was not entitled to the exemption when it was leased to those tenants.

The Court also found that the rent use requirement applied to the property. However, the Court did not analyze whether the Housing Corporation met that requirement once it concluded that it failed to meet the lessee identity requirement.

2003 Act 195, enacted in response to the *Columbus Park* decision, exempted residential housing from the lessee identity requirement. The Act did not address the rent use requirement. Therefore, tax-exempt property that is leased as residential housing remains subject to the statutory requirement that all of the lease income must be used for “maintenance of the leased property, construction debt retirement of the leased property, or both.”

The 10-Acre Limitation

Under current law, property that is exempt from the property tax under s. 70.11 (4), Stats., may not exceed 10 acres of land necessary for location and convenience of buildings while such property is used not-for-profit.

However, property used by churches or religious associations necessary for location and convenience of buildings, used for educational purposes and not-for-profit, is subject to a 30-acre limitation, not the 10-acre limitation.

LRB-1145/2

LRB 1145/2 does all of the following:

- Creates a **definition of low-income housing** and creates a specific exemption from the property tax for property owned by churches and religious, educational, and benevolent associations that meets the definition.
- Amends the **rent use requirement** as it applies to property owned by a church or religious, educational, or benevolent associations that meets the definition of low-income housing created in the draft.

- Amends the **10-acre limitation** as it applies to property owned by a church or a religious or benevolent association that meets the definition of low-income housing created in the draft.

Definition of Low-Income Housing

The draft defines “**low-income housing**” as any residential unit within a low-income housing project that is occupied by a low-income or very low-income person or is vacant and is only available to such persons.

Low-income persons and very low-income persons are determined in accordance with the income limits published by the federal Department of Housing and Urban Development (HUD) for low-income and very low-income families under the National Housing Act of 1937. The 2007 HUD income limits for Wisconsin are included as an attachment to this memorandum and may be viewed on-line at <http://www.huduser.org/DATASETS/il/il07/index.html>.

The draft defines “**low-income housing project**” as a residential housing project for which all of the following apply:

1. At least 75% of the occupied residential units are occupied by low-income or very low-income persons.
2. At least one of the following applies:
 - a. At least 20% of the residential units are rented to persons who are very low-income persons or are vacant and are only available to such persons.
 - b. At least 40% of the residential units are rented to persons whose income does not exceed 120% of the very low-income limit or are vacant and only available to such persons.

Under the draft, all properties included within the same HUD development contract or within the same federal Department of Agriculture, and Rural Development, contract are considered to be one low-income housing project.

Application of Property Tax Exemption to Various Portions of a Low-Income Housing Project

Under the draft, any residential unit within a low-income housing project that is leased to a low-income or very low-income person is exempt from property taxes if the rent received from the unit is used for the allowable purposes set forth below.

Any residential unit within a low-income housing project that is vacant and is available only to a low-income or very low-income person is exempt from the property tax.

Any housing unit within a low-income housing project that is leased to an individual who is not a low-income or very-low income person is subject to the property tax.

Any property that is part of a low-income housing project that is not leased and is otherwise tax-exempt because it is property owned and used exclusively by a church or religious, educational, or benevolent association, remains tax exempt.

The Rent Use Requirement

LRB-1145/2 amends the rent use requirement to provide that leasing property that is otherwise exempt from the property tax as low-income housing does not render it taxable if the all of the rental income from the property is used for any of the following expenditures directly related to the low-income housing project to which the property belongs:

1. Maintenance.
2. Capital replacements.
3. Insurance premiums.
4. Project management.
5. Debt retirement.
6. Moneys reserved for project-related purposes.
7. General and administrative expenses.
8. Social services and other resident services provided at the project.
9. Utilities.
10. Financing costs.
11. Any other expenditure related to preserving and managing the project.
12. Any other similar project-related expenditure.

In addition, up to 10% of the rental income from a low-income housing project may be used for any of the expenditures listed above that are directly related to any other low-income housing project in the state that is under **common control** with that project.

Further, any amount of the rental income from a low-income housing project may be used for debt service for any other low-income housing project in the state that is under common control with that project and is under the **same mortgage** as that project.

The 10-Acre Limitation

LRB-1145/2 specifies that property that is owned by a church or a religious or benevolent association and used for a low-income housing project is not subject to the 10-acre limitation.

Under the draft, up to 30 acres of property within any municipality owned by a church or a religious or benevolent association that is used for a low-income housing project may be exempt. All property under common control with another project is included in calculating the total acreage that may be exempt within a municipality. In addition, no more than 10 contiguous acres may be exempt in any one municipality.

Information Provided to Assessor

Under LRB-1145/2, the owner of a low-income housing project must file an annual statement with the assessor specifying which units in the project were occupied by low- or very low-income persons on January 1, as certified by the property owner to the appropriate federal or state agency.

The property owner must also provide a copy of the federal HUD contract or federal Department of Agriculture and Rural Development contract pertaining to the property, if applicable.

If the required statement is not received on or before March 1, the assessor must send the property owner a notice stating that failure to file a statement is subject to penalties. A person who fails to file a statement within 30 days after notification must forfeit \$10 for each succeeding day on which the form is not received by the taxation district assessor, but not more than \$500.

The assessor may require a property owner to submit other information to prove that the person's property qualifies as low-income housing that is exempt from taxation.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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Attachment