# WISCONSIN LEGISLATIVE COUNCIL

# TAX EXEMPTIONS FOR RESIDENTIAL PROPERTY (COLUMBUS PARK)

Room 412 East (Joint Finance Room), State Capitol
Madison, Wisconsin

September 28, 2004
10:00 a.m. – 4:15 p.m.

[The following is a summary of the September 28, 2004 meeting of the Special Committee on Tax Exemptions for Residential Property (Columbus Park). The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at **http://www.legis.state.wi.us/lc/2004studies.htm**.]

## Call to Order and Roll Call

Chair Fitzgerald called the meeting to order. The roll was called and it was determined that a quorum was present.

| | |
|---|---|
| COMMITTEE MEMBERS PRESENT: | Rep. Jeff Fitzgerald, Chair; Sens. Cathy Stepp and Julie Lassa; Reps. Terese Berceau, Mark Gottlieb, Ann Nischke, and Leah Vukmir; and Public Members Gregg Hagopian, Paul Hoffman, Robert Jones, Frederic Mohs, Mary Reavey, Fritz Ruf, John Sauer, and Earl Thayer. |
| COMMITTEE MEMBERS ABSENT | Public Member Tim Radelet. |
| COUNCIL STAFF PRESENT: | Laura Rose, Deputy Director; Mary Matthias, Senior Staff Attorney; and Kelly Mautz, Support Staff. |
| APPEARANCES: | Terry C. Anderson, Director, Legislative Council Staff; Lawrence Nines, Executive Director, Wisconsin Health and Educational Facilities Authority; Audra Brennan and Dennis Collier, Department of Revenue; Marty Evanson, Director, Bureau of Housing, Department of Commerce; Antonio Riley, Executive Director, Wisconsin Housing and Economic Development Authority; William Perkins, Executive Director, Wisconsin Partnership for Housing Development; Curt Witynski, Assistant Director, League of Wisconsin Municipalities, Ed Huck, Executive Director, Wisconsin Alliance of Cities, and Mike |

Higgins, City Assessor, City of Kenosha; Rev. Daniel Risch, Chief Executive Officer, Lincoln Lutheran of Racine, and Stephen Seybold, Executive Director, Homme Home of Wittenberg; Rita Kidd, Mayor, Richland Center; and Kyran Clark, Executive Director, Marquardt Village, Watertown.

## Opening Remarks

**Terry C. Anderson**, Director of the Legislative Council, welcomed the committee and introduced the Legislative Council staff members assigned to work with the committee. He noted that the committee's meetings are recorded and available on the Internet.

## Introduction of Committee Members

Chair Fitzgerald welcomed all members to the committee and thanked them for their commitment to serve on the committee. Chair Fitzgerald asked the members of the committee to briefly introduce themselves.

### Invited Speakers

**Lawrence Nines, Executive Director, Wisconsin Health and Educational Facilities Authority (WHEFA)**, provided background on WHEFA's role providing capital financing assistance to tax-exempt providers of residential facilities for the elderly and disabled, primarily health-care providers such as hospitals, nursing homes, and community-based residential facilities. He said that most of the financings they do in long-term care are "mixed-purpose," with bonding done to create a campus setting and a continuum of care from independent living with health care and personal care services available all the way to a skilled nursing facility.

Mr. Nines said that long-term care providers are the only sector of WHEFA's bond portfolio in which payment defaults have occurred. He said that if the providers with whom WHEFA works were to lose their tax-exempt status they would be forced to re-price their services, serve less of a lower-income population, or change the mix of units and services offered.

As a result, the government would be responsible to provide the services and facilities that are currently provided by tax-exempt entities. He said it might also cause borrowers to downsize current operations or shelve plans for future growth.

**Audra Brennan, Administrator, Division of Research and Policy, and Dennis Collier, Director, Bureau of Tax and Fiscal Policy, Department of Revenue**, addressed the committee. Mr. Collier provided background on the genesis of 2003 Wisconsin Act 195, and pointed out that the parties to the Columbus Park case are currently in court litigating the meanings of "maintenance" and "debt retirement" in s. 70.11 (intro.), Stats. He said the Columbus Park decision raised the issue of what types of housing leased by non-profit entities should be exempt from the property tax. He said this would entail creating a statutory definition of "benevolent association" that indicates the activities an association must perform to be considered benevolent.

Mr. Collier told the committee that the Benevolent Retirement Home for the Aged Task Force, created by 1997 Wisconsin Act 27, addressed issues similar to those in the Special Committee's charge, but failed to agree on a recommendation. He said some members supported the existing exemption, if a clearer definition of "benevolent" were added, while others argued for additional standards relating to guaranteed care and the income levels of residents.

Mr. Collier told the committee that there is only limited data on the value of exempt housing in the state. For 2002, the estimated value of exempt housing, not including nursing, retirement, or religious housing, is $862 million, which represents about $17.7 million in foregone property taxes.

Mr. Collier stated that the current exemption raises some tax equity issues. He noted that some housing leased by tax-exempt associations does not appear to be affordable housing for the needy and may not perform the function for which the exemption is intended. Also, the exemption shifts taxes to other property owners, including low-income homeowners and renters. He explained that the Homestead Tax Credit relieves only a portion of the property taxes and is phased out with income level.

Mr. Collier also noted that narrowing the property tax exemption might have a negative impact on the development of low-income and elderly housing projects.

**Marty Evanson, Director, Bureau of Housing, Department of Commerce**, discussed the bureau's role in increasing housing opportunities for persons of moderate income, which he defined as 80% or less of the county median income. He said the withdrawal of the tax-exemption for low-income housing projects developed under the federal Home Ownership Mortgage Loan (HOME) program and homeless shelters would pose a serious threat to the financial viability of those projects, and to future low-income housing efforts.

Mr. Evanson said that the lack of affordable rental housing is a serious problem in Wisconsin which would be made worse by requiring property taxes to be paid on properties that are currently exempt.

He also stressed the importance of mixed-income and mixed-use projects, in which higher revenues earned on portions of the development are used to subsidize the lower-income residents. He explained that because the residents of supported housing need case management and supportive services, the law should permit the use of rental income for these purposes without loss of the tax exemption. He also pointed out that the tax-exempt affordable housing benefits the community in many ways and may often be the most cost-effective way to serve certain populations.

**William Perkins, Executive Director, Wisconsin Partnership for Housing Development**, described the work of the Wisconsin Partnership. He said that tax exemption is an important means of ensuring affordability of low-income housing because the internal improvements clause in the Wisconsin Constitution prohibits the state from contracting for debt for, or be a party in carrying out, works of internal improvements. He pointed out that the availability of housing for low- to moderate-income people is required under the state's Smart Growth law and is important for economic development.

Mr. Perkins explained that low income housing tax credits are available only to for-profit entities, but that the tax exemption is vitally important for non-profit entities that build and rehabilitate housing, especially since there have been cutbacks in federal funding for housing programs.

He suggested creating a statutory definition of "benevolent association" to ensure equal treatment of properties throughout the state. He also urged the committee to amend the statutes to permit tax-exempt entities to use rental income for a broader range of expenses than is allowed under current law, such as utilities, management costs, legal and accounting expenses, and reserves and retirement of debt other than construction debt.

Mr. Perkins said that if the committee considers applying a means test to the tax exemption, it should carefully consider the impact this may have on mixed-income housing and consider the higher health care costs of seniors and their need for supportive services.

**Antonio Riley, Executive Director, Wisconsin Housing and Economic Development Authority (WHEDA)**, described WHEDA's involvement in supporting quality affordable housing. He expressed concern over the possible negative ramifications for affordable housing of changing the property tax exemption, especially on preservation of existing affordable housing. He explained many obstacles WHEDA faces, such as the "exit tax," when attempting to establish and preserve affordable housing in the state. He described the Saving Our Stock (SOS) initiative designed to address these issues and the important role that non-profit entities can take advantage of the tax exemption play in the initiative.

Mr. Riley stated that without the exemption, residents of non-profit housing would see a rent increase of between $150 and $300 per month, and that implementing full taxation on affordable housing projects would create an immediate annual cash need of $3 million for those developments. He explained that by saving money through the exemption, non-profits can afford to provide services to their needy residents.

In response to a question, Mr. Riley agreed that it would be possible to narrow the scope of the current exemption without affecting the tax-exempt status of the type of low-income housing with which WHEDA is concerned.

**Curt Witynski, Assistant Director, League of Wisconsin Municipalities, Ed Huck, Executive Director, Wisconsin Alliance of Cities, and Mike Higgins, City Assessor, City of Kenosha**, explained that for the past 35 years the property tax base has been eroding, which has resulted in shifting more of the burden of paying for municipal services on to homeowners. Mr. Witynski said that in 1970, homeowners paid 50% of all property taxes in Wisconsin, but in 2004, they will pay 70% of the total property taxes. As a result of the property tax exemption under s. 70.11 (4), Stats., in the City of Milwaukee, approximately $8 million in annual property taxes is shifted to other property taxpayers. Of that $8 million, roughly $500,000 goes to non-profit organizations providing housing to low-income tenants, while the remaining $7.5 million goes to independent living facilities providing high-end housing for middle- and upper-middle income residents.

Mr. Witynski said that the exemption has been applied in a much broader way than the Legislature originally intended. As currently applied, he said, it results in tax-paying homeowners subsidizing high-end housing facilities serving affluent members of the community. He pointed out that it is estimated that the number of seniors in Wisconsin will double over the next 25 years, which will result in an increase in expensive non-profit senior housing and also an increase in the number of elderly who cannot afford that type of facility.

Mr. Witynski said the tax exemption for housing owned by a benevolent association should be limited to non-profit housing facilities that serve residents who are legitimate subjects of charity as measured by an income test. High-end facilities that charge expensive endowments and monthly fees should not be exempt from property taxes.

Mr. Huck explained that tax-exempt properties are concentrated in cities, which creates higher taxes for other city residents, which in turn contributes to flight to the suburbs, further exacerbating the tax situation in the city, and stratifying the community. He also pointed out that under the scenario proposed by WHEDA's SOS initiative, many properties that are now on the property tax rolls would become tax-exempt when they are purchased by non-profit entities. He agreed that the committee should consider applying a "means test" to the exemption. He also suggested looking to the Supreme Court decision in the *Columbus Park* case [*Columbus Park Housing Association v. City of Kenosha*, 267 Wis. 2d 59, 761 N.W.2d 633 (2003)] for guidance regarding the type and amount of services an entity should be receiving to qualify for the exemption.

Mr. Higgins discussed the history of the *Columbus Park* case, and explained that the tenants in that case were receiving Section 8 vouchers, which they used to pay part of their rent. The property owners were receiving market rates for the units, paid for partially through the government-funded vouchers, yet still felt they were also entitled to a property tax exemption. Mr. Higgins said that since the government was making the property owners whole through the voucher payments, they should not also be exempt form property taxes.

Mr. Higgins said the Legislature must ensure that tax relief is provided where it is needed most. He said it should continue to provide assistance to low-income renters with vouchers and help low-income homeowners by expanding the Homestead Tax Credit. He also suggested creating a statutory definition of "benevolent" that would narrow the focus of the exemption.

**Rev. Daniel Risch, Chief Executive Officer, Lincoln Lutheran of Racine, and Stephen Seybold, Executive Director, Homme Home of Wittenberg**, described the facilities and services provided by their organizations to needy populations, and the dedication of the staff and the organization to provide appropriate care at all stages of their residents' lives. They said that the societal benefits provided by non-profit providers justify their tax-exempt status. They noted that if the tax exemption for residential housing were repealed, essential housing and services for seniors and other needy populations will be put at risk. They said that if these facilities and services can no longer be provided by non-profit associations because of the loss of the tax exemption, the entire community will suffer. They urged the committee to leave the exemption intact.

Rev. Risch pointed out that there is a qualitative difference in residential housing for seniors that offers a continuum of senior services from stand-alone residential housing. He also pointed out that in Delaware, all citizens over the age of 65 are exempt from the property tax.

Rev. Risch urged the committee to ensure that s. 70.11, Stats., be amended to specify that non-profit organizations that provide housing to individuals through leases remain tax-exempt; to permit the use of lease proceeds by those organizations to further the benevolent purposes of the organization; and to specifically exempt from property taxes non-profit skilled nursing facilities, community-based residential facilities, residential care apartment complexes, and senior housing because they are all health and service related.

Mr. Seybold told the committee that none of the facilities associated with Homme, Inc., charge an entrance fee to their residents, and that the average age for the residents in their independent living facility is 83. He said making eligibility for the tax exemption dependent upon an annual means test of residents would be difficult for his organization to administer and would create financial uncertainty for the organization, and would also encourage divestiture. He pointed out that if his facility were determined not to be tax-exempt, 50% of the residents would be eligible for the Homestead Tax credit, which would have an impact on state revenues. He invited the committee to visit his facility.

**Rita Kidd, Mayor, Richland Center**, said that in her city there is an increasing number of tax-exempt properties being built and proposed. She said that this will create a serious problem for the average taxpayer. Currently, 44% of the property in the city is tax-exempt, yet uses city services. The remaining 56% of the properties carry 100% of the property tax burden. She said that if every church in the city took advantage of its statutory right to 10 acres of tax-exempt property, 169 blocks (out of a total of 200 blocks) within the city would be tax-exempt.

Mayor Kidd stated that although some tax-exempt associations make voluntary Payment in Lieu of Taxes (PILOT) payments, they typically pay only the city portion of the property tax, which in Richland Center represents only 19% of the total property tax bill.

The Mayor said she is particularly concerned about the ability of private developers to compete with tax-exempt organizations building senior housing in the city. She cited the example of a for-profit developer who built an eight-unit senior apartment complex who lost six of the eight tenants to a tax-exempt facility that could offer lower prices.

Mayor Kidd reiterated that responsibility for property taxes should be spread out among the entire community.

**Kyran Clark, Executive Director, Marquardt Village, Watertown**, stated that every dollar generated by his tax-exempt organization is put back into meeting its benevolent mission of serving the elderly and handicapped. He said that no resident has ever been discharged for lack of payment because subsidies are provided for those who cannot afford the cost of assisted living and those who run out of money.

He said that because the elderly are the fastest-growing segment of our population, organizations such as Marquardt Village are increasingly important to serve this population, especially in light of current Medicaid shortfalls. He also said that due to increased longevity, people tend to come to his facility later in life, already needing extra services.

Mr. Clark told the committee that Marquardt Village makes annual voluntary PILOT payments of $150,000 to the City of Watertown for the services they use including police, fire, and streets. He said that if the *Columbus Park* decision had been allowed to stand, Marquardt Village would have had to pay approximately $500,000 in property taxes, which translates to about $100 per month for each resident.

Mr. Clark said it is not fair to the elderly to change or threaten to change the tax-exempt status of senior facilities every couple of years. He said the law should be changed to allow tax-exempt facilities to use leasehold income for benevolent purposes. He also explained that retirement campuses are impeded by the 10-acre restriction in s. 70.11 (4), Stats., and urged the committee to eliminate it.

## Other Business

There was no other business brought before the committee.

## Plans for Future Meetings

The next meeting of the Special Committee will be held at the call of the chair. Subsequently, Chair Fitzgerald scheduled the next meeting of the committee for ***Monday, November 8, 2004, at 10:00 a.m., in Room 412 East (the Joint Finance Room), State Capitol, Madison***.

## Adjournment

The meeting was adjourned at 4:15 p.m.

MM:ksm