

Wisconsin Association of Homes and Services for the Aging, Inc.

204 South Hamilton Street • Madison, WI 53703 • 608-255-7060 • FAX 608-255-7064 • www.wahsa.org

January 4, 2000

To: Tom Ourada, Executive Assistant, Department of Revenue

From: John Sauer, Executive Director

Subject: Legislative Chronology of the Benevolent Retirement Home for the Aged Issue

As a follow up to Bill Ford's presentation at the first meeting of the Benevolent Retirement Home for the Aged Task Force, we have attempted to construct, to the best of our recollection, a more comprehensive legislative chronology of this issue:

- The Legislative Council Special Committee on Exemptions from Property Taxation was created in May 1990. A year later, the Special Committee, which was chaired by then-State Representative Joe Wineke (D-Verona), recommended the Legislative Council introduce three bills relating to property tax exemptions: **1991 Assembly Bill 497**, relating to the imposition of service fees on tax-exempt real property and making those fees local purpose revenues for the calculation of shared revenue; 2) **1991 Assembly Bill 498**, relating to the property taxation of certain property in part and the property tax exemption for the manufacturing machinery and equipment; and 3) **1991 Assembly Bill 499**, relating to procedures for property tax exemptions and to modifying, repealing or granting tax exemptions for religious or charitable associations, leased municipal property and certain other property. (A copy of the 7/23/91 report on these three bills to the Legislative Council, as well as copies of AB 497 and AB 499, are attached).
- 1991 AB 499, which among other things would replace "benevolent," "benevolent institutions" and "benevolent associations" with "charitable services" and "charitable associations" in the statutory provisions describing property which is tax exempt, was referred to the Joint Survey Committee on Tax Exemptions, which determined the bill to be legal and good public policy. The bill then was referred to the Assembly Ways and Means Committee, which held a 3/9/92 public hearing on AB 499. The bill died in committee. (A copy of the WAHSA testimony on AB 499 before the Assembly Ways and Means Committee is attached).
- A motion was adopted by the Joint Committee on Finance to amend 1991 AB 91, the biennial budget bill, to incorporate most of the provisions relating to benevolent associations that were contained in AB 499. **That motion, which was offered by Representative Wineke, differed from AB 499 in one key area: It specifically exempted from property taxation benevolent**

nursing homes and retirement homes for the aged which have qualified for exemption under s.501(c)(3) of the Internal Revenue Code of 1954 as amended. (A copy of the Legislative Fiscal Bureau Analysis of this provision is attached). The motion of the Joint Finance Committee later was amended in the State Senate to define a "charitable association" to mean "an entity that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code."

- In signing AB 91 into law as 1991 Wisconsin Act 39, Governor Thompson vetoed the entire charitable association provision. In explaining his decision, the Governor stated that utilizing the federal 501(c)(3) tax exemption standard as the standard for a state property tax exemption would expand the number of tax exempt properties in Wisconsin and that there are a number of 501(c)(3) entities which are neither benevolent nor charitable. (A copy of the vetoed budget language is attached).
- The Governor's 1993-95 state budget bill (1993 Senate Bill 44) contained a provision to replace the "benevolent association" standard under s.70.11(4), Wis. Stats., to a defined "charitable association" standard. SB 44 would not apply the new "charitable" standard to benevolent nursing homes; however, it would apply the new standard to retirement homes for the aged. This provision later was one of the 110 items stripped from SB 44 by the co-chairs of the Joint Committee on Finance because it was policy and not fiscal in nature. By agreement, legislative leaders reintroduced this proposal as companion bills: 1993 Senate Bill 256 and 1993 Assembly Bill 456.
- Both SB 256 and AB 456 were referred to the Joint Survey Committee on Tax Exemptions and were the subject of a June 7, 1993 public hearing before the joint committee. Despite later efforts by DOR Secretary Mark Bugher to further modify the property tax exemptions standard specifically for benevolent retirement homes for the aged, both bills died in committee. (Attached are copies of AB 456 and its fiscal note, SB 256 and the 6/7/93 WAHSA testimony on the two bills before the Joint Survey Committee on Tax Exemptions, and Secretary Bugher's October 11, 1993 memo to the co-chairs of the Joint Survey Committee).
- During deliberations by the Joint Committee on Finance on 1995 Assembly Bill 150, the 1995-97 biennial budget bill, then-State Senator and JFC co-chair Joe Lee drafted a motion to narrow the exemption for benevolent retirement homes for the aged to only facilities where 50% or more of the residents were at or below the Homestead Tax Credit eligibility level. This was the first time a proposed legislative change in the property tax exemption standard under s.70.11(4) dealt solely with benevolent retirement homes for the aged. The Lee motion (Motion #646, which is attached), which mirrored a proposal suggested by the DOR in an attached copy of a 7/25/94 memo, was never introduced in the Joint Committee on Finance. Later, during budget deliberations in the Assembly Republican Caucus, then-State Representative Mary Lazich (R-New Berlin) considered offering the Lee motion as a caucus budget amendment but ultimately decided not to do so.
- During Joint Committee on Finance deliberations on 1997 Senate Bill 77, the 1997-99 biennial budget bill, a motion offered by then-State Senator Joe Wineke (the attached Motion # 1750) was adopted on a 12-4 vote of the joint committee, with then-State Representative Tom Ourada voting against the motion. The Wineke motion mirrors a proposal suggested by the DOR in a 9/9/96 memo to repeal the exemption for a benevolent retirement home for the aged and create a charitable retirement home for the aged exemption. State Senator Bob Jauch (D-Poplar) later offered a motion to delete this provision, which was adopted by the Senate Democrat Caucus. The Assembly Republican Caucus adopted a similar motion, offered by State Representative Frank Urban (R-Elm Grove), to delete the Joint Finance Committee benevolent retirement home for the

aged language. Later, the Assembly Republican Caucus combined the Urban motion to delete the benevolent retirement home language with a motion offered by State Representative Michael Lehman (R-Hartford) to create the 10-member Benevolent Retirement Home for the Aged Task Force of which we now are participants. (Copies of the 9/9/96 DOR memo, the Urban and Lehman motions and the Legislative Fiscal Bureau analysis of the motion creating the Task Force are attached).

- While budget deliberations on 1977 SB 77 continued, Senator Wineke introduced 1997 Senate Bill 261, which contained the same language as Motion #1750 adopted by the Joint Committee on Finance. SB 261 was the subject of a 10/29/97 public hearing before the Joint Survey Committee on Tax Exemptions, which later determined the bill to be legal and good public policy. SB 261 then was referred to the Senate Health, Human Services, Aging, Corrections, Veterans and Military Affairs Committee, where it died without a hearing. (A copy of 1997 SB 261 and WAHSA testimony on the bill is attached).

Attached also please find copies of: 1) A January 1998 paper developed by the DHFS Bureau on Aging and Long Term Care Resources entitled "Housing With Supportive Services: Options for Older People"; 2) The Chapter 50, Wis. Stats., definitions of "adult family home," "residential care apartment complex", "community-based residential facility" and "nursing home"; 3) 1991 AB 497, the municipal services fee bill recommended by the Legislative Council Special Committee on Exemptions from Property Taxation; 4) The April 4, 1990 Attorney General's opinion on the constitutionality of municipal service fee legislation; and 5) The current statutory definition of "charitable organization" and "charitable purpose." I earlier provided your office with the relevant IRS rulings related to retirement homes for the aged.

I hope this information is helpful to you and the Task Force. If you need additional information prior to the January 28, 2000 Task Force meeting, please give me a call.

¹The attachments referred to in the above memo are not attached but would be made available upon request. The following is an update to the above memo:

The Benevolent Retirement Home for the Aged Task Force was directed to "investigate the property tax exemption for benevolent retirement homes and all problems that are associated with it." The Task Force met six times from December 1999 through June 2000. In his August 4, 2000 report to legislative leaders, Ourada wrote: "Members agreed that the current exemption language for benevolent retirement homes lacks clarity and so provides little guidance for establishing what is exempt or taxable to either assessors or those who build and manage retirement facilities. However, consensus could not be reached regarding the scope of the Task Force and the standard to use to exempt retirement homes. As a result, the work of the Task Force has culminated in two minority reports, each of which has the support of five members."

Simply stated, the five members of the Task Force representing not-for-profit long-term care providers argued a benevolent retirement home should be defined to include only unlicensed, non-health-related apartment complexes for the elderly (excluding nursing homes, CBRFs, RCACs and CCRCs) and its tax exempt status should be based on a community benefits standards similar to that imposed by the IRS under s.501(c)(3).

The five Task Force members representing municipalities and for-profit long-term care providers argued the definition of a benevolent retirement home should include all licensed and unlicensed long-term care settings, except nursing homes, and its tax exempt status should be based on an income test.

Since the issuance of those two conflicting reports in August 2000, no legislation even has been introduced to address this issue. That is until the November 19, 2003 decision in *Columbus Park Housing Corporation v. City of Kenosha* eliminated the property tax exemption for leased property that is leased to individuals who themselves would not be tax exempt if they owned the property. This decision necessitated the introduction and ultimate passage of 2003 Senate Bill 512, which reversed the *Columbus Park* ruling by exempting residential housing from this requirement. SB 512 was signed into law as 2003 Wisconsin Act 195. Act 195 contains a provision directing the legislative council to study the effect of *Columbus Park Housing v. City of Kenosha*, 2003 WI 143, on property tax exemptions for property that is leased and report its findings, conclusions, and recommendations to the Legislature no later than December 15, 2004.