

MEMORANDUM

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HAGOPIAN MEMO NO. 2

TO: MEMBERS, SPECIAL COMMITTEE ON TAX EXEMPTIONS,
Wisconsin Legislative Council Special Committee On Tax Exemptions For
Residential Property (*Columbus Park*, 2003 WI 143), 2003 WI Act 195, 2003 SB
512

FROM: GREGG C. HAGOPIAN, Assistant City Attorney

DATE: October 12, 2004

RE: Brainstorming Table; Taxed-in-Part; Existing Data on Exemption Devices

A. Brainstorming Table

After our first Committee meeting on September 28, 2004, having heard all the speakers, I put together the attached "Brainstorming Table" that, hopefully, will be helpful to the Committee.

Of course, the Legislature has a number of options available to it. Our job, as I understand it, is for the Committee to analyze and discuss those options so we can make a recommendation to the Legislature. The table outlines some of those options, and includes, for some of the options, a thumbnail sketch on the various pros and cons associated with each of them.

The table is intended for true "brainstorming" and for generating discussion and further ideas. So, at least at this point, neither I nor the City should be interpreted as backing any particular idea. Moreover, the Legislature will have to undertake its own analysis as to the legality and enforceability of any particular proposal, and, whether, for example, constitutional amendment may be required.

B. Taxed-in-Part

Some ideas on the table are premised on the layman's concept of partial taxation. And, in analyzing those ideas, one should be aware of recent legal developments regarding partial taxation.

Wisconsin's commonlaw, for a long period of time now, has essentially required something to be either all taxed or all exempted. See, e.g., *Gottlieb v. City of Milwaukee*, 33 Wis. 2d 408, 147 N.W.2d 633 (S.Ct. 1967). However, one could argue that that basic principle of the commonlaw interpretation of Wisconsin's Uniformity Clause is very qualified and greatly eroded. For example:

1. The Legislature *already* allows or mandates taxed-in-part.
 - a. Legislature taxes exempt property in part where there is UBIT. Wis. Stat. § 70.1105. See, *Deutsches Land, Inc. v. City of Glendale*, 225 Wis.2d 70, 591 N.W.2d 583 (S. Ct. 1999) ¶¶29-32.
 - b. Legislature taxes some property due to leasing parts of the same. Wis. Stat. § 70.11 preamble. *Deutsches Land*.
 - c. Legislature taxes exempt property over certain acreage limits.
 - (1) 70.11(4), benevolent associations, 10 acres. But, 30 acres for property owned by religious associations used for educational purposes.
 - (2) 70.11(3), colleges and universities, 80 acres.
 - (3) 70.11(5), ag. fairs, 80 acres.
 - (4) Etc.
 - d. Legislature taxes some *portions of property* depending on use.
 - (1) 70.11(4m), doctor's offices, health and fitness centers, commercial space within hospital not exempt.
 - (2) 70.11(4m), hospital exemption for residential property is limited to dormitories of 12 or more units housing student nurses enrolled in state accredited nursing school affiliated with hospital.
 - (3) 70.11(9), veterans memorial halls taxed in part depending on whether part is used for pecuniary profit.
 - e. Legislature mandates PILOT's on certain exempt parcels.
 - (1) Redevelopment Authorities. 66.1333(12).

- (2) Public Housing. 70.11(18) and 66.1201(22).
 - (3) State-owned property. 70.119¹.
 - (4) UW Hospitals and Clinics Authority. 70.11(38). 70.119.
 - (5) DNR. 70.114(4).
 - f. Legislature allows for service charges against parcels (including exempt parcels). 66.0627.
 - g. See, Jack Stark, The Uniformity Clause of the Wisconsin Constitution, *Marquette Law Review*, Vol. 76, No. 3, (Spring, 1993), p. 607 (in reality, TIF law amounts to partial exemption). Yet, TIF law is constitutional. *Sigma Tau Gamma Fraternity House v. City of Menomonie*, 93 Wis. 2d 392, 288 N.W.2d 85 (1980).
2. The Supreme Court *already allows taxed-in-part*.
- a. In the *Deutsches Land* case, the Supreme Court allows taxed in part, depending on the property owner's ability to meet its § 70.109 burden of proof establishing precisely how each portion of a particular property is owned and used by an exempt organization for an exempt purpose. See, also, *Alonzo Cudworth Post No. 23 v. City of Milwaukee*, 42 Wis. 2d 1, 165 N.W.2d 397 (S.Ct. 1969) (court analyzes how parts of property are used regarding partial exemption analysis). *FH Healthcare Development, Inc. v. City of Wauwatosa*, 2004 WL 1822401 (Wis. App., Aug. 17, 2004), ¶¶30 and 31 (taxed in part is possible). *Saint Joseph's Hospital of Marshfield, Inc. v. City of Marshfield*, 2004 WL 1946144 (Wis. App., Sept. 2, 2004), ¶7 and fn.2 and fn.6 (Court seems to accept undisputed 2% exemption), ¶28 (Court assumes partial exemption is appropriate when only part of use of property is exempt use), ¶34 (Court rules for partial exemption).
 - b. The Supreme Court in *Columbia Hospital Association v. City of Milwaukee*, 35 Wis.2d 660, 151 N.W.2d 750 (S.Ct. 1967), even allowed a duplex to be taxed such that one unit of the duplex was exempt and the other unit was taxed.
3. Assessors throughout the State of Wisconsin *already* grant partial exemptions. For example, certain facilities in the City of Milwaukee (as referenced by the Supreme Court in the *Deutsches Land* case) are taxed in part. For example, facility X is taxed on its restaurant and banquet hall operations, but exempt on those operations actually used by the exempt owner for exempt purposes. See, *Deutsches Land*, ¶48.

¹ Also, SWIB, 70.115.

The above supports that the Uniformity Clause is not as strict as it seems. The Supreme Court said that the clause requires practical uniformity – not absolute. *Norquist v. Zeuske*, 211 Wis.2d 241, 564 N.W.2d 748 (S. Ct. 1997).

I hope we can use the table to brainstorm to find a solution. One that is practical, reflects good public policy, and considers the interests of those presently paying property tax as well as those who enjoy exemption.

C. Existing Data on Exemption Devices

At our September 28, 2004 meeting, some committee members sought information on the “cost” of exemptions. I refer you to some existing data sources.

1. **70.337.** Per 70.337, exempt owners, by March 31 of every even-numbered year, must file with the municipal clerk a DOR-report form regarding itself, its property, lease information, and the owner’s opinion of value by checking off value ranges.

A comprehensive report is then sent by the municipality to DOR. DOR then tabulates the data and prepares an estimate of the value of tax-exempt property in Wisconsin by 70.11 exemption category, and DOR provides the information to the Legislature in its “Summary of Tax Exemption Devices” prepared under 16.425(3).

2. **16.425 provides:**

“16.425 SUMMARY OF TAX EXEMPTION DEVICES. (1) DECLARATION OF POLICY. Because state policy objectives are sought and achieved by both governmental expenditures and tax exemption, and because both have an impact on the government’s capacity to lower tax rates or raise expenditures, both should receive regular comprehensive review by the governor and the legislature in the budgetary process. This section seeks to facilitate such comprehensive review by providing for the generation of information concerning tax exemptions and other similar devices comparable to expenditure information.

(2) DEFINITION. For the purposes of this section “tax exemption device” means any tax provision which exempts, in whole or in part, certain persons, income, goods, services, or property from the impact of established taxes, including, but not limited because of failure of enumeration, to those devices known as tax deductions, tax allowances, tax exclusions, tax credits and tax exemptions.

(3) REPORT ON TAX EXEMPTION DEVICES. The department of revenue shall, in each even-numbered year on the date prescribed for

it by the secretary, furnish to the secretary a report detailing the approximate costs in lost revenue, the policy purposes and to the extent possible, indicators of effectiveness in achieving such purposes, for all state tax exemption devices, including those based on the internal revenue code, in effect at the time of the report. The report need relate only to chs. 71, 76 and 77 tax exemption devices and to property tax exemptions for which reports are required under s. 70.337. The report shall be prepared in such a manner as to facilitate the making of comparisons with the information reported in s. 16.46(1) to (6).” (Emphasis added).

Thus, per 16.425, the Legislature should regularly review exemptions to analyze their cost and effectiveness. This contemplates regular legislative fine-tuning.

3. 2003 “Summary of Tax Exemption Devices” prepared by DOR under 16.425.

- a. Feb. 2003 Summary available online.
- b. Jan. 21, 2003 letter of DOR Commissioner Morgan, contained within Summary, says 16.425 review of exemptions “is important if we are to keep the revenue loss associated with current state tax exemptions in perspective.”
- c. The introduction to the 2003 Summary:
 - (1) Indicates that tax-exemption devices are not the only way to achieve policy goals. “In most cases, the same objectives could be met through direct expenditure programs . . . or other governmental actions,” and
 - (2) States that, because tax exemptions do impose fiscal costs “equivalent to those of a sum sufficient expenditure program” and because “government retains no direct control over costs once a tax exemption is enacted into law,” it is especially important for the Legislature to regularly revisit and analyze exemptions, their costs, and exemption alternatives.
- d. The 2003 Summary discusses:
 - (1) Homestead-credit program (p. 5, 25, Table 3).

- (2) Income-tax deductions for: long-term care insurance (p. 20); personal and elderly (age 65 and older) (p. 22); medical expenses (p. 22); charitable contributions (p. 23).
 - (3) Working-families credit (p. 23).
 - (4) Earned-income credit (p. 25).
 - (5) Sales and use-tax exemptions related to health care (p. 55).
 - (6) Sales-tax exemptions for religious, educational, and charitable organizations (p. 59).
 - (7) Property-tax exemptions (p. 71 and Table 1) – roughly \$18.6 billion of exempt private property in Wisconsin.
- 4. **59.57(2).** “It is . . . declared to be the policy of this state . . . to preserve and enhance the tax base in counties and municipalities”
 - 5. **24.11(2).** Legislature directs State Board of Commissioner of Public Lands to insert in every contract of sale of state/public land “a clause providing that the vendee . . . shall pay or cause to be paid all taxes that are or that may be assessed against the land from and after the date of the said contract.” Note that 70.11(1), the exemption for state-owned property, does not apply to “land contracted to be sold by the state.”
 - 6. **70.339.** Each year, exempt owners with UBIT must report to the municipality regarding the UBIT circumstances. See 70.1105 taxed-in-part for UBIT.

GCH:lmb
Attachment
1049-2004-2244:85732