

Earl R. Thayer
5210 Fairway Drive
Madison, WI 53711-1037

Phone: 608-271-9701

E-Mail: ethayer@chorus.net

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PROPERTY TAX EXEMPTION OF RETIREMENT HOMES FOR THE AGED

Let me tell you the story of my wife and me, because that story is partly why the Legislative Council Special Committee for Tax Exemptions on Residential Property (Columbus Park) is meeting, and partly why I am on the Committee.

As a young farm boy in Jefferson County during the Great Depression I knew all about having little or no money. When I wanted to go to college my parents gave me all the cash they had on hand, \$25, plus a bushel of good wishes. WWII interrupted my plans to get a law degree; I served as a combat engineer with the U.S. Army from Sept., 1942 to November, 1945 in the South Pacific from New Guinea to Japan.

Graduating in 1947 from the U.W.-Madison with a degree in Journalism, I joined the staff of the State Medical Society of Wisconsin where I spent the next 40 years, 17 as its Secretary/General Manager. Most of that time I was deeply involved in health policy issues affecting the state and nation. I led the effort for the first Medicare program (then called the Kerr-Mills bill for poor in Wis.) and the first private insurance plan in Wisconsin solely for those over 65. I retired in 1987 since then serving on numerous boards, corporate or volunteer, including Government Health Services, Milwaukee, (the Part A administrator for hospital, nursing home and home health care benefits) and the Madison BSP free clinic (providing free specialist consultation services to the uninsured poor who have no other public support).

My wife and I share two sons - one died of cancer - without health insurance - leaving a widow and two children and a ton of bills which we settled. Our other son, just retired, has three children. Like so many other grandparents these days we are helping our children and grandchildren. In our case it was with educational expense and health care....Of our five grandchildren, two have no health insurance; together they have had enormous health care expense.

Now at ages 82 and 89, my wife and I are planning to move from our modest 2-bedroom-small den home of 37 years to a life lease unit at Oakwood Village West. We bought our house in 1967 for \$37,500. It is now assessed at \$216,000, slightly above the median market value of all Madison homes. We are life-leasing our unit at Oakwood, 1280 sq. ft. 2 BR (no den), for \$235,000, with occupancy two years down the road.

Little did we realize that in signing up for an Oakwood life lease we have become targets for those opposed to property tax exemption for middle and lower income average American citizens who retire to independent living units in non-profit, benevolent homes for the aged.

I can hardly divorce myself from views I have as a volunteer at Oakwood, as chair of its Long Range Planning Committee and member of the Board of its Foundation, and by 2007 a resident of Oakwood. At the same time, I challenge myself to seriously consider the full spectrum of this issue, and to seek a solution that is truly in the broadest public welfare and interest of the people of this state.

That said, let me suggest to you that the problem is not with the Oakwoods of Wisconsin, of which we will certainly see more as the baby boomers triple our ranks in the next 25 years, unless we are inordinately successful in the aging-at-home trend while finding some miraculous cure for dementia and Alzheimer's disease.

The problem is in part created by a lack of definition in Chapter 70.11 (4) of the terms "not-for-profit" (or nonprofit) and "benevolent homes for the aged," even though they are prime requirements for property tax exemption. It is time to remedy this invitation to confusion, mixed interpretation, and unenforceability.

The problem is with an outdated, archaic statute that defines lease-hold income use in a manner that is inconsistent with reality, that forces poor business practice, and exposes every retirement facility to full property taxation for the "wrong reason at the wrong time and in the wrong place." This definition is right now being applied against at least one retirement home in the state. It is another Columbus Park in the making.

The problem is with a 100+ year-old statute that exempts only retirement homes for the aged with no more than 10 acres of property....an outmoded restriction in today's environment for a quality continuum of care facility for the elderly. It was written at a time when homes for the aged were a large home or a converted lodging house of from 5 to 10 rooms. Its goal was undoubtedly a good one: to offer incentives for private, non-profit alternatives to county homes for the aged. It's time, as they say, is long gone.

The problem is with a huge lack of sound data by which anyone can evaluate the overall impact on public policy of property tax exemption for residential housing. At the first meeting of the Special Committee it was asserted that 30 years ago residential taxpayers contributed 50% of the state's property tax revenue, and that today they contribute 70% of such revenue. If true, it is hard to believe that any significant part of that increase could be due to the growth of tax exempt CCRCs and other homes for the aged. But the State Department of Revenue acknowledges that it has no firm data to indicate how tax exemption of homes for the aged really affects the revenue issue, and what they do have is admittedly "unreliable." I am truly uneasy attempting to suggest sound public policy without a reasonable factual basis.

It is my belief that property tax exemption is a privilege granted in return for significant contribution to the public good. This growing industry, retirement services for the aged, has with a few exceptions, built an undeniably outstanding record and reputation of public benefit that qualifies it for property tax exemption.

Property tax exemption has given added force to the inspired missions of many of our benevolent facilities.

Property tax exemption has fostered the continuum of care movement, and is a critical support structure for the current social, economic and health care paradigm that envisions aging-in-place facilities and programs as the wave of the future for baby-boomers.

Under property tax exemption, the non-profit and benevolent activities of most of Wisconsin's homes for the elderly have demonstrated public responsibility and community benefit at the highest level of human care, concern and compassion. Can we do better? Of course. But only by strengthening not repealing property tax exemption for deserving retirement communities.

I perceive property tax exemption as a quid pro quo.....something given for something received. Let me put this in personal terms, but terms which affect thousands of elderly like myself and my wife.

As a purchaser of a life lease at Oakwood (without question a nonprofit benevolent facility) our unit is partially exempt from property tax; we will make an annual Payment for Municipal Services to the City of Madison. In return, upon leasing the unit, we will make an immediate gift to Oakwood of 10% of the unit's value (\$23,500), the amount not returnable to us in event we move out or die. Oakwood, in turn, uses those funds to further its Lutheran mission-driven goals: to provide quality nursing home care (130 beds); assisted living (97 beds plus assisted care "in place" in many of its independent living units); 60 dementia and Alzheimer's units; a start up pilot program of at-home-care for the elderly in cooperation with other CCRCs under a federal grant in aid, and to employ a staff of 515 skilled, dedicated and caring persons to look after the needs of nearly 1,000 residents on two campuses.

Case in point: A physician friend of ours, John, fell and hit his head. He went into coma, ultimately to a nursing home. He never regained consciousness. His wife, Ella, drove 8 miles each way twice a day to visit him. After seven years he died.....leaving a widow, broke, lonely and desolate. Had they been at Oakwood, their care would have been assured, she could have visited her husband by walking only a few steps, and she would have been supported by a quality facility with quality staff in a continuum of care and a large community of friends....precisely the attributes that make the Oakwoods of Wisconsin so attractive to so many. There are hundreds, maybe thousands of Johns and Ellas in such homes. My wife or I could be next.

Partial tax exemption is a quid pro quo for Oakwood using its life lease income and Foundation benevolence to provide 9 parish nurses with 12 care team ministries and 523 care partners who each year serve 11 churches and nearly 5,000 at-home persons in the Madison area; plus meals on wheels service to the poor, elderly or disabled in their homes, a total of 16,000 persons each year including those in health education programs. In addition, Oakwood has over 1,400 volunteers who each year give nearly 45,000 hours of service to Oakwood residents and to the community.

Case in Point: We are long time friends of one of these parish nurses. Janice routinely visits homes of the elderly, monitoring their health and safety, educating, counseling, keeping a watchful eye for their well-being. Her stories are heart-rending, full of care and compassion—priceless services to the elderly...most of it volunteer, or at minimal cost. My wife or I might some day be one of her stories.

Partial property tax exemption is a quid pro quo for the Oakwood West facility using its life lease income and Foundation benevolence to provide 30 HUD units out of a total of 297 independent living units, 30 units with persons whose subsidy is unknown to the rest of the residents. It is part of Oakwood's contribution to being a "good citizen" in Madison.

Partial tax exemption for Oakwood is a quid pro quo for our giving up the appreciation on the unit we will lease. Assuming we live at Oakwood for 5 years before death, (hopefully we'll do much better than that) we are giving up in gifts (\$23,000) and loss of appreciation (at least \$30,000) or a total of nearly \$53,000 over five years. Plus we give up the property tax deduction on our income tax every year. The total of our gifts and loss of appreciation is no doubt equal to or more than the property taxes we would have paid had we stayed in our home. We are direct and continuing contributors to Oakwood's means of supporting its benevolence.

Case in Point: From a selfish business standpoint, we could do better financially by purchasing a private for-profit condo; not gifting the 10%, not losing appreciation or income tax deduction, while paying full property tax. But like these other "Cases in Point", my wife or I could face the possibility of running out of money, going on Medicaid, or worse being out in the street because no for-profit apartment can afford to keep residents who cannot pay.

Partial tax exemption for our Oakwood life lease unit is a quid pro quo for Oakwood's covenant with us that if we do not deliberately divest it will assure us of shelter, food and the continuum of health care services no matter how long we live or how few our finances...even if we exhaust them. And we all know that happens all too frequently. On any given day at Oakwood, 60 to 70 residents out of nearly 1,000 (about 7%) are supported in whole or in part by Oakwood benevolence, which overall totals nearly \$2,000,000 each year.

Case in point: Close friends of ours, Harry and Jane, now at Oakwood, were forced out of their modest home on the West side by ill health. They thought they were financially well enough off to meet most health emergencies. Now, she is an Alzheimer's patient; rarely knows her husband. He has taken a 1-bedroom independent living unit at Oakwood. Together their monthly expenses are nearly \$8,000. Harry has told us that after five years of this, their once secure self-financed future is nearly gone. They did not divest, like several others whom we know. Only Oakwood or Medicaid stands between them and the street.. My wife or I could be next.

The key word in this scenario is DIVEST. Retirement communities whose benevolence includes the pledge to care for residents even when age and infirmities exhaust their resources are the State of Wisconsin's best protection against divestiture. Those pledges provide assisted living services for which little or not public money is available, and overall reduce the number of persons who need to rely on Medicaid. And let no one underestimate the current efforts of many lawyers and financial advisors who encourage elderly persons to divest. We get two or three such letters each month. We have attended one of their sessions. We were embarrassed by the blatant appeal to selfishness, with urgings to "give your assets to your kids and let the state house and care for you in your waning years." This trend is a potentially serious threat to Medicaid's fiscal future. My wife and I feel it important for ourselves to share Oakwood's covenant, and at the same time, in a small way, assure that we will never become public charges.

Finally, tax exemption is the quid pro quo for Wisconsin's Oakwoods to venture deeply into little tested areas of the new aging at home paradigm: help the elderly stay at home as they age....where they will be happier, healthier longer....thereby reducing the need for nursing home care....and reducing the expense for Medicaid in the process. Oakwood is already well into this program, and it offers real promise, great benefit to the elderly and great support for the economic and social well-being of the State of Wisconsin. I personally proposed that Oakwood place a high priority on developing this program, first because it is the right thing to do, and second because tax exemption imposes an obligation to do so.

What, then, should the Legislative Council Special Committee do? I recommend:

1. Retain property tax exemptions for qualifying non-profit, benevolent homes for the elderly, including nursing homes, assisted living facilities, dementia and Alzheimer's facilities, CBRFs, RCACs and CCRCs.

To establish qualification, the Committee should recommend:

- A. Providing a new definition of "leasehold income" use in Chap. 70.11 of Wis. Stats., to allow such income to be used for any purpose within the mission of the non-profit, benevolent entity.

- B. Incorporating into Chap. 70.11 a clear definition of “non-profit” as is provided by IRS Code 501 (c) (3).
- C. Develop a statutory definition of “benevolent retirement home for the aged.”
- D. Abandon the archaic 10 acre rule.
- E. Make certain that all of the above is done within Wisconsin’s statutory “Uniformity Clause” relative to taxing property.

I firmly believe that if the above proposals are enacted they will create a barrier to abuse of tax exemption that would be difficult for any retirement home for the aged to bridge.

Some other alternatives may seem easy, but in fact present major difficulties. A “means” or “income” test as a qualification for property tax exemption, for example, poses a serious invasion of privacy and is likely to be an administrative nightmare, a constantly changing standard, here one year and gone the next. Either a residential living unit is tax exempt or it is not. Moreover, a “means test” would jeopardize not only many existing homes for the aged whose debt is structured with a built-in tax exemption factor, it would require total restructuring of the life lease concept with a consequent loss of the benevolence so critical to mission-driven programs of service to the elderly.

Property taxes based not on who owns the property but on the person who occupies it would seem to run squarely against the “uniformity clause” of Wisconsin law. If it is based on income test or on a percentage of units devoted to low income housing it creates a powerful incentive for divestiture.

In summary, the nonprofit, benevolent homes for the aged community in Wisconsin has clearly demonstrated that the public policy of property tax exemption for qualifying facilities brings genuine and substantial public benefit. It is a policy that should be continued for the economic, health and social well being of the State.

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Whether the Legislative Council and ultimately the Legislature itself chooses to leave Chap. 70.11 unchanged, or to alter it in some fashion, I perceive that the non-profit, benevolent retirement communities of Wisconsin, of which Oakwood is a part, will be seriously challenged as we enter the baby boomer period ahead. Here is what I see:

1. The burgeoning of elderly numbers in the next quarter century will require most homes for the aged to intensify mission and commitment to genuine benevolence. If, as perceived by many, this new generation of older Wisconsinites is financially able to satisfy their desires for larger more expensive independent living accommodations while at the same time seeking the security and continuum of care offered by CCRCs, the mission-drive providers will need to expand their facilities and services to, at the same time, serve those of more moderate and low income.
2. If the non-profit benevolent homes for the aged cater to the demand of middle or higher income persons, they will need to expand proportionately the affordable housing opportunities within their residential communities (HUD, Sec. 8 and similar housing types) in order to retain the privilege of tax exemption.
3. Even without these two pressures, these homes will need to expand the depth and nature of programs aimed at serving the communities in which they operate (not just those who reside in their facilities), and they will need to document and make publicly available annual reports of social accountability and community benefit. This means that the non-profit, benevolent organizations and the volunteers they muster need to increasingly sponsor and operate programs for the poor and disadvantaged.....meals on wheels, health care for the poor, free health clinics and free health education and support for those who fall through all the cracks of private and government programs, those with no insurance and no public support, of whom there are increasing numbers. They will need to bring their substantial skills of organization and administration to bear on bringing affordable health care and housing to the poorer areas of our cities and towns or rural communities.
4. If they aren't already doing so, they need to develop significant at-home-care programs to deal with the burst of elderly numbers in the near future. It seems only sensible that we set in motion the model of aging-at-home care that seems so full of promise to both satisfy the elderly and keep them as healthy as possible for as long as possible before they need to enter an institutional setting of any kind.

5. All homes for the aged need to consider seriously using the “good citizen” card of making PILOT or PMS payments, at least for the direct services that their facilities and residents utilize, such as fire and police protection, etc.

As we look at what seems to be a widening gap in this country between the haves and the have nots, the non-profit, benevolent homes for the aged cannot help but be challenged by the importance of their mission.....a mission of true benevolence and service that should be inspired by their faith-based commitment if not by the growing expectations of the public.

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