

- 1 **AN ACT** *to amend* 70.11 (intro.); and *to create* 70.11 (43), 70.11 (44) and 70.11 (45)
2 of the statutes; **relating to:** rent use.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council's Special Committee on Tax Exemptions for Residential Property (Columbus Park).

Under current law, if property owned by a tax-exempt entity is leased as residential housing, the property retains its tax exemption only if the owner uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property or both. [s. 70.11 (intro.), stats.] This is commonly referred to as the "rent use" requirement". "Maintenance" is not defined. As discussed in Staff Brief 04-5, prepared for the special committee, in *Columbus Park Housing Association v. City of Kenosha*, 267 Wis. 2d 59, 761 N.W.2d 633 (2003), the Wisconsin supreme court stated that the rent use requirement applies to tax-exempt entities that lease property as residential housing.

Several persons testifying to the committee stated that many tax-exempt entities that lease property as residential housing currently use leasehold income for purposes that appear not to be permitted under the statute, and that if they were required to comply with the statute, they could face financial difficulties.

This draft creates separate statutory exemptions from the property tax for any portion of property that is owned by a benevolent association and used exclusively as any of the following, including any combination of the following and eliminates the rent use requirements for those types of property:

- (1) A residential care apartment complex.
- (2) A community-based residential facility.
- (3) A nursing home.
- (4) A facility in which persons reside pursuant to a continuing care contract.

(5) Low-income housing that satisfies the “safe harbor” requirements for relieving the poor and distressed, as provided under the regulations of the internal revenue service.

(6) Housing for older persons that satisfies federal requirements for homes for the aged.

(7) A qualified residential rental project under federal law. A qualified residential rental project under federal law is, generally, a project that rents at least 20% of its residential units to individuals whose income is no more than 50% of the area median gross income or rents at least 40% of its residential units to individuals whose income is no more than 60% of the area median gross income.

(8) Special housing, which is defined as property owned by a nonprofit corporation that is used as a homeless shelter, domestic violence shelter, or transitional housing facility.

1 **SECTION 1.** 70.11 (intro.) of the statutes is amended to read:

2 **70.11 Property exempted from taxation.** (intro.) The property described in this
3 section is exempted from general property taxes if the property is exempt under sub. (1), (2),
4 (18), (21), (27) or (30); if it was exempt for the previous year and its use, occupancy or
5 ownership did not change in a way that makes it taxable; if the property was taxable for the
6 previous year, the use, occupancy or ownership of the property changed in a way that makes
7 it exempt and its owner, on or before March 1, files with the assessor of the taxation district
8 where the property is located a form that the department of revenue prescribes or if the
9 property did not exist in the previous year and its owner, on or before March 1, files with the
10 assessor of the taxation district where the property is located a form that the department of
11 revenue prescribes. Leasing a part of the property described in this section does not render
12 it taxable if, except for property that is exempt under subs. (43), (44), and (45), the lessor uses
13 all of the leasehold income for maintenance of the leased property or construction debt
14 retirement of the leased property, or both, and, except for residential housing, if the lessee
15 would be exempt from taxation under this chapter if it owned the property. Any lessor who

1 claims that leased property is exempt from taxation under this chapter shall, upon request by
2 the tax assessor, provide records relating to the lessor's use of the income from the leased
3 property. Property exempted from general property taxes is:

4 **SECTION 2.** 70.11 (43) of the statutes is created to read:

5 70.11 **(43)** BENEVOLENT ASSOCIATIONS. All or any portion of property that is owned by
6 a benevolent association and used exclusively as any of the following, including any
7 combination of the following:

8 (a) A residential care apartment complex, as defined in s. 50.01 (1d).

9 (b) A community-based residential facility, as defined in s. 50.01 (1g).

10 (c) A nursing home, as defined in s. 50.01 (3).

11 (d) A facility, as defined in s. 647.01 (4), in which persons reside pursuant to continuing
12 care contracts, as defined in s. 647.01 (2).

13 (e) Low-income housing that satisfies the requirements under revenue procedure
14 96-32 of the internal revenue service.

15 (f) Housing for older persons, as defined in s. 106.50 (1m) (m), that satisfies the
16 requirements under the internal revenue service ruling 72-124.

17 **SECTION 3.** 70.11 (44) of the statutes is created to read:

18 70.11 **(44)** QUALIFIED RESIDENTIAL RENTAL PROJECT. (a) 1. In this subsection, "qualified
19 residential rental project" means a qualified residential rental project under section 142 (d) of
20 the Internal Revenue Code, not including section 142 (d) (4), (6), and (7) of the Internal
21 Revenue Code, with the following modifications:

22 a. The owner of the qualified residential rental project is "the issuer at the time of the
23 issuance of the issue" for purposes of section 142 (d) (1) of the Internal Revenue Code.

b. A period of not less than one year is the “qualified project period” for purposes of section 142 (d) (2) (A) of the Internal Revenue Code.

c. The phrase “by the secretary” does not apply for purposes of section (d) (2) (B) of the Internal Revenue Code.

2. “Qualified residential rental project” includes property located on more than one tax parcel, if the parcels are owned by the same person and are adjacent, separated only by a street, or within the same condominium development.

3. “Qualified residential rental project” includes residential units that are within property owned by a cooperative, if the beneficial owner of any of the shares of the cooperative is an organization described under section 501 (c) (3) of the Internal Revenue Code, the shares carry with them the right to lease one or more units within the property within the property, the organization is the lessee of the units pursuant to such right, and the organization subleases the units to individuals.

(b) Any portion of property that is a qualified residential rental project, the beneficial owner of which is an organization described in section 501 (c) (3) of the Internal Revenue Code.

SECTION 4. 70.11 (45) of the statutes is created to read:

70.11 **(45) SPECIAL HOUSING.** Property, the beneficial owner of which is an organization described in section 501 (c) (3) of the Internal Revenue Code, that is used as a homeless shelter, domestic violence shelter, or transitional housing facility.

(END)