

1       **AN ACT** *to amend* 70.11 (intro.) and 70.11 (4) of the statutes; **relating to:** revising the  
2       property tax exemption for certain residential property owned by a benevolent  
3       association, church, or religious association, and the use of leasehold income by a  
4       benevolent association, church, or religious association that leases residential  
5       property for certain purposes.

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

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

**Revision and Reorganization of s. 70.11 (intro.) and (4), stats.**

Under current law, property owned and used exclusively by certain entities specified under s. 70.11 (4), stats., is exempt from the property tax. This draft reorganizes s. 70.11 (4) to make it more readable and to place the types of property that are exempt under that section into separate statutory subdivisions.

This draft also revises the property tax exemption under current s. 70.11 (4) for "property owned by benevolent associations, including benevolent nursing homes and retirement homes for the aged" and for property owned by churches and religious associations.

Under the provisions in the draft:

1. **Residential housing** owned and used exclusively by a church or religious entity, **except for property owned and used for housing for pastors and their ordained assistants, members of religious orders and communities, and ordained teachers**, must fit into one of the following categories to be exempt from the property tax:
  - a. Nursing homes licensed under s. 50.03.
  - b. Community based residential facilities licensed under s. 50.03.
  - c. Adult family homes certified under s. 50.032 or licensed under s. 50.033.

- d. Residential care apartment complexes certified under s. 50.034.
  - e. Domestic abuse shelters.
  - f. Shelters for the homeless, including transitional housing facilities.
  - g. Housing for low-income persons that is operated in compliance with Internal Revenue Service Revenue Procedure 96-32.
  - h. Property that is used as residential housing that is equally available to any applicant without requiring a showing of the person's income or economic assets.
2. Property owned by a benevolent association that is used as **residential housing** must also fit into one of the 8 categories, above, to be exempt from the property tax.
3. **Nonresidential** property owned and used exclusively by a benevolent association is exempt from the property tax, as it is under current law.

#### Use of Leasehold Income

Under current law, if property that is exempt from taxation under s. 70.11 is leased, 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". 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.

The draft provides that leasing any of the types of residential property that are exempt from property tax under the draft, as described above, does not render the property taxable if the property owner uses all of the lease income to further the benevolent or religious activities of the owner.

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

20           **SECTION 2.** 70.11 (4) of the statutes is amended to read:

21           70.11 (4) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN'S CLUBS;  
22 HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. Property owned and used exclusively by  
23 educational any of the entities described in this subsection while such property is used not for  
24 profit. Property that is exempt from taxation under this subsection and is leased remains

1 exempt from taxation only if, in addition to the requirements specified in the introductory  
2 phrase of this section, the lessee does not discriminate on the basis of race. The amount of land  
3 exempt under this subsection may not exceed 10 acres of land necessary for location and  
4 convenience of buildings, except as provided in par. (b). This subsection does not include  
5 property owned by an organization that is organized under s. 185.981 or ch. 611, 613, or 614  
6 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service  
7 health organization as defined in s. 609.01 (3) or by an organization that is issued a certificate  
8 of authority under ch. 618 and that offers a health maintenance organization or a limited  
9 service health organization or by any nonstock, nonprofit corporation which services  
10 guaranteed student loans for others or on its own account.

11 (a) Educational institutions offering regular courses 6 months in the year; ~~or by~~  
12 ~~churches.~~

13 (b) Churches or religious, ~~educational or benevolent~~ associations, including benevolent  
14 nursing homes and retirement homes for the aged but not including an organization that is  
15 organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance  
16 organization as defined in s. 609.01 (2) or a limited service health organization as defined in  
17 s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that  
18 offers a health maintenance organization or a limited service health organization and not  
19 including property owned by any nonstock, nonprofit corporation which services guaranteed  
20 student loans for others or on its own account, and also including property owned and used  
21 for housing for pastors and their ordained assistants, members of religious orders and  
22 communities, and ordained teachers, whether or not contiguous to and a part of other property  
23 owned and used by such associations or churches; ~~or by women's, but not other types of~~  
24 residential housing except for the property described in par. (c). Property owned by churches

1 or religious associations necessary for location and convenience of buildings, used for  
2 educational purposes and not for profit, shall not be subject to the 10-acre limitation but shall  
3 be subject to a 30-acre limitation.

4 (c) Benevolent associations, churches or religious associations if the property is any of  
5 the following:

- 6 1. A nursing home licensed under s. 50.03.
- 7 2. A community based residential facility licensed under s. 50.03.
- 8 3. An adult family home certified under s. 50.032 or licensed under s. 50.033.
- 9 4. A residential care apartment complex certified under s. 50.034.
- 10 5. A domestic abuse shelter.
- 11 6. A shelter for the homeless, including transitional housing facilities.
- 12 7. Housing for low-income persons that is operated in compliance with internal  
13 revenue service revenue procedure 96-32.
- 14 8. Residential housing that is equally available to any applicant without requiring a  
15 showing of the person's income or economic assets.

16 (cm) Benevolent associations if the property is nonresidential.

17 (d) Women's clubs; or by domestic,

18 (e) Domestic incorporated historical societies; or by domestic,

19 (f) Domestic incorporated, free public library associations; or by fraternal

20 (g) Fraternal societies operating under the lodge system (except university, college and  
21 high school fraternities and sororities), but not exceeding 10 acres of land necessary for  
22 location and convenience of buildings while such property is not used for profit. Property  
23 owned by churches or religious associations necessary for location and convenience of  
24 buildings, used for educational purposes and not for profit, shall not be subject to the 10-acre

~~limitation but shall be subject to a 30-acre limitation. Property that is exempt from taxation under this subsection and is leased remains exempt from taxation only if, in addition to the requirements specified in the introductory phrase of this section, the lessee does not discriminate on the basis of race.~~

**(END)**