

1       **AN ACT** *to amend* 70.11 (intro.), 70.11 (4) and 74.11 (1); and *to create* 70.116 of the  
2       statutes; **relating to:** revision and elimination of the exemption from the property tax  
3       for certain property, the use of income from certain tax-exempt leased property, and  
4       payments for municipal services provided to certain tax-exempt residential housing.  
5

*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" by organizing property owned by a benevolent association into the following statutory subdivisions:

- 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 section 3 of Internal Revenue Service (IRS) revenue procedure 96-32 or

that is described in section 4.02 (4) or 4.02 (9) of that revenue procedure. Section 3 of IRS revenue procedure 96-32 sets forth income eligibility limits for federal low-income housing programs. Section 4.02 (4) refers to government housing programs designed to provide affordable housing. Section 4.02 (9) refers to programs designed to provide home ownership opportunities for families that cannot otherwise afford to purchase safe and decent housing.

h. A residential facility that provides alcohol or other drug abuse (AODA) treatment services or housing for persons with or recovering from AODA problems.

i. Residential housing for persons with permanent disabilities.

j. Residential housing that is not described under items a. through i. if the value of the housing does not exceed a certain percentage [not yet specified] of the average equalized value of residential property in the county.

k. Property that is not residential housing.

Under this revision, property owned by a benevolent association that is residential housing is subject to the property tax if it does not fit within any of the categories described under a. through i., above.

Nonresidential property owned and used exclusively by a benevolent association remains exempt from the property tax.

These provisions first apply to property tax assessments as of January 1, 2007, which are payable in 2008.

### **Payments for Municipal Services**

This draft requires a benevolent association that owns property described in newly created s. 70.11 (4) (c) 10., stats., described above under par. "j.", to make payments for municipal services for all housing units in that category that do not have at least one occupant whose income meets the eligibility requirements for the homestead credit. The property owner has the burden of proving that a housing unit has an occupant whose income meets this requirement.

Payments for municipal services are subject to s. 74.11, stats., which sets forth dates for payments of taxes, special assessments, and special charges.

This provision first applies to municipal services provided on or after January 1, 2007. The first payments for municipal services are due in January, 2008.

### **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 some 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 property described in s. 70.11 (4), stats., as residential housing does not render the property taxable if the property owner uses all of the lease income to further its benevolent or educational activities, or in the case of a church or religious association, to further the activities of the church or association. In addition, the draft provides that a property owner may not discriminate based on race.

This provision takes effect retroactively on January 1, 2003, to ensure that property may not be assessed retroactively under s. 70.44, stats., for failure to comply with the rent use requirement in current law. Section 70.44, stats., authorizes assessors to assess property that was omitted from assessment in the previous 2 years.

- 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

1 property did not exist in the previous year and its owner, on or before March 1, files with the  
2 assessor of the taxation district where the property is located a form that the department of  
3 revenue prescribes. Leasing a part of the property described in this section does not render it  
4 taxable if, except for property described in sub. (4), the lessor uses all of the leasehold income  
5 for maintenance of the leased property or construction debt retirement of the leased property,  
6 or both, and, except for residential housing, if the lessee would be exempt from taxation under  
7 this chapter if it owned the property. Leasing property described in sub. (4) as residential  
8 housing does not render it taxable if the property owner uses all of the leasehold income to  
9 further the benevolent or educational activities of the owner, or, in the case of a church or  
10 religious association, to further the activities of the church or association. Any lessor who  
11 claims that leased property is exempt from taxation under this chapter shall, upon request by  
12 the tax assessor, provide records relating to the lessor's use of the income from the leased  
13 property. Property exempted from general property taxes is:

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

15 70.11 (4) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN'S CLUBS;  
16 HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. Property owned and used exclusively by  
17 educational any of the entities described in this subsection while such property is used not for  
18 profit. Property that is exempt from taxation under this subsection and is leased remains  
19 exempt from taxation only if, in addition to the requirements specified in the introductory  
20 phrase of this section, the property owner and the lessee do not discriminate on the basis of  
21 race. The amount of land exempt under this subsection may not exceed 10 acres of land  
22 necessary for location and convenience of buildings, except as provided in par. (b). This  
23 subsection does not include property owned by an organization that is organized under s.  
24 185.981 or ch. 611, 613, or 614 and that offers a health maintenance organization as defined

1 in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or by an  
2 organization that is issued a certificate of authority under ch. 618 and that offers a health  
3 maintenance organization or a limited service health organization or by any nonstock,  
4 nonprofit corporation which services guaranteed student loans for others or on its own  
5 account.

6 (a) Educational institutions offering regular courses 6 months in the year; ~~or by~~  
7 ~~churches and educational associations.~~

8 (b) Churches or religious, ~~educational or benevolent~~ associations, including benevolent  
9 nursing homes and retirement homes for the aged but not including an organization that is  
10 organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance  
11 organization as defined in s. 609.01 (2) or a limited service health organization as defined in  
12 s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that  
13 offers a health maintenance organization or a limited service health organization and not  
14 including property owned by any nonstock, nonprofit corporation which services guaranteed  
15 student loans for others or on its own account, and also including property owned and used  
16 for housing for pastors and their ordained assistants, members of religious orders and  
17 communities, and ordained teachers, whether or not contiguous to and a part of other property  
18 owned and used by such associations or churches; ~~or by women's, but not other types of~~  
19 residential housing except for the property described in par. (c). Property owned by churches  
20 or religious associations necessary for location and convenience of buildings, used for  
21 educational purposes and not for profit, shall not be subject to the 10-acre limitation but shall  
22 be subject to a 30-acre limitation.

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

- 1        1. A nursing home licensed under s. 50.03.
- 2        2. A community based residential facility licensed under s. 50.03.
- 3        3. An adult family home certified under s. 50.032 or licensed under s. 50.033.
- 4        4. A residential care apartment complex certified under s. 50.034.
- 5        5. A domestic abuse shelter.
- 6        6. A shelter for the homeless, including transitional housing facilities.
- 7        7. Housing for low-income persons that is operated in compliance with section 3 or that  
8 is provided as part of a program described in section 4.02 (4) or 4.02 (9) of Internal Revenue  
9 Service revenue procedure 96-32. The property owner shall provide the assessor an affidavit  
10 stating that the property meets this requirement. For the purposes of this subdivision,  
11 “project”, when used in Internal Revenue Service revenue procedure 96-32, includes property  
12 located on more than one tax parcel, if the parcels are owned or operated by the same person  
13 and are adjacent, separated only by a street or other public right-of-way, or within the same  
14 condominium development.
- 15        8. A residential facility, the primary purpose of which is to provide alcohol or other drug  
16 abuse treatment or services or housing for persons with, or who are recovering from, alcohol  
17 or other drug abuse problems.
- 18        9. Residential housing that is occupied by one or more persons with permanent  
19 disabilities, for whom evidence is available that demonstrates that these persons meet the  
20 medical definition of permanent disability used to determine eligibility for programs  
21 administered by the federal social security administration.
- 22        10. Residential housing that is not described in subds. 1. through 9., if the following  
23 requirements are met:

1        a. For a property that is a single-family home, the property is exempt from the property  
2 tax if the equalized value of the property does not exceed [    %] of the average equalized value  
3 of a residential parcel in the county the previous year, as determined by the department of  
4 revenue.

5        b. For a property that is a duplex, the property is exempt from the property tax if the  
6 equalized value of the property does not exceed [    %] of the average equalized value of a  
7 residential parcel in the county the previous year, as determined by the department of revenue.

8        c. For a property that consists of 3 or more dwelling units that does not have an elevator,  
9 a dwelling unit is exempt from the property tax if the equalized value of the dwelling unit does  
10 not exceed [    %] of the average equalized value of a residential parcel in the county the  
11 previous year, as determined by the department of revenue.

12        d. For a property that consists of 3 or more dwelling units and that has an elevator, a  
13 dwelling unit is exempt from the property tax if the equalized value of the dwelling unit does  
14 not exceed [    %] of the average equalized value of a residential parcel in the county the  
15 previous year, as determined by the department of revenue.

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

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

5 **SECTION 3.** 70.116 of the statutes is created to read:

6 **70.116 Payments for municipal services; certain benevolent associations. (1)**

7 FINDINGS. Recognizing that the cost of property taxes is increasingly borne by residential  
8 property owners, and that the property tax burden causes a financial hardship to some  
9 residential property owners; recognizing that recently, benevolent associations have increased  
10 development of residential property from which the associations exclude persons who do not  
11 meet minimal financial standards set by the association, and that such property is exempt from  
12 the property tax, although municipalities are nevertheless required to provide municipal  
13 services to those properties and residents of those properties; and recognizing that numerous  
14 statutes require payments for municipal services by tax-exempt entities other than benevolent  
15 associations; the legislature finds and determines that benevolent associations should provide  
16 payments for municipal services provided to residential property owned by the association  
17 that is not recognized as primarily charitable in nature or serving a population with special and  
18 significant needs for medical, nursing, mental health, or other similar services.

19 **(2) DEFINITIONS.** In this section:

20 (a) "Municipality" means a city, village, or town or special purpose district under  
21 s.79.095 (1) (bm).

22 (b) "Municipal services" means solid waste management, as defined in s. 287.01 (13),  
23 law enforcement and fire protection, street construction, repair and maintenance, traffic  
24 control, street lighting and snow and ice removal and all eligible cost items under s. 86.303



1 (6) (a) through (c), public library services, and any administrative or debt service costs  
2 associated with the provision of these services.

3 (3) PAYMENTS. On or before January 31 of each year, the owner of any property  
4 described in s. 70.11 (4) (c) 10. of the statutes shall pay as a special charge an amount  
5 determined by the municipality as sufficient to defray the costs, including administrative costs  
6 and debt service costs, of making municipal services available to the property and to residents  
7 of the property in the previous year, that is equal to the total cost of making those services  
8 available to the property and its residents multiplied by the percentage of residential housing  
9 units on the property that were not occupied by at least one person whose household income  
10 did not exceed the maximum household income eligible for the homestead credit under s.  
11 71.54 (1), stats., in the previous year or whose income at the time of the person's initial  
12 occupancy of the housing did not exceed the maximum household income eligible for the  
13 homestead credit in effect at that time. The property owner has the burden of proving that a  
14 residential housing unit is occupied by at least one person whose income does not exceed, or  
15 did not exceed at the time of initial occupancy, the maximum household income eligible for  
16 the homestead credit.

17 (4) ADMINISTRATION. The authority of a municipality to require payments under this  
18 section is in addition to any other authority provided by law to a municipality. Payments under  
19 this section are subject to s. 74.11, stats.

20 **SECTION 4.** 74.11 (1) of the statutes is amended to read:

21 **74.11 Dates for payment of taxes, special assessments and special charges. (1)**

22 **APPLICABILITY.** General property taxes, special assessments, special charges and special taxes  
23 collectible under this chapter and payments under s. 70.116 are payable as provided in this  
24 section, except as provided in ss. 74.12, 74.125, and 74.87.

## SECTION 5. Initial applicability.

(1) The treatment of section 70.11 (intro.) of the statutes applies to property tax assessments as of January 1, 2003.

(2) The treatment of sections 70.11 (4), 70.116, and 74.11 of the statutes first applies to property tax assessments as of January 1, 2007 and municipal services provided on and after January 1, 2007.

**SECTION 6. Effective date.**

(1) The treatment of section 70.11 (intro.) of the statutes takes effect retroactively on January 1, 2003.

(2) The treatment of sections 70.11 (4), 70.116, and 74.11 of the statutes takes effect on January 1, 2007.

**(END)**