

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT to amend 70.11 (intro.) of the statutes; relating to: the property tax
2 exemption for leased residential housing.

Analysis by the Legislative Reference Bureau

Under current law, if property that is exempt from property taxes is leased, the property retains its tax exemption if the property owner uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property, or both, and, except for residential property, if the lessee would be eligible for the exemption if the lessee owned the property.

Under this bill, leasing property that is residential housing does not render the property taxable, regardless of how the property owner uses the leasehold income and regardless of whether the lessee would be eligible for the exemption if the lessee owned the property.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

22 Property exempted from general property taxes is:

23 **SECTION 2. Initial applicability.**

24 (1) This act first applies to the property tax assessments as of January 1, 2009.

25 (END)

2003 Senate Bill 512

Date of enactment: April 8, 2004
Date of publication*: April 22, 2004

2003 WISCONSIN ACT 195

AN ACT to amend 70.11 (intro.) of the statutes; relating to: the property tax exemption for property that is leased as residential housing.

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

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

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

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

SECTION 3. Nonstatutory provisions.

(1) PROPERTY TAX EXEMPTIONS RELATED TO LEASED PROPERTY. The legislative council shall study the effect of Columbus Park Housing v. City of Kenosha, 2003 WI 143, on property tax exemptions for property that is leased, pursuant to section 70.11 (intro.) of the statutes, 2001 stats., and as affected by this act. The legislative council shall report its findings, conclusions, and recommendations to the legislature in the manner provided under section 13.172 (2) of the statutes no later than December 15, 2004.

SECTION 4. Initial applicability.

(1) The treatment of section 70.11 (intro.) of the statutes first applies to the property tax assessments as of January 1, 2002.

SECTION 5. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 70.11 (intro.) of the statutes and SECTION 4 (1) of this act take effect retroactively to January 1, 2002.

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].



Madison

Office of the City Assessor

Room 101
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53703-3342
PH 608 266 4531
FAX 608 266 4257
TTY/Textnet 866 704 2340
www.cityofmadison.com/assessor

January 9, 2009

Location: 6145 Mineral Point Rd
070825106036
OAKWOOD LUTHERAN HOME
ASSC INC
6201 MINERAL POINT RD
MADISON WI 53705

Recently the Dane County Circuit Court made a ruling concerning the use of the leasehold income for three low-income housing providers. In his decision Judge Nowakowski determined that the three low-income housing providers at issue were not eligible for an exemption under S. 70.11(4) WI Statutes based on the use of their leasehold income. The complete decision can be found at <http://www.cityofmadison.com/assessor/documents/HearingMotionsSummJudgment20080926.pdf>.


The above property has been identified as a current exempt property that is leased and subject to the recent Circuit Court decision. Due to the above decision, all exempt property that is leased to other exempt entities or low-income residential tenants, will be required to submit information documenting the use of their leasehold income. Section 70.11 WI Stats, states, "*Any lessor who claims that leased property is exempt from taxation under this chapter shall, upon request by the tax assessor, provide records relating to the lessor's use of the income from the leased property*".

The following information must be submitted to me by February 20, 2009:

- Most recently filed IRS Form 990
- Detailed operating statement for 2008
- Any other documents detailing the specific use of your leasehold income

When this information is received, I will review your exempt status and notify you of any change. If your property does not meet the requirements for exemption, it will become assessable for January 1, 2009. In addition, failure to submit the above information will also result in your property being assessed for January 1, 2009.

Please contact me if you have any questions.


Michael G. Kurth
Assistant Assessor – Commercial and Personal Property
(608) 266-4530
mkurth@cityofmadison.com



ADDRESS MAIL TO:

Area 6-97
2135 Rimrock Road • P.O. Box 8971
Madison, WI 53708-8971
TELEPHONE: (608) 266-0939
FAX: (608) 264-6887

October 23, 2008

Mr. Michael P. May
Attorney, City of Madison
Room 401
210 Martin Luther King, Jr. Blvd
Madison, WI 53709-3345

Mr. Timothy J. Radelet
Attorney, Foley & Lardner LLP
150 East Gilman Street
P.O. Box 1497
Madison, WI 53701-1497

Dear Mr. May & Mr. Radelet,

This letter is in response to Mr. May's April 23, 2008 inquiry to the Wisconsin Attorney General J.B. Van Hollen and to Mr. Radelet's July 18, 2008 letter to the Department of Revenue. I appreciate having the opportunity to respond. Both of your letters request clarification of sec. 70.11, Wis. Stats.

As you know, sec. 70.109, Wis. Stats., provides for a strict interpretation of exemptions, a presumption of taxability, and places the burden of proof with the entity that is requesting an exemption. In addition, it is important to note that a recent Dane County Circuit Court decision¹ ruled on the definition of maintenance as it relates to property tax exemptions under sec. 70.11, Wis. Stats. The decision stated that there was clear legislative intent to limit the expenditure of leasehold income whereby the court held maintenance only includes expenses for the physical upkeep of the premises.

With this in mind, the questions at issue are listed below with the Department's response.

1. Do you concur that the leasehold income must be used for the stated purpose "of the leased property" that generated the income?

The lease exception clause in sec. 70.11, Wis. Stats., is specific to a particular property. In order for that property to maintain its exemption, the lessor must apply all of a property's leasehold income to that same property.

"... if the lessor uses **all** of the leasehold income for maintenance of **the leased property** or construction debt retirement of **the leased property**, or both ..." (Emphasis added)

2. Is the word "maintenance" in the statute limited to physical repairs, cleaning, and other actions taken on the property, or may it be interpreted to cover any costs that keep the property as a going concern, such as operating costs (utilities, insurance, mortgage debt, administration) of any variety?

¹ *Future Madison Eastpointe, Inc. et al. v. City of Madison*, Case Nos. 07-CV-1129, 1130 and 1817, (Dane Cty. Cir Ct. Sept. 26, 2008)

On page 22-4 of the 2008 *Wisconsin Property Assessment Manual*, definitions of maintenance are provided from *Webster's Third Unabridged Dictionary* and the *International Association of Assessing Officers*. The definitions from these two sources are "...the labor of keeping something (as buildings or equipment) in a state of repair or efficiency" and "An expenditure of a fixed asset that increases or tends to preserve the asset's value..."

As provided in sec. 70.11, Wis. Stats., "maintenance" is specific to "the leased property." Only those expenses for maintenance of the leased property would qualify. In accord with the definitions above, such maintenance would include expenses for the exterior structure and interior components of the property. Examples of those expenses that qualify as maintenance are cleaning expenses, ventilation system repairs and maintenance, elevator repairs and maintenance, flooring repairs, wall repairs and painting, refuse collection, snow removal, property insurance, and government fees required for completion of maintenance such as a building permit fee for roof replacement. Reserves for replacement would also qualify as maintenance for those annual allowances to replace building components, fixtures, and equipment, such as flooring replacement, roof replacement, window replacement, and ventilation system replacement. Maintenance includes the cost of labor and the related supplies required to complete the aforementioned tasks.

Other expenses that are associated with the entity's going concern would not qualify as maintenance. Examples of non-qualifying expenses are business insurance, advertising, depreciation, property additions, property acquisitions, debt payments, management fees, legal fees, accounting fees, financing fees, income taxes, franchise taxes, corporate taxes, real estate taxes, fees and expenses that are associated with a different property or business of the entity, and any costs associated with providing social, healthcare, and other services for residents. The cost of labor and any related supplies for these types of expenses would not qualify as maintenance.

3. Does the phrase "construction debt retirement" mean only the debt incurred to initially construct the property, implying that payment of other debt retirement is not meant to be included?

Construction debt retirement is specific to the "the leased property" under sec. 70.11, Wis. Stats. Payment of construction debt due to the initial construction of the leased property would qualify along with debt due to subsequent construction to the leased property.

A construction loan, converted to a conventional loan, would continue to qualify as construction debt retirement. However, any refinancing where other debt is included, such as new appliances, inventory, unpaid utilities, etc., would not be construction debt retirement. When such debts are combined, the property would not comply with sec. 70.11, Wis. Stats., and result in the property losing its tax exempt status.


In addition, other types of debt retirement by the leasehold income would not qualify as construction debt retirement. Examples include those debts associated with the business of operating the property, the debts of a parent or subsidiary entity, or the debts incurred from the construction of another property.

Mr. Radelet has argued that a narrow interpretation of the words "maintenance" and "construction debt retirement" is illogical because housing authorities and benevolent associations would be able to collect all possible leasehold income, but would not be able to apply it to all of the property operating expenses. The Department disagrees. The Department concurs with the Dane County Circuit Court in concluding that the statute shows clear legislative intent to limit lessors' use of rental income. It may be inferred that the Legislature was concerned that without such limitations, lessors could take unfair advantage of their exemption and use the leasehold income for speculative investments and other purposes. Or it may be that the Legislature wished nonprofit lessors to cover their expenses through benevolent activities and charitable donations rather than leasehold income.

Mr. Radelet also suggested that sec. 70.11 must only be applicable to subleases of property. He argues that the provision as to leasing states that it is only applicable to "property described in" sec. 70.11, and that apartment buildings of the type at issue are only described in § 70.11(4). The Department disagrees. Property described in sec. 70.11 includes property described in its subsections.

I hope you find the information helpful.

Sincerely,



Jean Gerstner
Deputy Administrator
Division of State and Local Finance

cc: Municipal Assessors

Thank you for using our printer friendly story page.

[Return to story](#)

Fix sought for law on taxing low-income housing providers

MARK PITSCH
608-252-6145
February 4, 2009

A Dane County judge last year ruled that under state law the organizations are exempt from property taxes only if their rental income is used for maintenance or construction debt. In the wake of the ruling, the state Department of Revenue endorsed that interpretation.

But seeking a solution may delay an agreement between Gov. Jim Doyle and legislative leaders on a bill aimed at creating jobs and reviving Wisconsin's economy.

Senate Majority Leader Russ Decker, D-Weston, wants to fix the tax law affecting low-income housing providers as soon as possible to relieve the concerns of owners and tenants that they'll lose their property tax exemptions after a recent Dane County court ruling, said Decker spokeswoman Carrie Lynch.

One way to do that would be to include a change to the law in the economic stimulus bill Decker is negotiating with Doyle and Assembly Speaker Mike Sheridan, D-Janesville, Lynch said.

But Doyle and Sheridan don't like that idea.

"This does not need to be part of an economic stimulus bill which would be, of course, designed to pass quickly and get people back to work," said Lee Sensenbrenner, a Doyle spokesman.

Rebekah Sweeney, a spokeswoman for Sheridan, said revising the tax law affecting nonprofit housing providers "is not the highest priority for (Sheridan) or his immediate focus right now."

At issue is whether nonprofit housing organizations will pay property taxes.

[Return to story](#)

madison.com is operated by Capital Newspapers, publishers of the Wisconsin State Journal, The Capital Times, Agri-View and Apartment Showcase. All contents Copyright ©2009, Capital Newspapers. All rights reserved.