

June 5, 2009

To: Members of the Wisconsin Assembly

From: John Sauer, Executive Director
Tom Ramsey, Director of Government Relations

Subject: **WAHSA Support for AB 75 Provision RE Property Tax Exemption for Certain Types of Housing (*Columbus Park*)-- Response to June 3, 2009 League of Wisconsin Municipalities Memo in Opposition to the *Columbus Park* Provision**

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership association of 200 not-for-profit long-term care organizations. WAHSA member corporations own, operate and/or sponsor 183 not-for-profit nursing homes, 76 community-based residential facilities (CBRF), 60 residential care apartment complexes (RCAC), and 113 apartment complexes for seniors, also referred to as retirement homes for the aged. Ninety-seven of these retirement homes for the aged are part of a campus which includes a nursing home, CBRF and/or a RCAC; the remaining 16 complexes are stand-alone, not-for-profit senior housing. WAHSA members employ over 38,000 dedicated staff who provide care and services to over 48,000 residents, tenants and clients.

The legislative debate on the property taxation of senior housing has been ongoing since 1990. The 1997 state budget contained a provision creating a 10-member Benevolent Retirement Homes for the Aging Task Force which met for six months in 1999-2000 but was unable to produce a compromise solution. The Legislative Council Special Committee on Tax Exemptions for Residential Property (*Columbus Park*) debated this issue extensively in 2004, with the result being 2005 Assembly Bill 573, which died without a vote on the Assembly floor. The issue reared its ugly head once again last session, when the debate on whether low-income housing should be exempt from property taxation under 2007 Senate Bill 403 was expanded to include a similar exemption for senior housing. The end result, once again, was incomplete.

At issue in all these debates was whether "affluent" seniors living in "high end" tax-exempt senior housing should be required to pay property taxes. WAHSA members believe a consensus was never found because "affluent" and "high-end" were never defined; those seeking change were never either willing or able to identify who it was they were targeting for taxation. The uncertainty of who would lose their tax-exempt status caused many legislators to shy away from these proposals.



The *Columbus Park* provision that was attached to AB 75 by the Joint Committee on Finance was the first real attempt in the 25+ years of debate on this issue to identify who these "affluent" seniors are and what "high-end" senior apartments should be required to pay property taxes. We are by no means comfortable in every case with the thresholds in this provision which identifies which senior housing units (by fair market value) will and will not be taxable because we know there are WAHSA members whose units are currently tax-exempt who will be required to pay property taxes under this proposal. But after years of uncertainty, where the undefined term of "benevolence" has been interpreted one way by Milwaukee County Circuit Court and another way entirely in Dane County Circuit Court, WAHSA members are willing to accept the certainty of this provision rather than the uncertainty of the differing circuit court rulings throughout the State that we anticipate the future currently holds. ***Therefore, WAHSA members, albeit somewhat reluctantly, support the Columbus Park property tax exemption provision contained in AB 75.*** The budget provision provides some certainty to residents and their non-profit senior and low-income housing providers, and to municipalities.

The remainder of this memo seeks to respond to the June 3, 2009 memo in opposition to this provision from the League of Wisconsin Municipalities, Wisconsin Realtors Association, Wisconsin Alliance of Cities, Wisconsin Towns Association, and the City of Milwaukee (referred to as "the League" memo):

- The League argues retirement homes for the aged should not be provided the same unrestricted use of the rental income they generate that this provision allows for low-income providers. In other words, the League believes senior housing providers only should be able to use their rental income for maintenance and/or construction debt retirement, as required under current law. That would preclude senior housing providers from using that rental income to subsidize the rent of tenants who have run out of funds or to subsidize the Medicaid deficit of the affiliated campus nursing home. How would such a limitation benefit society or, more specifically, the local taxpayer?
- The League memo states it opposes "a new property tax exemption for high value retirement homes for the aged." Benevolent retirement homes for the aged have been exempt from property taxation under s. 70.11(4) since 1957. This is not a brand new exemption: it is a clarification of a statute that has been on the books for over 50 years and is an attempt to stop the litigation stream surrounding this issue.
- The League memo states this provision ultimately will shift more of the property tax burden onto residential homeowners. We do not believe that assertion reflects reality. The senior housing complexes that will be impacted by this provision currently are exempt from property taxation; some apartments units within certain complexes will lose their tax exempt status if this provision becomes law. If anything, residential homeowners will be benefited by this provision. The only cases where currently taxable senior housing property may become tax-exempt under this provision is in the few instances where courts have denied tax-exempt status.

- The League continuously references "high end senior housing facilities used exclusively by affluent elderly." Yet how does the League define these "affluent" elderly and their "high-end senior housing facilities?" According to the League, an "affluent" tenant of a senior housing facility would be an individual/household residing in a unit whose assessed value is 100% of the average fair market value of residential parcels located in the municipality. Since when is the average "affluent?" The League's argument that it seeks only to require the "affluent" tenants of "high-end senior housing facilities" to pay property taxes seems to run counter to statements made in the media that the City of Milwaukee reportedly desires to tax all 1,360 senior housing units in Milwaukee in order to require seniors to pay \$8 million in property taxes.
- The League suggests that the current requirement that retirement homes must be owned by "benevolent" organizations be restored. For 20+ years, the Legislature has been unable to reach a consensus on the definition of "benevolence." Instead, the courts have taken up that cause and the results have differed from court to court. This provision requires the retirement home for the aged to be not-for-profit but lends some certainty to the determination of taxability. The AB 75 provisions hopefully will stop the well documented history of certain municipalities imposing a "creative" interpretation of current law, thereby requiring legislative intervention in order to clarify legislative intent. Let's stop the need for *Columbus Park*-like fixes.
- WAHSA members disagree with the assertion from Milwaukee and Madison staff that "all or nearly all of the individual dwelling units in high-end senior housing facilities in Milwaukee and Madison" would be tax exempt. That is why we fought hard for a threshold higher than 160%. Ultimately, however, it will be up to the local assessors to determine which of us is correct. Historically, WAHSA members have supported the position of the IRS that the elderly living in senior housing as a class, regardless of income, should be exempt from taxation. The *Columbus Park* provision, for our members, is a compromise from that historic position, a grudging acquiescence knowing that the some tenants of non-profit senior housing will now required to pay property taxes.

We respectfully ask that the State Assembly approve the *Columbus Park* provisions contained in AB 75. It's time to provide a "legislative fix" to this thorny issue and move on.

Thank you for your consideration of our interests and concerns.

DATE: June 3, 2009

TO: Members of the Wisconsin State Assembly

FROM: League of Wisconsin Municipalities
Wisconsin Realtors Association
Wisconsin Alliance of Cities
Wisconsin Towns Association
City of Milwaukee

RE: **Opposition to Property Tax Shift to Residential Homeowners Due to New Tax Exemption for High Value Retirement Homes in the Budget Bill**

The organizations listed above strongly oppose a new property tax exemption for high value retirement homes for the aged that the Joint Finance Committee voted to insert into the state budget bill. We oppose the provision because ultimately it will shift more of the property tax burden onto residential homeowners who already are paying 71% of the statewide property tax levy.

The new exemption will make it very easy for high end senior housing facilities used exclusively by affluent elderly to retain or obtain tax exempt status. It also will make it easier for non-profit organizations to build or acquire housing for the aged that will be tax exempt even if it is priced well above market rates. Seniors and all others who reside in their own homes should not be required to pay higher property taxes to subsidize the cost of services provided to tax exempt high end senior housing facilities.

Motion 700, passed by the Joint Finance Committee last week, gives high end senior housing facilities the same relief from current restrictions on the use of rent payments provided to low income housing providers by the motion, but goes much farther by creating an entirely new tax exemption for nonprofit retirement homes for the aged. The new exemption is extremely broad. Under this new exemption, a retirement home for the aged does not have to provide housing for low income individuals, does not have to provide housing priced below average market rates, does not have to be linked to assisted living facilities and nursing homes as part of a continuum of care, and does not have to be owned by a "benevolent" organization in order to qualify for the exemption.

The broad new exemption applies as long as the facility is nonprofit, provides housing to the aged, and the fair market value of an individual dwelling unit is less than 160% of the average fair market value of residential parcels located in the county. The assessor must exclude the value of any common areas when determining an individual dwelling unit's fair market value. *According to Milwaukee and Madison staff, all or nearly all of the individual dwelling units in high end senior housing facilities in Milwaukee and Madison have a value under the 160% threshold and therefore would be tax exempt.*

Recommendation: Delete the provision. This is a complex issue which requires detailed discussion and careful drafting.

At a minimum, if the provision remains in the budget bill, make the following changes:

- ◆ Reduce the threshold from 160% to 100% of the average fair market value of residential parcels located in the municipality, not the county.
- ◆ Delete requirement that the assessor exclude the value of any common areas when determining the value of an individual dwelling unit's fair market value.
- ◆ Restore requirement under current law that such facilities must be owned by "benevolent" organizations in order to qualify for an exemption.

Summary: We support legislation clarifying the property tax exemption for benevolent organizations that provide housing for low-income individuals. We would support a property tax exemption for retirement housing priced at or below market rates which is owned by benevolent organizations. We oppose the provision inserted in the budget bill because it goes far beyond these worthwhile objectives and will ultimately and unjustifiably shift more of the property tax burden onto homeowners.

Thank you for your consideration of these recommendations.

For More Information Contact:

Curt Witynski, League of Wisconsin Municipalities, (608) 267-2380

Should wealthy seniors get property tax breaks?

Under a state budget provision, owners of retirement units worth \$295,000 in Milwaukee County, \$505,000 in Waukesha County and \$506,000 in Ozaukee County would pay no property tax.

By Patrick Marley of the Journal Sentinel

Posted: Jun. 4, 2009 www.jsonline.com/news/statepolitics/47001607.html

Should wealthy seniors get property tax breaks? A state budget provision would likely end a six-year dispute over when units in retirement homes must pay property taxes, but critics say the plan ensures tax breaks for too many wealthy seniors - including those who live in units worth more than \$500,000 in suburban Milwaukee.

Whether seniors living in nonprofit retirement complexes must pay property taxes has been unclear since a 2003 state Supreme Court decision. City assessors have increasingly scrutinized facilities for wealthy people and threatened to put them on the tax rolls.

A measure inserted in the budget last week by the Legislature's Joint Finance Committee would guarantee that the units are exempt from property taxes if they are worth up to 160% of the average fair market value of condos and single-family homes in their community.

Critics of the plan said that limit would unfairly shift the tax burden to other homeowners. The proposal would grant tax exemptions for units that are worth as much as \$295,794 in Milwaukee County, \$505,180 in Waukesha County and \$506,539 in Ozaukee County.

"They talk a lot about a property tax exemption; I refer to it more as a prosperity tax exemption," said Milwaukee Mayor Tom Barrett. "It is unconscionable to have a situation where people who live in \$285,000 condos pay nothing and widows who live in \$95,000 homes pay them.

"I have people who can't afford to live in their homes because of property taxes. And what do I say to them, 'Oh, I'm sorry, you don't have an expensive " lobbyist that can get you an exemption?'" Supporters of the change said it clarified existing law, which protects many seniors from having to pay property taxes, while giving cities new tax revenue for the most expensive facilities.

For years, people living in retirement complexes and low-income housing run by nonprofits have not had to pay property taxes. But the 2003 Supreme Court decision said many of those tenants were liable for property taxes.

Legislators quickly changed the law to exempt seniors in housing run by benevolent nonprofit groups, but questions have persisted about who has to pay taxes. Assessors around the state have warned that they planned to bill high-end senior housing. The bills would go to the property owners and likely be paid by the tenants through higher rents.

Cities argue that the current exemption is available only to benevolent nonprofit groups that use rent payments solely to cover maintenance and pay off construction debt. Retirement complexes run by nonprofit groups that are not benevolent argue that they can use rent payments for other purposes, such as services and programming, and still get the exemption.

The proposed change would drop the requirement that groups show they are benevolent and would allow them to use rent payments for any purpose and retain the tax exemption.

The committee made similar changes for low-income housing, but those have generated less controversy.

Milwaukee City Assessor Mary Reavey said there are about 1,360 senior housing units in Milwaukee that haven't received tax bills in the past but she believes are taxable under current law. They would generate about \$8 million a year, she said.

But if the budget provision goes through - which appears likely - none of that money could be collected, Reavey said.

Taxes are already levied on for-profit retirement homes. Reavey said the for-profit and nonprofit homes are otherwise identical in many cases.

Exemptions defended

John Sauer, executive director of the Wisconsin Association of Homes and Services for the Aging, said the tax exemption makes sense because many of the high-end independent-living units are connected to assisted-living facilities and nursing homes. Excess money raised from the costly apartments is often used to subsidize care for people in the other facilities - costs that Sauer said would otherwise be paid by Medicaid, the state-federal health-care program.

"From my perspective, these apartments are necessary to fund the care and services that others are receiving," he said. "This clarifies the tax exemption in current law. I don't see this as expanding the tax exemption." Unlike Reavey, he believes the most expensive senior apartments in Milwaukee and Madison would become taxable under the changes.

But the law change could prompt new tax exemptions because nonprofits no longer would have to show they are benevolent, said Curt Witynski, assistant director of the League of Wisconsin Municipalities. "We're fearful it's going to ultimately shift more of the property tax burden on what you'd consider your typical property-tax payer," he said.

State Rep. Mark Pocan (D-Madison), co-chairman of the Joint Finance Committee, called the measure the best compromise he's seen. "I guess one thing I would offer is even though (cities are) not happy with where the level is, they can't get taxes right now from anyone, so at least it's bringing in some revenue and allows them to address, I think, the fundamentals of the problem," he said.

Senate Majority Leader Russ Decker (D-Weston) said in a statement that he hoped for a narrower deal but he had to make compromises to fix the problem. A spokesman for Democratic Gov. Jim Doyle said he was pleased with the deal.

The Democrat-controlled Legislature will take up the budget as early as Wednesday. It will then go to Doyle.