

**2007 DRAFTING REQUEST**

**Senate Amendment (SA-SB403)**

Received: **01/30/2008**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing: **mary mathias**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Property - exemption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Low-income housing; applicability and omitted property

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	jkreye 01/30/2008	kfollett 01/30/2008	jfrantze 01/30/2008	_____	sbasford 01/30/2008	sbasford 01/30/2008	

FE Sent For:

<END>

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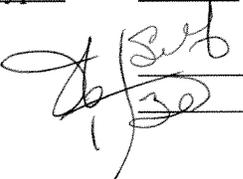
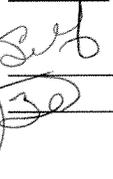
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/1	jkreye	1/15f 1/30					

FE Sent For:

<END>

MEMORANDUM

January 29, 2008

TO: Joseph T. Kreye  
Legislative Reference Bureau

FROM: Paul Ziegler  
Department of Revenue

SUBJECT: Technical Memorandum on 2007 SB 403 Regarding the Property Tax Exemption for Low-Income Housing

*R 1/29/08*

Making the bill retroactively effective on January 1, 2006, will create administrative problems for both the Department of Revenue (DOR) and those local governments where low-income housing projects are located.

For DOR, the bill creates problems regarding property assessment procedures. DOR will need time to develop and distribute the annual statement required under proposed s. 70.11 (4a) (f) 1. It will also be necessary to update the property assessment manual, inform assessors of the law change, and train assessors on how to administer the law.

For local governments, should any currently taxable low-income housing projects be eligible for exemption under the bill, the project owner will be able to file for a refund of any taxes paid on the 2006 and 2007 assessment. The affected municipalities will then bill overlying taxation districts for their share of these refunds.

The above problems could be avoided if the bill took effect on January 1, 2009.

The bill creates a penalty of \$10 per day for late filings of the annual statement concerning the occupancy status of units in a low-income housing project. The bill does not provide a means of recovering the penalty if the owner of the low-income housing project refuses or fails to pay the penalty.

DOR would incur one-time costs related to programming for the property tax administration system. The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

	Chapter 20	Amount	FTE
one-time	s. 20.566 (3) (a)	\$ 8,200	0.0

If you have questions regarding the non-cost aspects of this memorandum, please contact Daniel Huegel at 266-5705. If you have any questions regarding the administrative costs, please contact Julie Raes at 267-9892.

cc: Senator Lena Taylor

Wisconsin Department of Administration  
Division of Executive Budget and Finance

### Fiscal Estimate - 2007 Session

Original       Updated       Corrected       Supplemental

<b>LRB Number</b> 07-3790/1	<b>Introduction Number</b> SB-403
<b>Description</b> Under this bill, property owned by churches or religious or benevolent associations and used as low-income housing is exempt from the property tax. Re-defines low income housing.	
<b>Fiscal Effect</b>	
<b>State:</b>	
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriations <input checked="" type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriations <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <span style="margin-left: 400px;"><input checked="" type="checkbox"/> Yes      <input type="checkbox"/> No</span> <input type="checkbox"/> Decrease Costs	
<b>Local:</b>	
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs      3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs      4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
<b>5. Types of Local Government Units Affected</b> <input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Village <input checked="" type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input checked="" type="checkbox"/> School Districts <input checked="" type="checkbox"/> WTCS Districts	
<b>Fund Sources Affected</b>	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEGS	
<b>Affected Ch. 20 Appropriations</b>	
<b>Agency/Prepared By</b> DOR/ Daniel Huegel (608) 266-5705	<b>Authorized Signature</b> Paul Ziegler (608) 266-5773
<b>Date</b> 1/29/2008	

*PZ 1/29*

**Fiscal Estimate Narratives**  
**DOR 1/29/2008**

LRB Number 07-3790/1	Introduction Number SB-403	Estimate Type Original
<b>Description</b> Under this bill, property owned by churches or religious or benevolent associations and used as low-income housing is exempt from the property tax. Re-defines low income housing.		

**Assumptions Used in Arriving at Fiscal Estimate**

**CURRENT LAW**

Prior to 2003, property owned by non-profit organizations and rented to low-income persons was usually considered to be exempt from property taxes. However, a provision of the property tax exemption statute indicated that, for property rented to others, the property tax exemption would hold only if both of the following conditions were met: (a) all rental income was used for maintenance of the property and/or to service construction debt (the "rent use" test) and (b) the person or entity who rented the property would be exempt from property taxes if they owned the property (the "lessee identity" test).

In response to a question concerning the taxability of a provider of low-income housing, a 2003 decision by the Wisconsin Supreme Court (Columbus Park Housing Corporation v. Kenosha, 267 Wis.2d 59) held that property owned by Columbus Park (a non-stock, non-profit corporation) and rented to low-income persons was taxable because, if the renters had owned the property, it would be subject to property taxes.

The Legislature reacted to this decision by enacting 2003 Wisconsin Act 195 (2003 Senate Bill 512), which created an exception to the "lessee identity" test for residential housing.

Thus, under the current property tax exemption statutes regarding residential housing, the property tax exemption holds only if the "rent use" test is met (all rental income is used for maintenance of the property and/or to service construction debt).

In general, the amount of land owned by a property tax exempt organization within a municipality may not exceed a statutory limit. For churches and religious organizations, this limit is 30 acres. For all other exempt entities, the general limit is 10 acres.

**PROPOSED LAW**

Property used as low-income housing, as defined, and meeting a newly defined "rent use" test, and owned by churches or religious or benevolent associations would be exempt from property taxes.

The definition of who qualifies as a low-income or very low-income person is based on the household income levels used by the U. S. Department of Housing and Urban Development (HUD) in its low-income housing assistance programs. A very low-income person is a member of a household with an income of less than 50% of the HUD area median family income. A low-income person is a member of a household with a median income of 50% or more, but less than 80%, of the HUD area median family income.

"Low-income housing" is defined as any residential unit within a "low-income housing project" that is either occupied by a low-income or very-low income person or, if vacant, is only available to such a person. A "low-income housing project" is defined as a multi-unit property where at least 75% of the occupied residential units are occupied by low-income or very-low income persons and (a) at least 20% of the units are rented by or, if vacant, only available to a very-low income person, or (b) at least 40% of the units are rented by or, if vacant, only available to a person whose income does not exceed 120% of the very low-income limit. All properties included within the same HUD contract, or for rural areas the related program operated by the U. S. Department of Agriculture (USDA), shall be considered as one low-income housing project.

*R 1/29*

For low-income housing owned by churches or religious or benevolent associations, the "rent use" test is changed so that the property tax exemption is retained if the all of the rental income is used for the following purposes directly related to the low-income housing project: (1) maintenance, (2) capital replacements, (3) insurance premiums, (4) project management, (5) debt retirement, (6) reserves for project-related purposes, (7) general and administrative expenses, (8) social and other services to project residents, (9) utilities, (10) financing costs, (11) other expenses for preserving and managing the project, and (12) other similar project-related expenses. In addition, up to 10% of a project's rental income could be used for these purposes at another low-income housing project in Wisconsin owned by the same entity. The owner of the low-income housing project may also use any of the rental income from a project to pay the debt service on another low-income housing project as long as the both projects are under common control, under the same mortgage, and located in Wisconsin.

Annually, by March 1, each owner of a low-income housing project shall file a report with the municipal assessor, on a form prescribed by the Department of Revenue (DOR), that specifies which units were occupied by residents who met the low-income limits. A copy of the HUD or USDA contract must also be included with this report. If the assessor does not receive this report by March 1, the assessor must notify the owner via certified mail of the failure to report and that failing to report is subject to a penalty. If a person fails to file the report within 30 days of notification, a penalty of \$10 is imposed for each succeeding day on which the form is not received, with a maximum penalty of \$500.

The general limit on the amount of tax exempt land owned by a non-religious organization remains at 10 acres. However, the amount that can be owned by churches or religious or benevolent associations and used for low-income housing is subject to a limitation of 30 acres and a further limitation of 10 contiguous acres.

These changes would take effect retroactively on January 1, 2006.

#### FISCAL EFFECT

Most, if not all, of the low-income housing projects that are currently exempt from property taxes are expected to remain exempt under the bill. The bill may also permit additional low-income housing projects to become exempt from property taxes. The Department of Revenue does not have data to permit a reasonable estimate of how much property could become exempt under the bill. It is therefore not possible to reasonably estimate the potential shift in property taxes at the local level, the decrease in state forestation taxes, and any refunds that may be needed should any property that was taxed in the last two years be deemed to have qualified for the exemption as a result of the bill on January 1, 2006.

The Department of Revenue would incur one-time costs of \$8,200 for programming related to its property tax administration systems.

*R2 1/29*

#### Long-Range Fiscal Implications

Wisconsin Department of Administration  
 Division of Executive Budget and Finance

**Fiscal Estimate Worksheet - 2007 Session**

Detailed Estimate of Annual Fiscal Effect

Original       Updated       Corrected       Supplemental

<b>LRB Number 07-3790/1</b>		<b>Introduction Number SB-403</b>	
<b>Description</b> Under this bill, property owned by churches or religious or benevolent associations and used as low-income housing is exempt from the property tax. Re-defines low income housing.			
<b>I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b>  The Department of Revenue would incur one-time costs of \$8,200 for programming related to its property tax administration systems.			
<b>II. Annualized Costs:</b>		<b>Annualized Fiscal Impact on funds from:</b>	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations - Salaries and Fringes	\$		\$
(FTE Position Changes)			
State Operations - Other Costs			
Local Assistance			
Aids to Individuals or Organizations			
<b>TOTAL State Costs by Category</b>	<b>\$</b>		<b>\$</b>
<b>B. State Costs by Source of Funds</b>			
GPR			
FED			
PRO/PRS			
SEG/SEG-S			
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>			
	Increased Rev	Decreased Rev	
GPR Taxes	\$		\$
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
<b>TOTAL State Revenues</b>	<b>\$</b>		<b>\$</b>
<b>NET ANNUALIZED FISCAL IMPACT</b>			
	State	Local	
NET CHANGE IN COSTS	\$		\$
NET CHANGE IN REVENUE	\$see text		\$see text
<b>Agency/Prepared By</b>		<b>Authorized Signature</b>	<b>Date</b>

*Paul P. Zy* 1/29

DOR/ Daniel Huegel (608) 266-5705	Paul Ziegler (608) 266-5773	1/29/2008
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## Kreye, Joseph

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**From:** Matthias, Mary  
**Sent:** Wednesday, January 30, 2008 12:48 PM  
**To:** Kreye, Joseph  
**Subject:** FW: SB 403

**Importance:** High

**Attachments:** 2008.01.29 DOR (Ziegler) regarding effective date.pdf

Mary Matthias  
Senior Staff Attorney  
Wisconsin Legislative Council Staff  
Ph.(608)266-0932;Fax (608)266-3830

---

**From:** Solie, Denise  
**Sent:** Wednesday, January 30, 2008 8:30 AM  
**To:** Matthias, Mary; Peterson, Eric  
**Subject:** SB 403  
**Importance:** High

Mary & Eric,

Eric, thanks for sending the attached to me late yesterday.

I think we should have a concise response addressing the effective date issue. It's been raised a couple of times now, and if DOR has concerns, so will legislators. Joe Kreye and I talked about this a couple days ago. I think I get it, but I'm not certain I can articulate it well so others can understand (and whether the information will get to everyone who wants it!).

Mary, would it be possible to update the memo on 1145/2 that you did for Gottlieb, to include SB 403 as introduced, the effect of the senate amendment, and some mention of the effective date issue? Eric, given that it's your bill and in your house, I think that memo should be addressed to Senator Taylor instead of to Gottlieb, but I Mary probably needs to get the request from you.

It's my understanding that SB 403 will be on the senate floor tomorrow, Thursday January 31, and that the floor session will likely begin around 11:30. Mary, you may get some questions from caucus (before session starts). And I think it would be helpful to have you there while it's being debated. (Don't you think so, Eric?) Just a heads up.



2008.01.29 DOR  
(Ziegler) regar...

Here's the attachment:

denise

**Kreye, Joseph**

---

**From:** Matthias, Mary  
**Sent:** Wednesday, January 30, 2008 12:44 PM  
**To:** Solie, Denise; Kreye, Joseph  
**Cc:** Peterson, Eric; Sklansky, Ron  
**Subject:** RE: SB 403

I found the provision from an earlier bill that I was thinking of. It is from 2005 SB 660 (Wirch/Gottlieb):

Section 8. 70.44 (1) of the statutes is amended to read:

SB660, s. 8 - continued

Pg8Ln14 70.44 (1) Real or personal property omitted from assessment in  
any of the 2  
Pg8Ln15 next previous years, unless previously reassessed for the same year or  
years, shall  
Pg8Ln16 be entered once additionally for each previous year of such omission,  
designating  
Pg8Ln17 each such additional entry as omitted for the year of omission and affixing  
a just  
Pg8Ln18 valuation to each entry for a former year as the same should then have  
been assessed  
Pg8Ln19 according to the assessor's best judgment, and taxes shall be  
apportioned, using the  
Pg8Ln20 net tax rate as provided in s. 70.43, and collected on the tax roll for such  
entry. This  
Pg8Ln21 section shall not apply to manufacturing property assessed by the  
department of  
Pg8Ln22 revenue under s. 70.995 or to property previously omitted from  
assessment solely on  
Pg8Ln23 the basis of the property owner's failure to comply with the leased property  
Pg8Ln24 provisions under s. 70.11 (intro.) during the years for which the property  
was  
Pg8Ln25 omitted.

Mary Matthias  
Senior Staff Attorney  
Wisconsin Legislative Council Staff  
Ph.(608)266-0932;Fax (608)266-3830

---

**From:** Peterson, Eric  
**Sent:** Wednesday, January 30, 2008 10:59 AM  
**To:** Solie, Denise; Matthias, Mary  
**Subject:** RE: SB 403

Hi all,

Ok, I am back in the office and can spend some time addressing concerns here.

I believe that memos regarding the bill, the amendment, and the effective date issue are fitting. Can you please address them to Senator Taylor and Representative Gottlieb.

Also, I do think that your presence, Mary, will be helpful for caucus and on the floor tomorrow. I will be checking with members this afternoon on the bill and have a better sense of any problems by the end of the day.

Eric

***Eric M. Peterson***

Office of Senator Lena C. Taylor  
608-266-5810

---

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denise

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa1169/1dn

JK.....  
*KF*

*Date*

Senator Taylor:

This amendment is meant to address the concerns raised by DOR in its technical memorandum, dated January 29, 2008, and is based, in part, on my conversation with Mary Matthias at Legislative Council.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: [joseph.kreye@legis.wisconsin.gov](mailto:joseph.kreye@legis.wisconsin.gov)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBa1169/1

JK: *[Signature]*

SENATE AMENDMENT ,  
TO 2007 SENATE BILL 403

*m 1-30-08*  
*[Signature]*

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 7, line 6: delete lines 6 to 10 and substitute:

3 **“SECTION 3m. Nonstatutory provisions.**

4 (1) OMITTED PROPERTY. Notwithstanding section 70.44 (1) of the statutes,  
5 section 70.44 (1) of the statutes does not apply to property described under section  
6 70.11 (4a) of the statutes, as created in 2007 Wisconsin Act... (this act), for the years  
7 during which the property was omitted from assessment.

8 **SECTION 4m. Initial applicability.**

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

*before 2009*

10 (END)

*D-Note*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa1169/1dn  
JK:kjf:jf

January 30, 2008

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Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: [joseph.kreye@legis.wisconsin.gov](mailto:joseph.kreye@legis.wisconsin.gov)