WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

2003 Wisconsin Act 195 [2003 Senate Bill 512]	Residential Housing Tax Exemption
2003 Acts: www.legis.state.wi.us/2003/data/acts/	**Act Memos:** www.legis.state.wi.us/lc/act_memo/act_memo.htm

Current law exempts certain property from the property tax, including certain property owned and used exclusively by churches or religious, educational, or benevolent associations. [s. 70.11 (4), Stats.]

Prior to enactment of Act 195, the law provided that if property that was exempt from the property tax was leased, the property retained its tax exemption if two requirements were met:

1. The lessee (the person to whom the property is leased) would be exempt from paying property tax if the lessee owned the property. [s. 70.11 (intro.), Stats.] This requirement is commonly referred to as the "lessee identity condition."

2. The lessor (the person who owns the property) used 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 requirement is commonly referred to as the "rent use" requirement.

In the City of Kenosha, a dispute arose over whether the rent use and lessee identity requirements applied to property that was owned by a nonprofit organization and leased to low-income families. Apparently, until the City of Kenosha raised the issue, it was generally assumed that the "lessee identity condition" did not apply when property was leased to an individual and property taxes were not assessed against tax-exempt property leased to individuals.

The Wisconsin Supreme Court issued a decision on this issue in November, 2003, in *Columbus Park Housing Association v. City of Kenosha*, 267 Wis. 2d 59, 671 N.W.2d 633 (2003); ("*Columbus Park*"). The court held that the lessee identity condition does apply to tax-exempt property leased to individuals. Specifically, the court held that property owned by a benevolent organization that purchased blighted property, rehabilitated it, and rented it to low-income families who received federal

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rent subsidies was not exempt from property tax because the low-income tenants would not be entitled to the exemption if they owned the property themselves.

The court also stated that the rent use requirement applies to tax-exempt property leased to individuals. However, because the court concluded that the housing corporation did not satisfy the lessee identity condition, it did not address the issue of whether the corporation's use of its lease income satisfied the rent use requirement.

Act 195 provides that the lessee identity requirement does not apply to tax-exempt property leased as residential housing. In other words, property that would otherwise be exempt from property taxes, that is leased as residential housing, does not become taxable solely because the lessee would not be exempt from property taxes if the lessee owned the property. Under the Act, this new provision applies to all future tax assessments and applies retroactively to assessments as of January 1, 2002.

Act 195 does not amend the "rent use" requirement. Therefore, tax-exempt property that is leased as residential housing remains subject to the statutory requirement that all of the lease income must be used for maintenance of the leased property or construction debt retirement of the property, or both.

The Act also directs the Legislative Council to study the effect of *Columbus Park* on property tax exemptions for property that is leased, pursuant to s. 70.11 (intro.), 2001 Stats., and as affected by the Act. Act 195 requires the Legislative Council to report its findings, conclusions, and recommendations to the Legislature no later than December 15, 2004.

Effective Date: Act 195 takes effect on April 23, 2004. The provision of the Act that exempts residential housing from the lessee identity condition applies retroactively to tax assessments beginning on January 1, 2002.

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