Wisconsin Department of Revenue
Division of Research and Analysis
August 25, 2000

Department of Revenue Staff Summary of Proceedings of the Benevolent Retirement Home for the Aged Task Force

I. The Charge of the Task Force and its Membership

1997 Wisconsin Act 27 created the benevolent retirement home for the aged task force to investigate the property tax exemption for benevolent retirement homes and all problems associated with it. The task force was originally to submit its report and recommendation by June 30, 1999. Since the task force was delayed in convening, the deadline was extended by one year.

The task force was comprised of the following members:

- Gregg C. Hagopian, Assistant City Attorney
  City of Milwaukee
  (Governor Thompson appointee)
- David R. Huebsch, Assessor
  Village of West Salem
  (Governor Thompson appointee)
- Michael Kittleson, Nursing Home Administrator
  Grand View Nursing Home
  (Senate Majority Leader appointee)
- Patrick Murphy, VP Managing Partner
  Care-Age of Brookfield
  (Speaker appointee)
- James B. Olson, Administrator
  Schmitt Woodland Hills, Inc.
  (Senate Majority Leader appointee)
- John Sauer, Executive Director
  Wisconsin Association of Homes and Services for the Aging (WAHSA)
  (Governor Thompson appointee)
- Robert J. Schaefer, Nursing Home Administrator
  Lindengrove, Inc.
  (Senate Minority Leader appointee)
- Larry Weiss, Chairman
  The Laureate Group, Inc. (retired)
  (Speaker appointee)
- Peter C. Weissenfluh, Chief Assessor,
  City of Milwaukee
  (Assembly Minority Leader appointee)
- Glenda J. Zielski, Nursing Home Administrator
  The Lutheran Home
  (Governor Thompson appointee)

- Beth Christie, Vice President
  The Laureate Group, Inc.
  (Alternate)
- Dennis Sampson, Nursing Home Administrator
  Tudor Oaks Retirement Community
  (Alternate)

At the request of the task force, Mr. Thomas Ourada, Executive Assistant, Department of Revenue, agreed to serve as the nonvoting chair.

The task force met six times from December, 1999 through July, 2000. A summary of the background information presented regarding legislative history, other states' laws related to retirement homes, demographics of the aged, market and operations analysis of for-profit and not-for-profit facilities, and federal exemption standards is attached as an appendix.

II. Discussion and Perspectives

Task force members generally agreed that the current exemption language for benevolent retirement homes lacks clarity and provides little guidance in establishing what is exempt or taxable. However, consensus could not be reached regarding the scope of the task force and the standard to use to exempt retirement homes.

Scope of task force. Members representing not-for-profit facilities argued that the mandate of the task force was to determine if there were problems associated with the exemption for only unlicensed independent retirement homes. In their view, licensed facilities such as nursing homes, assisted living facilities and continuing care campuses were not in the purview of the task force. In contrast, members representing for-profit entities and taxing jurisdictions argued that all types of senior housing currently exempt under s. 70.11(4), Wis. Stats., must be explored in order to comply with the legislature's mandate in creating the task force and to address potential abuses under existing law; consequently they favored discussing the various types of senior housing facilities that exist in Wisconsin, e.g. independent living facilities, residential care apartment complexes, nursing homes, etc.

Exemption Standards. Two perspectives were voiced regarding the type of facility that merits a property tax exemption. The different perspectives reflected a corresponding difference of opinion regarding the use of income generated by an exempt facility.

Members representing not-for-profit facilities argued that a facility that uses its income to serve the community or to offset losses in other levels of care is serving a legitimate exempt purpose. According to the not-for-profit perspective, as outlined in the report submitted by the five members (and one alternate) representing not-for-profit facilities, designation as an Internal Revenue Service Code (IRC) 501(c)3 organization is an appropriate property tax exemption standard.

Members representing for-profit facilities and taxing jurisdictions argued that Wisconsin law requires that exemptions be based on use of the property rather than use of the income from the property and that exempt property must be exclusively used for the exempt purpose of the organization. According to this view, facilities serving residents who are not legitimate subjects of charity should not be exempt even if income from the facility is used for the community at large or for residents of affiliated facilities. The perspective outlined in the "Government 5 Report", submitted by the two members representing for-profit facilities and the three members representing taxing jurisdictions, held that the property tax exemption should be limited to facilities that serve elderly residents who are legitimate subjects of charity as measured by an income test.

These two perspectives are discussed below.

The nonprofit standard. Members representing not-for-profit facilities maintained that their motivation to provide quality care and their long-term commitment to the community warrant their exempt status. In contrast, they argued, the commitment of the for-profit sector is to their shareholders and their motivation is to earn a profit.

According to the not-for-profit perspective, the long-term community benefits provided by not-for-profit facilities include higher wages and lower turnover of staff compared to for-profit facilities, subsidized care for residents no longer able to pay, and cross-subsidization across levels of care that offset Medicaid deficits. Other benefits include community health care outreach and financial contributions to the community and to charitable causes.

To provide clarity to the law, these members recommended language specifying that exempt facilities have an IRC 501(c)3 designation. IRC rulings hold that nonprofit facilities that meet the housing, social, health and financial needs of the aged and that have a policy of not discharging residents who become unable to pay for their care qualify for tax-exempt status under Federal income tax law.

Arguments against a nonprofit standard. Countering this perspective, members representing for-profit facilities and taxing jurisdictions argued that the proposed nonprofit standard would essentially retain current law without addressing the problems the task force was created to address.

These members argued that the current property tax exemption unfairly advantages nonprofit facilities over competing for-profit facilities that serve the same populations of seniors. They argued that higher wages and better staffing are not the type of community benefits for which exemptions should be granted. They further argued that for-profit facilities provide many of the same community benefits, including cross-subsidization across levels of care, support groups, meal sites and charitable contributions.

These members opposed sole reliance on an IRC 501(c)3 federal income tax designation for property tax exemption purposes. They pointed out nonprofit facilities that serve only those who have been prescreened for health and wealth - only accepting those who are wealthy enough to afford substantial endowments and monthly fees - are exempt from federal income taxes under IRC 501(c)3. They questioned the importance of IRS' no-discharge policy since prescreening for wealth makes it unlikely that a resident would become unable to pay, but should a resident become unable to pay, large endowment fees would provide any needed back-up reserve.

These members argued that an IRC 501(c)3 standard would continue to exempt facilities that serve residents who are often more affluent and who live in nicer units than seniors who live in taxable housing, including those who live in their own homes. As a result, the standard would continue to give a tax advantage to the wealthy and shift their tax burden to all other taxable property. Finally, they argued that due to limited staff, the IRS is unable to monitor compliance with IRC 501(c)3 requirements.

Income test and age standard. Members representing for-profit facilities and taxing jurisdictions supported the requirement that exempt facilities be nonprofit and have an IRC 501(c)3 designation, but in addition, they recommended a standard that would limit the exemption to facilities actually being used to serve residents who are elderly and who are in financial need as measured by resident income. This position reflects the view that the property tax exemption for senior housing was intended to help seniors of limited means and not intended to exempt middle class or upper class housing. These members argued that conflicting case law has created the need for a more stringent standard than exists under current law.

They further argued that the growth and evolution of the senior housing industry has created a need for greater clarity of the law for all types of senior housing, not just independent units. Thus, their recommendation applies to unlicensed independent retirement homes as well as licensed facilities such as community based residential care facilities, residential care apartment complexes, and continuing care residential complexes.

The members representing for-profit facilities and taxing jurisdictions recommended an exemption standard that is tied to the percentage of a facility's residents who are elderly (65 or older) and needy (i.e. who have a household income at or below the maximum household income that would qualify for the homestead credit which, beginning in 2001, is $24,500). For example, if 60% of the residents of a facility were 65 or older and reported income at or below the level that would qualify for the homestead credit, 60% of the facility's value would be property tax exempt. For campus-type facilities, the standard would be applied separately to each level of care. Under the proposal, facilities would be required to obtain annual verification of residents' age and income, except that skilled nursing facilities that accept Medicaid patients would be exempt without any reporting requirements.

Arguments against an income test standard. Not-for-profit members argued that not-for-profit facilities need not serve only the poor to be benevolent and deserving of a property tax exemption.

These members opposed the potential for variability under the income test standard, arguing that due to continual change in a facility's population, its exemption could change from one year to the next, making tax planning difficult. They also voiced concern that seeking income information from their residents could be a violation of licensure requirements and could be difficult to obtain.

Furthermore, these members argued that given the high costs and fees of assisted living facilities, it is unlikely that any assisted living facility would qualify for exemption.

APPENDIX – Presentations at Task Force Meetings

The following background information was presented to the task force regarding legislative history, other states' laws related to retirement homes, demographics of the aged, market and operations analysis of for-profit and nonprofit facilities, and federal exemption standards:

1. ***Review of the property tax exemption for benevolent retirement homes*** presented by Bill Ford, Attorney for Legislative Council. Mr. Ford reviewed the work of the Legislative Council Special Committee on Exemptions from Property Taxation convened in 1990 to review property tax exemptions. The Committee focussed on the exemption for benevolent retirement homes in response to a 1987 Legislative Audit Bureau Report which found that 'benevolent' is not defined by statute but has been interpreted by court decisions to mean simply "doing good". The Committee recommended the statute exempting property owned by benevolent retirement homes be repealed and replaced with an exemption for property owned and used by a charitable retirement home. [See Ron Rosner's presentation on recent legislative proposals below.] Mr. Ford discussed the difficulty in defining who is a legitimate object of charity or what it means to base services on ability to pay; he suggested more objective standards be explored; for example, a requirement that a given percentage of residents have income that would qualify for the homestead tax credit. He noted that language that can be interpreted differently by assessors creates difficulties for assessors and for organizations in proving their charitable nature.

2. ***Demographics, income and housing patterns of senior citizens*** presented by Siobain Beddow of Wisconsin Housing and Economic Development Authority (WHEDA). Ms. Beddow explained that 13.2% of the Wisconsin population is over 65 and that between 1990 and 2010, this age group is estimated to grow 20.6%. Approximately half of the 65-74 age group have household income below $25,000, and 65% in the 75-84 age group have household income below $25,000. She described the different types of licensed housing available to seniors.

3. ***Industry definitions and comparison of facilities*** presented by Beth Christie of the Laureate Group. Ms. Christie compared the amenities and fee structure of a 2-bedroom apartment of various retirement facilities in the Milwaukee area. She considered the fees charged for housing only and excluded fees charged for other amenities. Low service facilities offer only housing and tend to be for-profit entities; these facilities do not charge endowment fees but charge $920-$955 monthly or about $1 per square foot. Full service facilities offer amenities in addition to housing including activity programs, transportation and dining services. Full service, for-profit facilities charge $1,000-$2,000 per month or about $1.25-$2 per square foot and no entrance fees. Full service nonprofit facilities providing a rental option charge $2,100-$2,370 monthly or approximately $3 per square foot and no entrance fees. Nonprofit facilities offering life care contracts include an entrance fee of $98,500-$150,000 and monthly fees (covering maintenance, forfeiture of entry fee, and monthly lost income from entry fee at 5%) estimated at $2,000-$3,000 per month or about $2.25-$3.75 per square foot.

4. ***Summary of Internal Revenue Service (IRS) Section 501(c)3 requirements for retirement homes*** presented by Margaret Derus of Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C. Ms. Derus explained the organizational and operational tests required for a 501(c)3 designation. The IRS requires a 501(c)3 retirement home to relieve the distress of the aged, but that distress need not be financial. According to the IRS, someone

with significant financial assets may be distressed because of advanced age or health needs. Factors the IRS considers in granting 501(c)3 status to a retirement facility include whether it provides 1) suitable housing, equipped for the needs of seniors; 2) civic, cultural and recreational activities; 3) access to health care; and 4) an overall environment conducive to the dignity and independence of the elderly. Financial security is served by a policy that allows people who become unable to pay to remain in residence; however, the IRS allows a facility to financially prescreen its applicants so long as the purpose is to maintain the stability of the entity and not to ensure that the entity will never have a resident unable to pay.

Response to Ms. Derus' presentation by Gregg Hagopian, Assistant City Attorney for the City of Milwaukee. Mr. Hagopian argued that the IRS 501(c)3 standard should not be adopted for property tax purposes, noting that 1) full compliance with federal law does not always exist, particularly given the limited resources available to the IRS for audit; 2) the IRS standards can be abused because they downplay the financial distress factor; and 3) the 501(c)3 criteria exempts facilities that charge high endowments and monthly fees and serve only affluent people.

5. ***History and operations of Tudor Oaks Continuing Care Retirement Community in Hales Corners*** presented by Dennis Sampson, Executive Director. Mr. Sampson described the fee structure and eligibility requirements of Tudor Oaks. Tudor Oaks requires a $41,500 accommodation fee and $1,102 monthly fee for a studio apartment; the facility also offers a rental option with no accommodation fee but higher monthly fees. The private pay rate for the nursing facility is $177 per day, but life care residents pay an average of $53 per day; Medicaid reimbursement is $108 per day. Administrative loss from the nursing facility amounts to $60,000 per month, and the loss due to uncompensated health care amounts to an additional $40,000 per month. Losses are only partly offset by independent living fees; the balance comes from gifts and foundation support.

6. ***Operations of Caring Communities of Hales Corners*** presented by Mark Wimmer, President. Mr. Wimmer explained that Caring Communities is a for-profit corporation which provides development and operations management to both for-profit and not-for-profit organizations. In that capacity, he also serves as Executive Director of Regency Senior Communities, a not-for-profit provider of long-term care services. Mr. Wimmer explained that nonprofit continuing care retirement communities often have a minimum income requirement equal to 60% of the median household income of the county which meets the state-defined threshold for affordable housing. Fees from the independent component are used to deliver benefits to the community as well as to residents in the assisted living programs with higher needs. His organization makes contributions to the community including seminars, wellness clinics, meal site for senior programs, and support groups.

7. ***Recent legislative proposals related to benevolent associations and retirement homes*** presented by Ron Rosner of the Department of Revenue. Since 1991 there have been several proposals to limit the exemption for benevolent retirement homes. 1991 AB 499 replaced "benevolent associations" with "charitable associations" that provide "charitable services" and required charges for a reasonable percentage of the charitable services to be based on ability to pay. A "charitable service" was defined as a service of such service to the community that its discontinuation may result in the allocation of public funds.
1993 AB 456 defined "charitable services" as services provided free, at nominal cost or on the basis of ability to pay and are of such benefit to the community that discontinuation may result in the allocation of public funds. Mr. Rosner explained that two other proposals

changed the exemption for benevolent retirement homes. 1995 AB 150 limited the exemption for benevolent retirement homes to nonprofit facilities where at least 50% of the occupants had a household income that would qualify for the homestead tax credit. 1997 SB 77 required retirement homes to be nonprofit, to have a substantial number of residents pay fees that do not cover costs, and to benefit a substantial number of persons who are legitimate subjects of charity.

8. ***Laws of neighboring states*** presented by Rebecca Boldt of the Department of Revenue. Ms. Boldt summarized the retirement home exemption laws in Illinois, Indiana, Iowa, Michigan, Minnesota and Ohio. Illinois, Michigan and Minnesota link their exemptions to federally subsidized housing programs. Illinois also exempts facilities that provide for a reduction in entrance and service fees based on ability to pay. Ohio excludes independent retirement homes in its exemption statutes but does exempt licensed facilities that provide life care without regard to ability to pay. Indiana does not explicitly exempt independent retirement homes but nonprofit facilities are exempted as charitable organizations. Iowa also exempts charitable and benevolent associations but does not explicitly exempt retirement homes. Iowa case law suggests that facilities that do not provide reduced fees and that do not accept residents without regard to ability to pay are not charitable organizations. Mr. Hagopian provided written material on 16 other states' statutory and case laws related to retirement homes.

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Task Force Materials

Staff Materials

1. Minutes of Task Force Meetings
   - December 15, 1999
   - January 29, 2000
   - March 3, 2000
   - March 23, 2000
   - April 27, 2000
   - May 31, 2000

2. Recent Legislative Initiatives Related to Benevolent Associations & Retirement Homes (undated)
3. Laws of Neighboring States (March 23, 2000)
4. DOR proposal related to benevolent retirement home for the aged, submitted May 31, 2000.

Other Materials

1. Legislation on Exemptions from Property Taxation, Legislative Council Staff, RL 91-7; (July 23, 1991).
2. A Review of Property Tax Exemptions, Legislative Audit Bureau 87-1 (January 21, 1987.
3. 1991 Assembly Bill 497.
4. 1991Assembly Bill 499.
5. Memorandum, Wisconsin Association of Homes and Services for the Aging (WAHSA) Position on 1991 Assembly Bill 499 from John Sauer and Tom Ramsey, (March 9, 1992).
6. WAHSA Issue Paper Property Tax Exemptions for Benevolent/Charitable Associations, Statement in opposition to 1993 SB 256/AB 456 (undated).
7. The Impact of Exemptions on the Fairness of Property Tax Systems and the Special Problem of Residential Retirement Centers, by C.B (Bart) McLean, Jr. paper presented to the International Association of Assessing Officers, 1992.
8. Housing With Supportive Services: Options for Older People, Wisconsin Department of Health and Family Services, Bureau of Aging and Long Term Care Resources (January, 1998).
9. Excerpt, Comparative Summary of 1991-93 Budget Recommendations, page 748, Legislative Fiscal Bureau (June, 1991).
10. 1993 Assembly Bill 456.
12. 1993 Senate Bill 256.
13. Memorandum, Wisconsin Association of Homes and Services for the Aging (WAHSA) Position on 1993 SB 256/AB 456 from John Sauer and Tom Ramsey (June 7, 1993).
14. Memorandum, Property Tax Exemption for Benevolent Retirement Homes from Mark Bugher, Secretary of Revenue to Co-Chairmen of Joint Survey Committee on Tax Exemptions (October 11, 1993).
15. Revenue Ruling 79-18, U.S. Internal Revenue Service (1979).
16. Revenue Ruling 72-124, U.S. Internal Revenue Service (1972).
17. Motion 646, Property Tax Exemption for Benevolent Retirement Homes, drafted by Senator Joe Leean during Joint Committee on Finance deliberations on 1995 Assembly Bill 150 (not introduced).
18. Revise Property Tax Exemption for Benevolent Retirement Homes, Department of Revenue budget proposal (July 25, 1994).

19. Motion 1750, Property Tax Exemption for Benevolent Retirement Homes for the Aged, offered by Senator Joe Wineke during Joint Committee on Finance deliberations on 1997 Senate Bill 77 (undated).
20. Property Tax – Revise Exemption for Benevolent Retirement Homes, Department of Revenue budget proposal (September 9, 1996).
21. 1997 SB 261
22. Memorandum, Wisconsin Association of Homes and Services for the Aging (WAHSA) Position on 1997 SB 261 from John Sauer and Tom Ramsey (October 29, 1997).
23. Letter from Donald J. Hanaway, Attorney General regarding constitutionality of municipal service fees (April 4, 1990).
24. 1999 LRB 2194/3.
25. Guide to Long-Term Care, Office of Commissioner of Insurance (March, 1998).
26. Senior Overview: Demographics, Income, Where People Live, and Health, Presentation materials from Siobian Beddow, Wisconsin Housing and Economic Development Authority (January 29, 1999).
27. Memorandum, Application of Internal Revenue Code 501(c)3 Requirements to Retirement Homes, from Margaret M. Derus, Reinhart, Boerner, Van Deuren, Norris and Rieselbach s.c. (January 27, 2000).
28. Tudor Oaks Retirement Community, A Continuing Care Retirement Community: Fast Facts, by Dennis Sampson, Administrator (March 3, 2000).
29. "Task force tackles tax-exempt status for nonprofit retirement homes", by Kelly Quigley, The Milwaukee Business Journal page 12 (February 12, 2000).
30. "The sky's the limit", by Tawny Colaizy, Eau Claire Leader-Telegram page 1B and 3B (March 2, 2000).
31. State Property Tax Treatment of Elderly Housing, prepared by Judy Zelio, Commerce Clearing House *State Tax Guide*, 1999.
32. "Who pays? Who doesn't?" by Joan Kent, La Crosse Tribune page A-7 (March 5, 2000).
33. "Some tax-exempt groups make voluntary payments", by Joan Kent, La Crosse Tribune (March 5, 2000).
34. Memorandum from Michael Kittleson, Grand View Nursing Home and Glenda Zielski, The Lutheran Home regarding exemption proposal (March 20, 2000).
35. Proposal to exempt benevolent retirement homes for the aging, submitted by John Sauer, Wisconsin Association of Homes and Services for the Aging (March 21, 2000).
36. Memorandum, Proposal for New Statutory Language, from Gregg Hagopian, David Huebsch, Patrick Murphy, Larry Weiss, and Peter Weissenfluh (March 22, 2000).
37. Memorandum, Benevolent Retirement Home for the Aged Task Force; Revised Proposal; Other Matters; Next Agenda, from Gregg Hagopian, David Huebsch, Patrick Murphy, Larry Weiss, and Peter Weissenfluh (April 25, 2000).
38. Memorandum from Martha K. Walston, North Carolina Legislative Staff Attorney, related to status of continuing care retirement center law in North Carolina, (March 21, 2000).
39. North Carolina Legislation and Court Decisions Regarding Property Tax Treatment of Homes for the Aged, Sick or Infirm, by Martha K. Walston, North Carolina Legislative Staff Attorney (February 7, 2000).
40. Other States' Tax Treatment of Homes for the Aged, by Martha K. Walston North Carolina Legislative Staff Attorney (April 10, 2000).
41. Memorandum, Permit-Holding Continuing Care Facilities under Chapter 647, Wisconsin Statutes, from John Kitslaar, Office of the Commissioner of Insurance (March 1, 2000).
42. Resident contracts of continuing care facilities in Wisconsin.

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