

2003 SENATE BILL 527

March 4, 2004 – Introduced by Senators RISSER and COGGS, cosponsored by Representatives GUNDERSON, BLACK and VAN ROY. Referred to Joint Survey Committee on Tax Exemptions.

1 **AN ACT** *to amend* 70.11 (intro.); and *to create* 70.11 (43), 70.11 (44) and 70.11
2 (45) of the statutes; **relating to:** the property tax exemption for leased property
3 and creating property tax exemptions for residential housing owned by
4 benevolent associations and nonprofit organizations.

Analysis by the Legislative Reference Bureau

Under current law, property owned by and used exclusively by churches or religious, educational, or benevolent associations is exempt from property taxes, including benevolent nursing homes. In addition, under current law, real property owned by a nonprofit organization is exempt from property taxes, if the organization holds the property for the purpose of building or rehabilitating residential structures on the property and the structures will sold to low-income persons; it offers no-interest loans to low-income persons to purchase the structures; it requires prospective purchasers to participate in building or rehabilitating the structures; and it acquired the property within three years prior to the date of assessment.

Under this bill, property owned by a benevolent association and used exclusively as any of the following, including any combination of the following, is exempt from property taxes: 1) a nursing home; 2) a residential care apartment complex; 3) a community-based residential facility; and 4) housing for older persons that satisfies the requirement for homes for the aged under an Internal Revenue Service ruling.

Under the bill, property that is a qualified residential rental project, pursuant to requirements under federal law, is exempt from property taxes. A qualified

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residential rental project under federal law is, generally, a project that rents at least 20 percent of its residential units to individuals whose income is no more than 50 percent of the area median gross income or rents at least 40 percent of its residential units to individuals whose income is no more than 60 percent of the area median gross income.

In addition, under the bill, property of a homeless shelter, domestic violence shelter, or transitional housing facility is exempt from property taxes.

Under current law, leasing a part of any property that is exempt from property taxes does not render the property taxable, if the lessor uses all of the income earned from leasing the property for maintenance of the leased property or construction debt retirement of the property, or both, and if the lessee would be exempt from property taxes if the lessee owned the property.

The Wisconsin Supreme Court recently decided that residential housing owned by a benevolent association and leased to low-income individuals is subject to property taxes because the property would not be exempt from property taxes if the low-income individual owned the property. See, *Columbus Park Housing v. City of Kenosha*, 2003 WI 143.

This bill provides that, regardless of whether the lessee would be exempt from property taxes if the lessee owned the property, leasing a part of any property that is exempt from property taxes does not render the property taxable, if the property is owned and used exclusively by a church or a religious, educational, or benevolent association; owned by a nonprofit organization that holds property for the purpose of building or rehabilitating structures for sale to low-income persons; owned by a nonprofit organization and used as a qualified residential rental project, homeless shelter, domestic violence shelter, or transitional housing facility; or owned by a benevolent association and used exclusively as a nursing home, a residential care apartment complex, a community-based residential facility, or housing for older persons that satisfies federal requirements for homes for the aged. In addition, the income earned from leasing such property must be used for the maintenance and operation of the leased property or debt retirement of the property, or both.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this 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:

- 1 **SECTION 1.** 70.11 (intro.) of the statutes is amended to read:
- 2 **70.11 Property exempted from taxation.** (intro.) The property described
- 3 in this section is exempted from general property taxes if the property is exempt
- 4 under sub. (1), (2), (18), (21), (27) or (30); if it was exempt for the previous year and

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1 its use, occupancy or ownership did not change in a way that makes it taxable; if the
2 property was taxable for the previous year, the use, occupancy or ownership of the
3 property changed in a way that makes it exempt and its owner, on or before March 1,
4 files with the assessor of the taxation district where the property is located a form
5 that the department of revenue prescribes or if the property did not exist in the
6 previous year and its owner, on or before March 1, files with the assessor of the
7 taxation district where the property is located a form that the department of revenue
8 prescribes. Leasing a part of the property described in this section does not render
9 it taxable if the lessor uses all of the leasehold income for the maintenance and
10 operation of the leased property, ~~construction~~ debt retirement of the leased property
11 or both and, except for property that is exempt under subs. (4), (4g), (43), (44), and
12 (45), if the lessee would be exempt from taxation under this chapter if it owned the
13 property. Any lessor who claims that leased property is exempt from taxation under
14 this chapter shall, upon request by the tax assessor, provide records relating to the
15 lessor's use of the income from the leased property. Property exempted from general
16 property taxes is:

17 **SECTION 2.** 70.11 (43) of the statutes is created to read:

18 70.11 **(43)** BENEVOLENT ASSOCIATIONS. All or any portion of property that is
19 owned by a benevolent association and used exclusively as any of the following,
20 including any combination of the following:

21 (a) A residential care apartment complex, as defined in s. 50.01 (1d).

22 (b) A community-based residential facility, as defined in s. 50.01 (1g).

23 (c) A nursing home, as defined in s. 50.01 (3).

24 (d) Housing for older persons, as defined in s. 106.50 (1m) (m), that satisfies the
25 requirements under the internal revenue service ruling 72-124.

SENATE BILL 527**SECTION 3**

1 **SECTION 3.** 70.11 (44) of the statutes is created to read:

2 70.11 **(44)** QUALIFIED RESIDENTIAL RENTAL PROJECT. (a) 1. In this subsection,
3 “qualified residential rental project” means a qualified residential rental project
4 under section 142 (d) of the Internal Revenue Code, not including section 142 (d) (4),
5 (6), and (7) of the Internal Revenue Code, with the following modifications:

6 a. The owner of the qualified residential rental project is “the issuer at the time
7 of the issuance of the issue” for purposes of section 142 (d) (1) of the Internal Revenue
8 Code.

9 b. A period of not less than one year is the “qualified project period” for purposes
10 of section 142 (d) (2) (A) of the Internal Revenue Code.

11 c. The phrase “by the secretary” does not apply for purposes of section 142 (d)
12 (2) (B) of the Internal Revenue Code.

13 2. “Qualified residential rental project” includes property located on more than
14 one tax parcel, if the parcels are owned by the same person and are adjacent,
15 separated only by a street, or within the same condominium development.

16 3. “Qualified residential rental project” includes residential units that are
17 within property owned by a cooperative, if the beneficial owner of any of the shares
18 of the cooperative is an organization described under section 501 (c) (3) of the
19 Internal Revenue Code, the shares carry with them the right to lease one or more
20 units within the property, the organization is the lessee of the units pursuant to such
21 right, and the organization subleases the units to individuals.

22 (b) Any portion of property that is a qualified residential rental project, the
23 beneficial owner of which is an organization described in section 501 (c) (3) of the
24 Internal Revenue Code.

25 **SECTION 4.** 70.11 (45) of the statutes is created to read:

