

**2003 DRAFTING REQUEST**

**Bill**

Received: 02/06/2004

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Fred Risser (608) 266-1627

By/Representing: leslie

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - property

Extra Copies:

Submit via email: YES

Requester's email: Sen.Risser@legis.state.wi.us

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us

**Pre Topic:**

No specific pre topic given

**Topic:**

Property tax exemption for leased residential property

**Instructions:**

See Attached

**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>
/?				_____			S&L Tax
/1	jkreye 02/10/2004	kgilfoy 02/10/2004	rschluet 02/11/2004	_____	sbasford 02/11/2004	lemery 02/13/2004	S&L Tax
/2	jkreye	kgilfoy	jfrantze	_____	sbasford	sbasford	S&L

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↪ At Intro.

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*2/27/2004*

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Kmg

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Kmg

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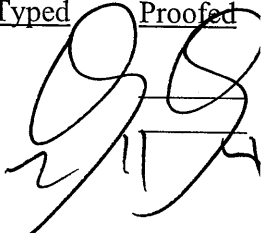
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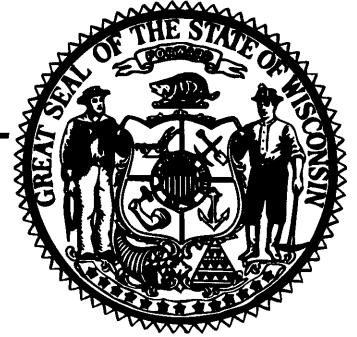
FE Sent For:

<END>

FRED A. RISSER

2/5/04

Wisconsin State Senator



Dear Steve,

Please have the attached drafted  
into bill form for Senator Risser.

Thank you,

Leslie Travis

**OAKWOOD LUTHERAN HOMES ASSOCIATION PROPOSAL  
TO ENSURE DECENT HOUSING TO WISCONSIN'S  
POOREST AND MOST DISADVANTAGED PEOPLE AND  
PRESERVE FAITH-BASED CARE FOR THE AGED AND INFIRM**

- I. Amend the second sentence of Sec. 70.11, Wis. Stats., by adding thereto the following highlighted phrase:

Leasing a part of the property described in this section does not render it taxable if the lessor uses all of the leasehold income for maintenance of the leased property, construction debt retirement of the leased property or both; and if the lessee would be exempt from taxation under this chapter if it owned the property, **except as otherwise provided for in s. 70.11(4), (4g) or (43) below.**

- II. Create s. 70.11(43), Wis. Stats., to read as follows:

**(43) BENEVOLENT INSTITUTIONS AND USES.** All or any portion of any property owned by a benevolent religious association described in s. 70.11(4), which is used exclusively for any one or combination of the following uses, shall be exempt from general property taxes:

- (a) A "nursing home" as defined in s. 50.01(3); or
- (b) A "residential care apartment complex" as defined in s. 50.01(1d); or
- (c) A "community-based residential facility" as defined in s. 50.01(1g); or
- (d) A "facility" which is occupied by "residents" pursuant to "continuing care contracts" as defined in s. 647.01(2), (4) and (11); or
- (e) "Housing" for low income individuals provided the requirements of the Internal Revenue Service Rev. Procedure 96-32 are satisfied.

Neither the 10-acre limitation nor the 30-acre limitation set forth in s. 70.11(4) shall be applicable to the uses and benevolent associations described herein.

*role has been neg*

*IRC 142(d) ?  
§ 42 of IRC ?*

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*26 CFR 601.201: Rulings and determination letters.  
(Also Part I, §§ 501(c)(3); 1.501(c)(3)-1.)*

**Rev. Proc. 96-32**

**SECTION 1. PURPOSE**

.01 This revenue procedure sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in § 501(c)(3) of the Internal Revenue Code because they relieve the poor and distressed as described in § 1.501(c)(3)-1(d)(2) of the Income Tax Regulations. This revenue procedure also describes the facts and circumstances test that will apply to determine whether organizations that fall outside the safe harbor relieve the poor and distressed such that they will be considered charitable organizations described in § 501(c)(3). It also clarifies that housing organizations may rely on other charitable purposes to qualify for recognition of exemption from federal income tax as organizations described in § 501(c)(3). These other charitable purposes are described in § 1.501(c)(3)-1(d)(2). This revenue procedure supersedes the application referral described in Notice 93-1, 1993-1 C.B. 290.

.02 This revenue procedure does not alter the standards that have long been applied to determine whether low-income housing organizations qualify for tax-exempt status under § 501(c)(3). Rather, it is intended to expedite



the consideration of applications for tax-exempt status filed by such organizations by providing a safe harbor and by accumulating relevant information on the existing standards for exemption in a single document. Low-income housing organizations that have ruling or determination letters and have not materially changed their organizations or operations from how they were described in their applications can continue to rely on those letters.

## SEC. 2. BACKGROUND OF SAFE HARBOR

.01 Rev. Rul. 67-138, 1967-1 C.B. 129, Rev. Rul. 70-585, 1970-2 C.B. 115, and Rev. Rul. 76-408, 1976-2 C.B. 145, hold that the provision of housing for low-income persons accomplishes charitable purposes by relieving the poor and distressed. The Service has long held that poor and distressed beneficiaries must be needy in the sense that they cannot afford the necessities of life. Rev. Ruls. 67-138, 70-585, and 76-408 refer to the needs of housing recipients and to their inability to secure adequate housing under all the facts and circumstances to determine whether they are poor and distressed.

.02 The existence of a national housing policy to maintain a commitment to provide decent, safe, and sanitary housing for every American family is reflected in several federal housing acts. See, for example, § 2 of the United States Housing Act of 1937, 42 U.S.C. § 1437; § 2 of the Housing Act of 1949, 42 U.S.C. § 1441; § 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701t; and §§ 101, 102, and 202 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. §§ 12701, 12702, and 12721. Not all beneficiaries of these housing acts, however, are necessarily poor and distressed within the meaning of § 1.501(c)(3)-1(d)(2).

.03 In order to support national housing policy, the safe harbor contained in this revenue procedure identifies those low-income housing organizations that will, with certainty, be considered to relieve the poor and distressed. The safe harbor permits a limited number of units occupied by residents with incomes above the low-income limits in order to assist in the social and economic integration of the poorer residents and, thereby, further

the organization's charitable purposes. To avoid giving undue assistance to those who can otherwise afford safe, decent, and sanitary housing, the safe harbor requires occupancy by significant levels of both very low-income and low-income families.

.04 Low-income housing organizations that fall outside the safe harbor may still be considered organizations that offer relief to the poor and distressed based on all the surrounding facts and circumstances. Some of the facts and circumstances that will be taken into consideration in determining whether a low-income housing organization will be so considered are set forth in section 4.

.05 Low-income housing organizations may also qualify for tax-exempt status because they serve a charitable purpose described in § 501(c)(3) other than relief of the poor and distressed. Exempt purposes other than relief of the poor and distressed are discussed in section 6.

.06 To be recognized as exempt from income tax under § 501(c)(3), a low-income housing organization must not only serve a charitable purpose but also meet the other requirements of that section, including the prohibitions against inurement and private benefit. Specific concerns with respect to these prohibitions are set forth in section 7.

## SEC. 3. SAFE HARBOR FOR RELIEVING THE POOR AND DISTRESSED

.01 An organization will be considered charitable as described in § 501(c)(3) if it satisfies the following requirements:

(1) The organization establishes for each project that (a) at least 75 percent of the units are occupied by residents that qualify as low-income; and (b) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit. Up to 25 percent of the units may be provided at market rates to persons who have incomes in excess of the low-income limit.

(2) The project is actually occupied by poor and distressed residents. For projects requiring construction or rehabilitation, a reasonable transition period is allowed for an organization to

place the project in service. Whether an organization's transition period is reasonable is determined by reference to all relevant facts and circumstances. For projects that do not require substantial construction or substantial rehabilitation, a one-year transition period to satisfy the actual occupancy requirement will generally be considered to be reasonable. If a project operates under a government program that allows a longer transition period, this longer period will be used to determine reasonableness.

(3) The housing is affordable to the charitable beneficiaries. In the case of rental housing, this requirement will ordinarily be satisfied by the adoption of a rental policy that complies with government-imposed rental restrictions or otherwise provides for the limitation of the tenant's portion of the rent charged to ensure that the housing is affordable to low-income and very low-income residents. In the case of homeownership programs, this requirement will ordinarily be satisfied by the adoption of a mortgage policy that complies with government-imposed mortgage limitations or otherwise makes the initial and continuing costs of purchasing a home affordable to low and very low-income residents.

(4) If a project consists of multiple buildings and each building does not separately meet the requirements of sections 3.01(1), (2), and (3), then the buildings must share the same grounds. This requirement does not apply to organizations that provide individual homes or individual apartment units located at scattered sites in the community exclusively to families with incomes at or below 80 percent of the area's median income.

.02 In applying this safe harbor, the Service will follow the provisions listed below:

(1) Low-income families and very low-income families will be identified in accordance with the income limits computed and published by the Department of Housing and Urban Development ("HUD") in *Income Limits for Low and Very Low-Income Families Under the Housing Act of 1937*. The term "very low-income" is defined by the relevant housing statute as 50 percent of an area's median income. The term "low-income" is defined by the same statute as 80 percent of an area's median income. However, these income limits may be adjusted by HUD

to reflect economic differences, such as high housing costs, in each area. The income limits are then tailored to reflect different family sizes. If HUD's program terminates, the Service will use income limits computed under such program as is in effect immediately before such termination. Copies of all or part of HUD's publication may be obtained by calling HUD at (800) 245-2691 (HUD charges a small fee to cover costs of reproduction).

(2) The retention of the right to evict tenants for failure to pay rent or other misconduct, or the right to foreclose on homeowners for defaulting on loans will not, in and of itself, cause the organization to fail to meet the safe harbor.

(3) An organization originally meeting the safe harbor will continue to satisfy the requirements of the safe harbor if a resident's income increases and causes the organization to fail the safe harbor, provided that the resident's income does not exceed 140 percent of the applicable income limit under the safe harbor. If the resident's income exceeds 140 percent of the qualifying income limit, the organization will not fail to meet the safe harbor if it rents the next comparable non-qualifying unit to someone under the income limits.

(4) To be considered charitable, an organization that provides assistance to the aged or physically handicapped who are not poor must satisfy the requirements set forth in Rev. Rul. 72124, 1972-1 C.B. 145, Rev. Rul. 79-18, 1979-1 C.B. 194, and Rev. Rul. 79-19, 1979-1 C.B. 195. If an organization meets the safe harbor, then it does not need to meet the requirements of these rulings even if all of its residents are elderly or handicapped residents. However, an organization may not use a combination of elderly or handicapped persons and low-income persons to establish the 75-percent occupancy requirement of the safe harbor. An organization with a mix of elderly or handicapped residents and low-income residents may still qualify for tax-exempt status under the facts and circumstances test set forth in section 4.

#### SEC. 4. FACTS AND CIRCUMSTANCES TEST FOR RELIEVING THE POOR AND DISTRESSED

.01 If the safe harbor contained in section 3 is not satisfied, an organiza-

tion may demonstrate that it relieves the poor and distressed by reference to all the surrounding facts and circumstances.

.02 Facts and circumstances that demonstrate relief of the poor may include, but are not limited to, the following:

(1) A substantially greater percentage of residents than required by the safe harbor with incomes up to 120 percent of the area's very low-income limit.

(2) Limited degree of deviation from the safe harbor percentages.

(3) Limitation of a resident's portion of rent or mortgage payment to ensure that the housing is affordable to low-income and very low-income residents.

(4) Participation in a government housing program designed to provide affordable housing.

(5) Operation through a community-based board of directors, particularly if the selection process demonstrates that community groups have input into the organization's operations.

(6) The provision of additional social services affordable to the poor residents.

(7) Relationship with an existing 501(c)(3) organization active in low-income housing for at least five years if the existing organization demonstrates control.

(8) Acceptance of residents who, when considered individually, have unusual burdens such as extremely high medical costs which cause them to be in a condition similar to persons within the qualifying income limits in spite of their higher incomes.

(9) Participation in a homeownership program designed to provide homeownership opportunities for families that cannot otherwise afford to purchase safe and decent housing.

(10) Existence of affordability covenants or restrictions running with the property.

#### SEC. 5. EXAMPLES

.01 Application of the safe harbor and the facts and circumstances test is illustrated by the following examples:

(1) Organization *N* operates pursuant to a government program to provide low and moderate income housing projects. Seventy percent of

*N*'s residents have incomes that do not exceed the area's low-income limit. Fifty percent of *N*'s residents have incomes that are at or below the area's very low-income limit. Under the program, *N* restricts rents charged to residents below the income limits to no more than 30 percent of the applicable low or very low-income limits for *N*'s area. *N* is close to meeting the safe harbor. *N* has a substantially greater percentage of very low-income residents than required by the safe harbor; it participates in a federal housing program; and it restricts its rents pursuant to an established government program. Although *N* does not meet the safe harbor, the facts and circumstances demonstrate that *N* relieves the poor and distressed.

(2) Organization *O* will finance a housing project using tax-exempt bonds pursuant to § 145(d). *O* will meet the 20-50 test under § 142(d)(1)(A). Another 45 percent of the residents will have incomes at or below 80 percent of the area's median income. The final 35 percent of the residents will have incomes above 80 percent of the area's median income. *O* will restrict rents charged to residents below the income limits to no more than 30 percent of the residents' incomes. *O* will provide social services to project residents and to other low-income residents in the neighborhood. Also, *O* will purchase its project through a government program designed to retain low-income housing stock. *O* does not meet the safe harbor. However, the facts and circumstances demonstrate that *O* relieves the poor and distressed.

(3) Organization *R* provides affordable homeownership opportunities to purchasers determined to be low-income under a federal housing program. The homes are scattered throughout a section of *R*'s community. Beneficiaries under the program cannot afford to purchase housing without assistance. *R*'s program makes the initial and continuing costs of mortgages affordable to the home buyers by providing assistance with down payments and closing costs. Homeowners assisted by *R* will have the following composition: 40 percent will not exceed 140 percent of the very low-income limit for the area, 25 percent will not exceed the low-income limit, and 35 percent will exceed the low-income limit but will not exceed 115 percent of the area's median income. *R* does not satisfy the safe harbor. How-

ever, the facts and circumstances demonstrate that *R* relieves the poor and distressed.

(4) Organization *U* will purchase existing residential rental housing financed using tax-exempt bonds issued in accordance with § 145(d). *U* will meet the minimum requirements of the 40-60 test of § 142(d)(1)(B). It will provide the balance of its units to residents with incomes at or above area median income levels. *U* has a community-based board of directors. *U* does not satisfy the safe harbor. Moreover, the facts and circumstances do not demonstrate that *U* relieves the poor and distressed.

(5) Organization *V* provides rental housing in a section of the city where income levels are well below the other parts of the city. All of *V*'s residents are below the very low-income limits for the area, yet they pay rents that are above 50 percent of the area's very low-income limits. *V* has not otherwise demonstrated that the housing is affordable to its residents. Although the residents are all considered poor and distressed under the safe harbor, *V* does not relieve the poverty of the residents.

(6) Organization *W* provides homeownership opportunities to purchasers with incomes up to 115 percent of the area's median income. *W* does not meet the income levels required under the safe harbor. *W*'s board of directors is representative of community interests, and *W* provides classes and counseling services for its residents. The facts and circumstances do not demonstrate that *W* relieves the poor and distressed.

## SEC. 6. EXEMPT PURPOSES OTHER THAN RELIEVING THE POOR AND DISTRESSED

.01 Relief of the poor and distressed, whether demonstrated by satisfaction of the safe harbor described in section 3 of this Revenue Procedure or by reference to the facts and circumstances test described in section 4, does not

constitute the only exempt purpose that a housing organization may have. Such organizations may qualify for exemption without having to satisfy the standards for relief of the poor and distressed by providing housing in a way that accomplishes any of the purposes set forth in § 501(c)(3) or § 1.501(c)(3)-1(d)(2). Those purposes include, but are not limited to, the following:

(1) Combatting community deterioration is an exempt purpose, as illustrated by Rev. Rul. 68-17, 1968-1 C.B. 247, Rev. Rul. 68-655, 1968-2 C.B. 213, Rev. Rul. 70-585, 1970-2 C.B. 115 (Situation 3), and Rev. Rul. 76-147, 1976-1 C.B. 151. An organization that combats community deterioration must (1) operate in an area with actual or potential deterioration, and (2) directly prevent or relieve that deterioration. Constructing or rehabilitating housing has the potential to combat community deterioration.

(2) Lessening the burdens of government is an exempt purpose, as illustrated by Rev. Ruls. 85-1 and 85-2, 1985-1 C.B. 178. An organization lessens the burdens of government if (a) there is an objective manifestation by the governmental unit that it considers the activities of the organization to be the government's burdens, and (b) the organization actually lessens the government's burdens.

(3) Elimination of discrimination and prejudice is an exempt purpose, as illustrated by Rev. Rul. 68-655, 1968-2 C.B. 213, and Rev. Rul. 70-585, 1970-2 C.B. 115 (Situation 2). These rulings describe organizations that further charitable purposes by assisting persons in specific racial groups to acquire housing for the purpose of stabilizing neighborhoods or reducing racial imbalances.

(4) Lessening neighborhood tensions is an exempt purpose, as illustrated by Rev. Rul. 68-655, 1968-2 C.B. 213, and Rev. Rul. 70-585, 1970-2 C.B. 115 (Situation 2). It is generally

identified as an additional charitable purpose by organizations that fight poverty and community deterioration associated with overcrowding in lower income areas in which ethnic or racial tensions are high.

(5) Relief of the distress of the elderly or physically handicapped is an exempt purpose, as illustrated by Rev. Rul. 72-124, 1972-1 C.B. 145, Rev. Rul. 79-18, 1979-1 C.B. 194, and Rev. Rul. 79-19, 1979-1 C.B. 195. An organization may further a charitable purpose by meeting the special needs of the elderly or physically handicapped.

## SEC. 7. OTHER CONSIDERATIONS

If an organization furthers a charitable purpose such as relieving the poor and distressed, it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

## SEC. 8. EFFECT ON OTHER DOCUMENTS

Notice 93-1 is superseded.

## SEC. 9. EFFECTIVE DATE

This revenue procedure is effective on [date of publication].

## DRAFTING INFORMATION

The principal authors of this revenue procedure are Lynn Kawecky and Marvin Friedlander. For further information regarding this revenue procedure, contact Mr. Kawecky at (202) 622-7305 (not a toll free number).



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-42167

JK: King

RMR

in 2-10-04

due Monday  
2-16

D-1

Gen. Asst.

1 AN ACT **relating to:** the property tax exemption for leased property and  
2 creating a property tax exemption for residential housing owned by a  
3 benevolent religious association.

**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. 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 religious 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; 4) a facility in which persons reside pursuant to a continuing care contract; and 5) low-income housing that satisfies the ~~the~~ "safe harbor" requirements for relieving the poor and distressed, as provided under the regulations of the Internal Revenue Service.

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; or owned by a benevolent religious association and used exclusively as a nursing home, a residential care apartment complex, a community-based residential facility, a facility in which persons reside pursuant to a continuing care contract, or low-income housing under the federal "safe harbor" regulations. However, the income earned from leasing such property must be used for maintenance of the leased property or construction 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  
5 its use, occupancy or ownership did not change in a way that makes it taxable; if the  
6 property was taxable for the previous year, the use, occupancy or ownership of the  
7 property changed in a way that makes it exempt and its owner, on or before March 1,  
8 files with the assessor of the taxation district where the property is located a form  
9 that the department of revenue prescribes or if the property did not exist in the  
10 previous year and its owner, on or before March 1, files with the assessor of the  
11 taxation district where the property is located a form that the department of revenue

1 prescribes. Leasing a part of the property described in this section does not render  
2 it taxable if the lessor uses all of the leasehold income for maintenance of the leased  
3 property, construction debt retirement of the leased property or both and, except for  
4 property that is exempt under subs. (4), (4g), and (43), if the lessee would be exempt  
5 from taxation under this chapter if it owned the property. Any lessor who claims that  
6 leased property is exempt from taxation under this chapter shall, upon request by  
7 the tax assessor, provide records relating to the lessor's use of the income from the  
8 leased property. Property exempted from general property taxes is:

History: 1971 c. 152, 154, 312; 1973 c. 90; 1973 c. 333 s. 201m; 1973 c. 335 s. 13; 1975 c. 39; 1975 c. 94 s. 91 (10); 1975 c. 199; 1977 c. 29 ss. 745m, 1646 (3), 1647 (5), (7); 1977 c. 83 s. 26; 1977 c. 273, 282, 391, 418, 447; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221, 225; 1979 c. 310 s. 12; 1981 c. 20; 1983 a. 27 ss. 1177, 1178, 1179f; 1983 a. 189 s. 329 (16); 1983 a. 201, 327; 1985 a. 26, 29, 316, 332; 1987 a. 10, 27, 395, 399; 1987 a. 403 s. 256; 1989 a. 25, 31, 307; 1991 a. 37, 39, 269; 1993 a. 263, 307, 399, 490; 1995 a. 27 ss. 3344 to 3348m, 9126 (19); 1995 a. 201, 227, 247, 366; 1997 a. 27, 35, 134, 147, 164, 184, 237; 1999 a. 9, 32, 63, 65; 1999 a. 150 ss. 624, 672; 1999 a. 167, 185; 2001 a. 16, 38, 59, 103.

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

10 **70.11 (43) BENEVOLENT RELIGIOUS ASSOCIATIONS.** All or any portion of property  
11 that is owned by a benevolent religious association and used exclusively as any of the  
12 following, including any combination of the following:

- 13 (a) A residential care apartment complex, as defined in s. 50.01 (1d).  
14 (b) A community-based residential facility, as defined in s. 50.01 (1g).  
15 (c) A nursing home, as defined in s. 50.01 (3).  
16 (d) A facility, as defined in s. 647.01 (4), in which persons reside pursuant to  
17 continuing care contracts, as defined in s. 647.01 (2).  
18 (e) Low-income housing that satisfies the requirements under revenue  
19 procedure 96-32 of the Internal Revenue Service.

20 **SECTION 3. Initial applicability.**

- 21 (1) This act first applies to the property tax assessments as of January 1, 2004.

22 (END)

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

LRB-42167dn

JK:.....  
King

Senator Risser:

Please review this draft carefully to ensure that it is consistent with your intent. I did not include the reference in s. 70.11 (43), as created in the bill, to a "benevolent religious association described in s. 70.11 (4)" because I believe the reference is confusing. First, s. 70.11 (4) describes benevolent associations and religious associations, but not benevolent religious associations. In fact, ~~the~~ the term "benevolent religious association" may be redundant. Why not just "religious association"? On the other hand, should the reference be to both benevolent associations and religious associations? Second, s. 70.11 (43) describes various types of property that are or are not exempt from the property tax. Therefore, a reference to the associations described in s. 70.11 (4) could potentially subject the exemption under s. 70.11 (43), as created in the bill, to various interpretations, some of which may not be consistent with your intent.

Although the instructions do not mention the *Columbus Park Housing* decision, I assume that the request is a response to that decision. The analysis, therefore, provides a brief description of the case. Please let me know if I assumed too much.

Finally, the bill first applies to property tax assessments as of January 1, 2004. Is that consistent with your intent. Please contact me if you have any questions.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.kreye@legis.state.wi.us

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

LRB-4216/1dn  
JK:kmg:rs

February 11, 2004

Senator Risser:

Please review this draft carefully to ensure that it is consistent with your intent. I did not include the reference in s. 70.11 (43), as created in the bill, to a "benevolent religious association described in s. 70.11 (4)" because I believe the reference is confusing. First, s. 70.11 (4) describes benevolent associations and religious associations, but not benevolent religious associations. In fact, the term "benevolent religious association" may be redundant. Why not just "religious association"? On the other hand, should the reference be to both benevolent associations and religious associations? Second, s. 70.11 (43) describes various types of property that are or are not exempt from the property tax. Therefore, a reference to the associations described in s. 70.11 (4) could potentially subject the exemption under s. 70.11 (43), as created in the bill, to various interpretations, some of which may not be consistent with your intent.

Although the instructions do not mention the *Columbus Park Housing* decision, I assume that the request is a response to that decision. The analysis, therefore, provides a brief description of the case. Please let me know if I assumed too much.

Finally, the bill first applies to property tax assessments as of January 1, 2004. Is that consistent with your intent. Please contact me if you have any questions.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.kreye@legis.state.wi.us



**Emery, Lynn**

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**From:** Travis, Leslie  
**Sent:** Friday, February 13, 2004 12:21 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-4216/1 Topic: Property tax exemption for leased residential property

It has been requested by <Travis, Leslie> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-4216/1 Topic: Property tax exemption for leased residential property

10/2007 1122 03:00 PM CHAIRMAN'S COMMITTEE AND THE REV. 000 200201 11/01/01

*Changed to CRB 4/21/11*

**OAKWOOD LUTHERAN HOMES ASSOCIATION PROPOSAL  
TO  
ENSURE DECENT HOUSING TO WISCONSIN'S POOREST AND MOST DISADVANTAGED PEOPLE  
AND  
PRESERVE FAITH-BASED CONTINUING CARE FOR THE AGED AND INFIRM**

- I. Amend the second sentence of Sec. 70.11, Wis. Stats., by adding thereto the following highlighted phrase:

Leasing a part of the property described in this section does not render it taxable if the lessor uses all of the leasehold income for maintenance of the leased property, construction debt retirement of the leased property or both; and if the lessee would be exempt from taxation under this chapter if it owned the property, **except as otherwise provided for in s. 70.11(4), (4g) or (43) below.**

- II. Create s. 70.11(43), Wis. Stats., to read as follows:

**(43) BENEVOLENT INSTITUTIONS AND USES.** All or any portion of any property owned by a benevolent religious association described in s. 70.11(4), which is used exclusively for any one or combination of the following uses, shall be exempt from general property taxes:

- (a) A "nursing home" as defined in s. 50.01(3); or
- (b) A "residential care apartment complex" as defined in s. 50.01(1d); or
- (c) A "community-based residential facility" as defined in s. 50.01(1g); or

*Remove (d)* → A "facility" which is occupied by "residents" pursuant to "continuing care contracts" as defined in s. 647.01(2), (4) and (11); or

- (e) "Housing" for low income individuals provided the requirements of the Internal Revenue Service Rev. Procedure 96-32 are satisfied.

Neither the 10-acre limitation nor the 30-acre limitation set forth in s. 70.11(4) shall be applicable to the uses and benevolent associations described herein, provided that such association provides all the services described in (a) (b) (c) and (d) above.

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

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

12 70.11 (43) BENEVOLENT ~~RELIGIOUS~~ <sup>g</sup> ASSOCIATIONS. All or any portion of property  
 13 that is owned by a benevolent ~~religious~~ <sup>g</sup> association and used exclusively as any of the  
 14 following, including any combination of the following:

- 15 (a) A residential care apartment complex, as defined in s. 50.01 (1d).
- 16 (b) A community-based residential facility, as defined in s. 50.01 (1g).
- 17 (c) A nursing home, as defined in s. 50.01 (3).
- 18 (d) A facility, as defined in s. 647.01 (4), in which persons reside pursuant to  
 19 continuing care contracts, as defined in s. 647.01 (2).

20 ~~(e) Low income housing that satisfies the requirements under revenue~~  
 21 ~~procedure 96-82 of the internal revenue service~~

22 SECTION 3. Initial applicability.

- 23 (1) This act first applies to the property tax assessments as of January 1, 2004.

24 (END)

*See  
42 or  
below*



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-4216/1  
JK:kmg:rs

2

RMR

2003 BILL

2-19-04

Today

including benevolent nursing homes,

1 AN ACT to amend 70.11 (intro.); and to create 70.11 (43) of the statutes; relating  
2 to: the property tax exemption for leased property and creating a property tax  
3 exemption for residential housing owned by a benevolent religious association.

*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. 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 religious 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; 4) a facility in which persons reside pursuant to a continuing care contract, and ~~of low income housing that satisfies the "safe harbor" requirements for relieving the poor and distressed, as provided under the regulations of the internal revenue service.~~

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

2

**BILL**

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; or owned by a benevolent religious association and used exclusively as a nursing home, a residential care apartment complex, a community-based residential facility, a facility in which persons reside pursuant to a continuing care contract, ~~or low-income housing under the federal "safe harbor" regulations.~~ However, the income earned from leasing such property must be used for <sup>the</sup> maintenance of the leased property or ~~construction~~ debt retirement of the property, or both. *In addition* and *operation*

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
- 5 its use, occupancy or ownership did not change in a way that makes it taxable; if the
- 6 property was taxable for the previous year, the use, occupancy or ownership of the
- 7 property changed in a way that makes it exempt and its owner, on or before March 1,
- 8 files with the assessor of the taxation district where the property is located a form
- 9 that the department of revenue prescribes or if the property did not exist in the

## BILL

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

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

12 70.11 (43) BENEVOLENT ~~RELIGIOUS~~ ASSOCIATIONS. All or any portion of property  
 13 that is owned by a benevolent ~~religious~~ association and used exclusively as any of the  
 14 following, including any combination of the following:

- 15 (a) A residential care apartment complex, as defined in s. 50.01 (1d).  
 16 (b) A community-based residential facility, as defined in s. 50.01 (1g).  
 17 (c) A nursing home, as defined in s. 50.01 (3).  
 18 (d) A facility, as defined in s. 647.01 (4), in which persons reside pursuant to  
 19 continuing care contracts, as defined in s. 647.01 (2).

20 ~~(e) Low income housing that satisfies the requirements under revenue~~  
 21 ~~procedure 96-32 of the internal revenue service.~~ *I delete; don't strike*

22 SECTION 3. Initial applicability.

- 23 (1) This act first applies to the property tax assessments as of January 1, 2004.

24 (END)



*DM*

## 2003 SENATE BILL

*NOW* 2-19-04

1 **AN ACT to amend 70.11 (intro.); and to create 70.11 (43) of the statutes; relating**  
 2 **to: the property tax exemption for leased property and creating a property tax**  
 3 **exemption for residential housing owned by a benevolent association.**

*Gen. Cert.*

### *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) a facility in which persons reside pursuant to a continuing care contract.

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.

*and 5) low-income housing that satisfies the "safe harbor" requirements for relieving the poor and distressed as provided under the regulations of the Internal Revenue Service*

**SENATE BILL**

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; or owned by a benevolent association and used exclusively as a nursing home, a residential care apartment complex, a community-based residential facility, or a facility in which persons reside pursuant to a continuing care contract. 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  
5 its use, occupancy or ownership did not change in a way that makes it taxable; if the  
6 property was taxable for the previous year, the use, occupancy or ownership of the  
7 property changed in a way that makes it exempt and its owner, on or before March 1,  
8 files with the assessor of the taxation district where the property is located a form  
9 that the department of revenue prescribes or if the property did not exist in the  
10 previous year and its owner, on or before March 1, files with the assessor of the  
11 taxation district where the property is located a form that the department of revenue



SENATE BILL

1 prescribes. Leasing a part of the property described in this section does not render  
 2 it taxable if the lessor uses all of the leasehold income for the maintenance and  
 3 operation of the leased property, ~~construction~~ debt retirement of the leased property  
 4 or both and, except for property that is exempt under subs. (4), (4g), and (43), if the  
 5 lessee would be exempt from taxation under this chapter if it owned the property.  
 6 Any lessor who claims that leased property is exempt from taxation under this  
 7 chapter shall, upon request by the tax assessor, provide records relating to the  
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10 SECTION 2. 70.11 (43) of the statutes is created to read:

11 70.11 (43) BENEVOLENT ASSOCIATIONS. All or any portion of property that is  
 12 owned by a benevolent association and used exclusively as any of the following,  
 13 including any combination of the following:

- 14 (a) A residential care apartment complex, as defined in s. 50.01 (1d).
- 15 (b) A community-based residential facility, as defined in s. 50.01 (1g).
- 16 (c) A nursing home, as defined in s. 50.01 (3).
- 17 (d) A facility, as defined in s. 647.01 (4), in which persons reside pursuant to  
 18 continuing care contracts, as defined in s. 647.01 (2).

19 SECTION 3. Initial applicability.

20 (1) This act first applies to the property tax assessments as of January 1, 2004

*The effective date of this subsection*

21 (END)

*Sec #. Effective date,  
 (1) This act takes effect retroactively to January 1, 2002.*

~~(e) low-income housing that satisfies the requirements under revenue procedure 96-32 of the internal revenue service.~~

## Kreye, Joseph

---

**From:** Jodie Tierney [jtierney@broydrick.com]  
**Sent:** Tuesday, February 24, 2004 6:06 PM  
**To:** Kreye, Joseph; Travis, Leslie  
**Subject:** 4216?

Joe,

While I was finding the answer to your question re: overlap

More questions came up. So here is what I now understand.

1. The Overlap created in a, b & c isn't a problem
2. (e) is in fact a problem for several facilities - it is too strict and would eliminate some independent living facilities like Attic Angels here in Madison and we don't want to do that.

So in order to fix this let's leave (e) out. And create 70.11 (44) which should be the language from Rep. Berceau's LRB 4303/2 70.11(43) and as long as we are borrow language from Rep. Berceau let's create 70.11(45) which should be her language dealing with "Special Housing"

Leslie,

This bill then should make everyone involved in getting to something that is Pre Columbus Park content if not happy. I'll come by in the morning.

Once again thank you both for your time and effort

Jodie Tierney

--

Berlie - Sen. Rissner

6-1627

1) add back into low-income housing program - (e)

2) (d) - a priority in what the review described  
in s. 647.01(6), (7), & (8) and s.  
647.01(5) are provided.

3) 10 acre limitation - apply to (a) to (d)?

should s. 70.11(4) be amended?

( - except as provided in sub. (43) -  
overlap & potential conflict

## Kreye, Joseph

---

**From:** Jodie Tierney [jtierney@broydrick.com]  
**Sent:** Tuesday, February 24, 2004 4:11 PM  
**To:** Kreye, Joseph; Travis, Leslie  
**Subject:** FW: lrb4216/3

Hello,

Hello Joe & Leslie,

My understanding is that if we do not need to specifically change the limitations under 70.11(4) because the exemption created under (43) fixes the problem - that's great!

So then the only changes to 4216/3 would be

70.11 (43)

delete (d)

and replace with

(d) "housing for older persons" as defined in s.106.50(1m)(m), Wis. Stats., provided the requirements of internal Revenue Service Revenue Ruling 72-124 are satisfied.

Add (e) back in - "Housing" for low income individuals provided the requirements of the Internal Revenue Service re. Procedure 96-32 are satisfied.

Joe please feel free to reach me via office 255-0566 or cell 414-732-0395 to discuss this further.

Thank you both very much

Jodie Tierney  
Broydrick & Associates

--

----- Forwarded Message

> From: "Travis, Leslie" <Leslie.Travis@legis.state.wi.us>  
> Date: Mon, 23 Feb 2004 10:38:34 -0600  
> To: "'jtierney@broydrick.com'" <jtierney@broydrick.com>  
> Subject: FW: lrb4216/3

>  
>  
>

>> -----Original Message-----

>> From: Kreye, Joseph  
>> Sent: Monday, February 23, 2004 10:30 AM  
>> To: Travis, Leslie  
>> Subject: RE: lrb4216/3

>>  
>> Leslie,  
>>

>> Sorry, but I misunderstood the 10-acre limitation provision you mentioned.  
>> The language was contained in the original instructions, but there was no  
>> need to add it because, legally, there is no way to interpret the new  
>> exemption I created to include a limitation that is not in the exemption.

>> In other words, the limitations under s. 70.11 (4) have no bearing on the  
>> exemption I created under s. 70.11 (43).

>> Now, the language below suggests something different. It suggests that:

>> 1) The limitations should apply to (a) through (e), if the association  
>> offers only one of the services described.

>> 2) The limitations do not apply if the association offers all of the  
>> services under (a) to (d).

>> Is this really what they intend?

>> Bottom line: if they don't want the limitations to apply to associations  
>> offering any of the specified services, there is no reason to mention the  
>> limitations under s. 70.11 (4).

>> Joseph T. Kreye  
>> Legislative Attorney  
>> Legislative Reference Bureau  
>> (608) 266-2263

>> -----Original Message-----

>> From: Travis, Leslie  
>> Sent: Monday, February 23, 2004 10:13 AM  
>> To: Kreye, Joseph  
>> Subject: lrb4216/3

>> Hi Joe,

>> Once again, we have changes to this draft.

>> 1) Please restore the language that we took out in (e) Low-income housing  
>> that satisfies the requirements under revenue procedure 96-32 of the  
>> internal revenue service.

>> 2) Please change the language in (d) A "facility" in which the services  
>> described in s.647.01(6), (7) or (8) and s.647.01(5) are provided; or

>> 3) Please add language something like suggested:

>> Neither the 10-acre limitation nor the 30-acre limitation set forth  
>> in s.70.11(4) shall be applicable to the uses and benevolent associations  
>> described herein, provided that such association provides all the services  
>> described in (a), (b), (c) and (d) above.

>> Joe Thanks again.

>>>>> End of Forwarded Message

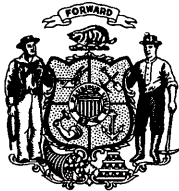
Section #. 70.11 (4) of the statutes is amended to read:

*except as provided in sub. (43),*

70.11 (4) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN'S CLUBS; HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. Property owned and used exclusively by educational institutions offering regular courses 6 months in the year; or by churches or religious, educational or benevolent associations, including benevolent nursing homes and retirement homes for the aged but not including an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization and not including property owned by any nonstock, nonprofit corporation which services guaranteed student loans for others or on its own account, and also including property owned and used for housing for pastors and their ordained assistants, members of religious orders and communities, and ordained teachers, whether or not contiguous to and a part of other property owned and used by such associations or churches; or by women's clubs; or by domestic, incorporated historical societies; or by domestic, incorporated, free public library associations; or by fraternal societies operating under the lodge system (except university, college and high school fraternities and sororities), but not exceeding 10 acres of land necessary for location and convenience of buildings while such property is not used for profit. Property owned by churches or religious associations necessary for location and convenience of buildings, used for educational purposes and not for profit, shall not be subject to the 10-acre limitation but shall be subject to a 30-acre limitation. Property that is exempt from taxation under this subsection and is leased remains exempt from taxation only if, in addition to the requirements specified in the introductory phrase of this section, the lessee does not discriminate on the basis of race.

*History:* 1971 c. 152, 154, 312; 1973 c. 90; 1973 c. 333 s. 201m; 1973 c. 335 s. 13; 1975 c. 39; 1975 c. 94 s. 91 (10); 1975 c. 199; 1977 c. 29 ss. 745m, 1646 (3), 1647 (5), (7); 1977 c. 83 s. 26; 1977 c. 273, 282, 391, 418, 447; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221, 225; 1979 c. 310 s. 12; 1981 c. 20; 1983 a. 27 ss. 1177, 1178, 1179f; 1983 a. 189 s.

329 (16); 1983 a. 201, 327; 1985 a. 26, 29, 316, 332; 1987 a. 10, 27, 395, 399; 1987 a. 403 s. 256; 1989 a. 25, 31, 307; 1991 a. 37, 39, 269; 1993 a. 263, 307, 399, 490; 1995 a. 27 ss. 3344 to 3348m, 9126 (19); 1995 a. 201, 227, 247, 366; 1997 a. 27, 35, 134, 147, 164, 184, 237; 1999 a. 9, 32, 63, 65; 1999 a. 150 ss. 624, 672; 1999 a. 167, 185; 2001 a. 16, 38, 59, 103.



in 2-25-04  
Today

2003 SENATE BILL

RM not R

housing for older persons that  
satisfies the requirements for <sup>mes</sup> housing  
for the aged under an Internal  
Revenue Service ruling

reger

1 AN ACT to amend 70.11 (intro.); and to create 70.11 (43) of the statutes; relating  
2 to: the property tax exemption for leased property and creating a property tax  
3 exemption for residential housing owned by a benevolent association

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) ~~any other facility in which persons reside pursuant to a continuing care contract~~

INSERT A1

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.

analysis of the bill...  
the Senate over all...



SENATE BILL

owned by a nonprofit organization and used as a qualified residential rental project, homeless shelter, domestic violence shelter, or transitional housing facility;

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; or owned by a benevolent association and used exclusively as a nursing home, a residential care apartment complex, a community-based residential facility, or a facility in which persons reside pursuant to a continuing care contract. 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  
5 its use, occupancy or ownership did not change in a way that makes it taxable; if the  
6 property was taxable for the previous year, the use, occupancy or ownership of the  
7 property changed in a way that makes it exempt and its owner, on or before March 1,  
8 files with the assessor of the taxation district where the property is located a form  
9 that the department of revenue prescribes or if the property did not exist in the  
10 previous year and its owner, on or before March 1, files with the assessor of the  
11 taxation district where the property is located a form that the department of revenue

housing for older persons that satisfies federal requirements for homes for the aged

SENATE BILL

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

SECTION 1

1 prescribes. Leasing a part of the property described in this section does not render  
2 it taxable if the lessor uses all of the leasehold income for the maintenance and  
3 operation of the leased property, ~~construction~~ debt retirement of the leased property  
4 or both and, except for property that is exempt under subs. (4), (4g), and (43), if the  
5 lessee would be exempt from taxation under this chapter if it owned the property.  
6 Any lessor who claims that leased property is exempt from taxation under this  
7 chapter shall, upon request by the tax assessor, provide records relating to the  
8 lessor's use of the income from the leased property. Property exempted from general  
9 property taxes is:

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

11 70.11 (43) BENEVOLENT ASSOCIATIONS. All or any portion of property that is  
12 owned by a benevolent association and used exclusively as any of the following,  
13 including any combination of the following:

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

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

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

17 (d) ~~A facility, as defined in s. 647.01 (4), in which persons reside pursuant to~~  
18 ~~continuing care contracts, as defined in s. 647.01 (2).~~

19 SECTION 3. Initial applicability.

20 (1) This act first applies to the property tax assessments as of the effective date  
21 of this subsection.

22 SECTION 4. Effective date.

23 (1) This act takes effect retroactively to January 1, 2002.

24 (END)

INSERT 3-18 ✓

## 2003 ASSEMBLY BILL

1 AN ACT *to amend* 70.11 (intro.) and 70.11 (intro.); and *to create* 70.11 (43) and  
2 70.11 (44) of the statutes; **relating to:** a property tax exemption for property  
3 leased as housing.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, property owned and used exclusively by churches or religious, educational, or benevolent associations 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 leased 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.

Under this bill, for property tax assessments beginning in 2002 and ending in 2005, leasing all or a part of any property that is exempt from property taxes does not render the property taxable, if the property is housing or if the lessee would be exempt from property taxes if the lessee owned the property and the lessor uses all of the income earned from leasing the property for maintenance of the leased property or construction debt retirement of the leased property, or both.

**ASSEMBLY BILL**

INSERT  
A-1

<sup>me</sup> Under ~~this bill, beginning with property tax assessments in 2006,~~ property that is a qualified residential rental project, pursuant to requirements under federal law, is exempt from property taxes. A qualified 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, ~~beginning with property tax assessments in 2006,~~ property of a homeless shelter, domestic violence shelter, or transitional housing facility is exempt from property taxes.

Finally, the bill provides that, beginning with property tax assessments in 2006, leasing all or a part of any property that is a qualified residential rental project, homeless shelter, domestic violence shelter, or transitional housing facility does not render the property taxable.

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:***

**SECTION 1.** 70.11 (intro.) of the statutes is amended to read:

**70.11 Property exempted from taxation.** (intro.) The property described in this section is exempted from general property taxes if the property is exempt under sub. (1), (2), (18), (21), (27) or (30); if it was exempt for the previous year and its use, occupancy or ownership did not change in a way that makes it taxable; if the property was taxable for the previous year, the use, occupancy or ownership of the property changed in a way that makes it exempt and its owner, on or before March 1, files with the assessor of the taxation district where the property is located a form that the department of revenue prescribes or if the property did not exist in the previous year and its owner, on or before March 1, files with the assessor of the taxation district where the property is located a form that the department of revenue prescribes. Leasing all or a part of the property described in this section does not

## ASSEMBLY BILL

1 render it taxable if the leased property is housing or if the lessor uses all of the  
2 leasehold income for maintenance of the leased property, construction debt  
3 retirement of the leased property, or both and if the lessee would be exempt from  
4 taxation under this chapter if it owned the property. Any lessor who claims that  
5 leased property is exempt from taxation under this chapter shall, upon request by  
6 the tax assessor, provide records relating to the lessor's use of the income from the  
7 leased property. Property exempted from general property taxes is:

8 SECTION 2. 70.11 (intro.) of the statutes, as affected by 2003 Wisconsin Act ....  
9 (this act), is amended to read:

10 **70.11 Property exempted from taxation.** (intro.) The property described  
11 in this section is exempted from general property taxes if the property is exempt  
12 under sub. (1), (2), (18), (21), (27) or (30); if it was exempt for the previous year and  
13 its use, occupancy or ownership did not change in a way that makes it taxable; if the  
14 property was taxable for the previous year, the use, occupancy or ownership of the  
15 property changed in a way that makes it exempt and its owner, on or before March 1,  
16 files with the assessor of the taxation district where the property is located a form  
17 that the department of revenue prescribes or if the property did not exist in the  
18 previous year and its owner, on or before March 1, files with the assessor of the  
19 taxation district where the property is located a form that the department of revenue  
20 prescribes. Leasing all or a part of the property described in this section does not  
21 render it taxable if the leased property is housing property described under subs. (43)  
22 and (44) or if the lessor uses all of the leasehold income for maintenance of the leased  
23 property, construction debt retirement of the leased property, or both and the lessee  
24 would be exempt from taxation under this chapter if it owned the property. Any  
25 lessor who claims that leased property is exempt from taxation under this chapter

ASSEMBLY BILL

INSERT  
3-18

1 shall, upon request by the tax assessor, provide records relating to the lessor's use  
2 of the income from the leased property. Property exempted from general property  
3 taxes is:

4 SECTION 3. 70.11 (~~43~~)<sup>44</sup> of the statutes is created to read:

5 70.11 (~~43~~)<sup>44</sup> QUALIFIED RESIDENTIAL RENTAL PROJECT. (a) 1. In this subsection,  
6 "qualified residential rental project" means a qualified residential rental project  
7 under section 142 (d) of the Internal Revenue Code, not including section 142 (d) (4),  
8 (6), and (7) of the Internal Revenue Code, with the following modifications:

9 a. The owner of the qualified residential rental project is "the issuer at the time  
10 of the issuance of the issue" for purposes of section 142 (d) (1) of the Internal Revenue  
11 Code.

12 b. A period of ~~no~~<sup>not</sup> less than ~~1~~<sup>one</sup> year is the "qualified project period" for purposes  
13 of section 142 (d) (2) (A) of the Internal Revenue Code.

14 c. The phrase "by the secretary" does not apply for purposes of section 142 (d)  
15 (2) (B) of the Internal Revenue Code.

16 2. "Qualified residential rental project" includes property located on more than  
17 one tax parcel, if the parcels are owned by the same person and are adjacent,  
18 separated only by a street, or within the same condominium development.

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



## ASSEMBLY BILL

3-18

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

4 **SECTION 4.** 70.11 ~~(4)~~<sup>45</sup> of the statutes is created to read:

5 70.11 ~~(4)~~<sup>45</sup> SPECIAL HOUSING. Property, the beneficial owner of which is an  
6 organization described in section 501 (c) (3) of the Internal Revenue Code, that is  
7 used as a homeless shelter, domestic violence shelter, or transitional housing facility.

8 **SECTION 5. Initial applicability.**

9 (1) The treatment of section 70.11 (intro) (by SECTION 1) of the statutes first  
10 applies to the property tax assessments as of January 1, 2002.

11 (2) The treatment of section 70.11 (intro) (by SECTION 2), (43), and (44) of the  
12 statutes first applies to the property tax assessments as of January 1, 2006.

13 **SECTION 6. Effective date.**

14 (1) The treatment of section 70.11 (intro) (by SECTION 1) of the statutes takes  
15 effect retroactively to January 1, 2002.

16 (2) The treatment of section 70.11 (intro) (by SECTION 2), (43), and (44) of the  
17 statutes takes effect on January 1, 2006.

18 (END)

END OF  
INSERT 3-18

**Kreye, Joseph**

---

**From:** Travis, Leslie  
**Sent:** Friday, February 27, 2004 9:18 AM  
**To:** Kreye, Joseph  
**Subject:** 4216/4

Hi Joe, I just talked with Mary Mathias from LC and she said that we need to make another change. She said she talked with you about. So, I'll be sending the draft back to you for the correction. Thanks again Joe.





State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-4216/4  
JK:kmg:rs

5

RM not R

2003 SENATE BILL

in 2-27  
Today

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

**SENATE BILL**

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

## SENATE BILL

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), ~~and~~ (43), if the  
 12 lessee would be exempt from taxation under this chapter if it owned the property.  
 13 Any lessor who claims that leased property is exempt from taxation under this  
 14 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.

(44) and (45)

**SENATE BILL**

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:

**SENATE BILL**

1           70.11 (45) SPECIAL HOUSING. Property, the beneficial owner of which is an  
2 organization described in section 501 (c) (3) of the Internal Revenue Code, that is  
3 used as a homeless shelter, domestic violence shelter, or transitional housing facility.

4           **SECTION 5. Initial applicability.**

5           (1) This act first applies to the property tax assessments as of the effective date  
6 of this subsection.

7           **SECTION 6. Effective date.**

8           (1) This act takes effect retroactively to January 1, 2002.

9

(END)