STATE OF WISCONSIN

REPORT OF THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS

2003 SENATE BILL 512

[Introduced by Senators Roessler and Stepp.]

General Nature of Proposal

Current law exempts certain property from the property tax, including certain property owned and used exclusively by churches or religious, educational, or benevolent associations. Under current law, if exempt property is leased the property does not automatically become 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. This latter requirement is generally referred to as the "lessee identity condition."

In *Columbus Park Housing Association v. City of Kenosha*, 671 N.W.2d 633 (2003), the Wisconsin Supreme Court determined that property owned by a benevolent organization that purchased blighted property, rehabilitated it, and rented it to low-income families who received federal rent subsidies who are not exempt from property tax because it did not meet the "lessee identity condition." In other words, because the low-income tenants would not be entitled to the exemption if they owned the property, the property was not entitled to the exemption when it was leased to the tenants.

The bill provides that, for property tax assessments beginning in 2002 and ending in 2005, the "lessee identity condition" does not apply in the case of leased "residential housing." Under the bill, to maintain a property's exemption while leased, the lessor of "residential housing" would still need to use 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. In addition, the "lessee identity condition" would still apply in the case of leased property that is not "residential housing." In addition, the bill requires the Legislative Council staff to study the effect of the *Columbus Park* decision on property tax exemptions for leased property. The bill directs the Council staff to report its findings, conclusions, and recommendations to the Legislature no later than December 15, 2004.

Legality Involved

There are no questions of legality involved.

Fiscal Effect Upon the State and Its Subdivisions

The Department of Revenue explains the fiscal effect of the bill as follows:

> In its decision in Columbus Park Housing Corporation v. Kenosha, the Wisconsin Supreme Court held that property owned by Columbus Park -- a non-stock and non-profit corporation that buys and rehabilitates residential property and rents these properties to qualified low-income

families -- was not exempt from property taxation. The Court based its decision on the preamble to sec. 70.11 which states that exempt property leased to another retains its exemption only if the lessee can also claim exemption from property taxes. Since the low-income families that rent from Columbus Park are not exempt from property taxes, the Court held that Columbus Park's property was not exempt from property taxation.

Previous to the decision, an organization such as Columbus Park was considered to be a benevolent association whose property was exempt under the provisions of sec. 70.11 (4) of state statutes.

Under current law, as a result of the Court decision, municipalities may be able to treat affected property as omitted property for the 2002 and 2003 assessment years, and issue tax bills for those years as if the property had been taxable. In addition, the property is to be placed on the tax rolls and treated as other taxable property beginning with the 2004 assessment.

Under the bill, the previous interpretation of the law which was applied to property such as that owned by Columbus Park will remain in effect for the 2002 to 2005 assessment years. Beginning with the 2006 assessment year, this property would be subject to property taxation.

Based on information from the exemption summary reports filed in 2002 by owners of exempt housing with municipalities and submitted to the Department of Revenue, the total value of exempt housing (excluding nursing, retirement, and religious housing) is estimated to be about $862 million. It is not clear that the entire $862 million is now taxable under the Columbus Park decision and would become exempt under the bill, but assuming the entire amount is taxable and a net average statewide tax rate of $20.55 per $1,000 equalized value (the net rate for 2002/03), about $17.7 million ($862 million X 0.02055) in property taxes would be shifted to other taxpayers for the 2004/05 and 2005/06 tax years. Subsequently, this property would again be taxable.

If the higher property taxes resulting from the Columbus Park decision are shifted to renters, these renters would be eligible for the Homestead Credit, to the extent they meet the income and other requirements for that credit. This bill, by exempting low-income housing for 2004/05 and 2005/06, would eliminate credits for these renters, since Homestead cannot be claimed on tax-exempt housing, except when payments in lieu of taxes are made on the housing. Assuming that credit is claimed on the full $17.7 million in property taxes that otherwise would have been paid on exempt housing, with minimal reduction due to payments in lieu of taxes, and that the Homestead Credit equaled 45.2%, which was the credit as a percent of rent constituting property taxes for Homestead claims filed in 2003, this bill would reduce Homestead Credits by approximately $8 million per year in both FY05 and FY06. This "reduction" essentially offsets unanticipated additional expenditures on Homestead that resulted from the Columbus Park decision.

The State of Wisconsin imposes a tax of $0.20 per $1,000 of equalized value for purposes of state forestry programs. If the $862 million in previously exempt housing that is taxable under the Columbus Park decision is exempt for 2004/05 and 2005/06, the state forestation tax would decrease by $172,400 ($862 million X 0.0002) each year.

Public Policy Involved

The bill is good public policy.

03/03/04 *JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS*