

2005 ASSEMBLY BILL 640

August 30, 2005 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Joint Survey Committee on Tax Exemptions.

1 **AN ACT to amend** 70.337 (7); and **to create** 70.11 (44) of the statutes; **relating**
2 **to:** creating a property tax exemption for real property owned by an American
3 Indian tribe or band and used exclusively for a governmental purpose.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's special committee on state-tribal relations. It relates to creating a property tax exemption for real property owned by a federally recognized American Indian tribe or band in Wisconsin (tribe) if the property is used by the tribe exclusively for a governmental purpose.

General Background

Fee land (sometimes referred to as fee simple land or fee-patented land) refers to land the title to which is held by the owner. Trust land refers to land the title to which

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is held by the United States in trust for a tribe or American Indian, as authorized under federal law. A tribe may own land in fee without requesting that it be placed in trust, or a tribe may acquire land and then apply to the U. S. secretary of interior to have the land held in trust for the tribe. Federal regulations promulgated by the Bureau of Indian Affairs set forth the procedure and criteria used by the secretary to make a decision as to whether to take land in trust.

Federal law provides that *trust land* is exempt from taxation by state and local government. [25 U.S.C. s. 465.] In contrast, the U.S. Supreme Court has held that *fee land* owned by a tribe or American Indian, even fee land on a reservation, is subject to state and local *ad valorem* property tax if Congress has made the land freely alienable, that is, the owner can freely transfer the land. [*County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992) (for land allotted under the General Allotment Act); *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103 (1998) (for land allotted under the Nelson Act).]

Current State Law

Under current state law, certain types of property are exempt from general property taxes. These include: (1) property of the state; (2) property owned by any county, city, village, town, school district, technical college district, and certain other governmental districts (for example, a town sanitary district) (collectively referred to hereinafter as municipal property); (3) property owned and used exclusively by educational, religious, and benevolent institutions, under certain circumstances; and (4) several other types of property. [s. 70.11, stats.] In addition, land owned by the United States is exempt from taxation and assessment. [s. 1.04, stats.]

If land is exempted from property tax, fiscal effects include the following:

1. Property taxes levied upon other taxable property in the taxation district typically are increased unless payments are made in lieu of taxes.
2. The equalized value of taxable property in a taxation district is decreased. This has consequences under several statutes, including statutes that factor in the equalized value of taxable property in a formula used to determine the amount of state aid, for example, aid to school districts and to technical college districts. In general, a decrease in the equalized value of taxable property in a taxation district may increase state aid to that taxation district and decrease state aid to other taxation districts.
3. The state tax of \$0.20 per \$1,000 of equalized value for purposes of the state forestry program, which is paid under certain circumstances under s. 70.58, stats., would not be paid for such property.

However, several statutes provide for payments in lieu of taxes or payments for services to tax-exempt properties. Some statutes provide that payments in lieu of taxes are in the amount of what the taxes would have been if the property were not tax exempt; other statutes provide for a lesser amount. If property is tax exempt because it is owned by the state Department of Natural Resources, state aid is provided to cities, towns, and villages in lieu of taxes. [ss. 70.113 and 70.114, stats.] In addition, the state and University of Wisconsin Hospitals and Clinics Authority (UW Hospitals) must: (1) make reasonable payments for water, sewer, electrical services, and all other services directly provided by a municipality to state facilities and UW Hospitals if the service is financed by special charges or fees; and (2) negotiate payments for municipal services, such as police and fire protection, garbage and trash disposal not financed by special charges or fees, and any other direct general government service provided by municipalities to state facilities. [s. 70.119, stats.] A city may require a public housing authority or redevelopment authority to make payments in lieu of taxes for services, improvements, or facilities furnished by the city. [ss. 66.1201 (22) and 66.1333 (12), stats.] A city may require a local cultural arts district to pay a sum in lieu of property taxes. [s. 229.846 (5), stats.] County boards may, but are not required to, make payments in lieu of taxes to any municipality or school district in which a county facility is located. [s. 59.52 (16), stats.]

ASSEMBLY BILL 640Bill Provisions

This bill creates an exemption from property tax for real property owned by a tribe if the property is used by the tribe exclusively for a governmental purpose, including: a police station or other law enforcement facility; tribal court or tribal court offices; tribal administrative offices; fire station; preschool; elementary or secondary school; institution of higher education; library; social services facility, including a day care center; health care facility, including a nursing home or an assisted living facility; natural resources facility, including a noncommercial fish hatchery or an environmental protection facility; tribal physical infrastructure, including a facility for the treatment or distribution of water, a facility for the collection, treatment, or discharge of sewage, a recycling facility, transfer station, or landfill; tribal housing; cultural center; museum; youth camp; or property of traditional or historical significance to the tribe.

The bill also exempts a tribe from biennial reporting about the value of the tax-exempt property.

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

2 **70.11 (44) Tribal property used for governmental purposes.** Real
3 property owned by a federally recognized American Indian tribe or band in
4 Wisconsin, provided that the property is used by the tribe or band exclusively for a
5 governmental purpose, including a police station or other law enforcement facility;
6 tribal court or tribal court offices; tribal administrative offices; a fire station; a
7 preschool; an elementary or secondary school; an institution of higher education; a
8 library; a social services facility, including a day care center; a health care facility,
9 including a nursing home or an assisted living facility; a natural resources facility,
10 including a noncommercial fish hatchery or an environmental protection facility; a
11 tribal physical infrastructure, including a facility for the treatment or distribution
12 of water, a facility for the collection, treatment, or discharge of sewage, a recycling
13 facility, a transfer station, or a landfill; tribal housing; a cultural center; a museum;
14 a youth camp; and property of traditional or historical significance to the tribe. In
15 this subsection, “tribal housing” means residential facilities provided under a
16 housing program operated by an American Indian tribe or band in this state or by
17 a tribal housing authority or tribally designated housing entity of such a tribe or
18 band.

ASSEMBLY BILL 640**SECTION 1**

NOTE: This subsection adds to the list of property exempted from general property taxes real property owned by a tribe if the property is used by the tribe exclusively for a governmental purpose, which includes any of the specified purposes. The bill also includes a definition of “tribal housing” under this statute.

1 **SECTION 2.** 70.337 (7) of the statutes is amended to read:

2 70.337 (7) This section does not apply to property that is exempt under s. 70.11
3 (1), (2), (13), (13m), (15), (15m), (21) ~~or~~ (30), or (44), property that is exempt under
4 s. 70.11 (18) if a payment in lieu of taxes is made for that property, lake beds owned
5 by the state, state forests under s. 28.03 or 28.035, county forests under s. 28.10,
6 property acquired by the department of transportation under s. 85.08 or 85.09, or
7 highways, as defined in s. 340.01 (22).

NOTE: Current law provides that, by March 31 of each even-numbered year, with certain exceptions, the owner of each parcel of property that is tax exempt under s. 70.11 must file with the clerk of the taxation district in which the property is located a Department of Revenue (DOR) form that contains information required by statute, including basic identifying information, information about whether the property is being leased, and an estimate of the fair market value of the property. [s. 70.337, stats.] By July 1 of each even-numbered year, the clerk of each taxation district completes and provides to DOR a form in which the clerk estimates the value of tax-exempt property, classified by type of owner, within the taxation district. DOR then tabulates this data and prepares an estimate of the value of tax-exempt property in the biennial report, *Summary of Tax Exemption Devices*. The biennial report also must detail the approximate costs in lost revenues, the policy purposes of the exemption, and, to the extent possible, indicators of the effectiveness in achieving these policy purposes. [s. 16.425, stats.] The governing body of a taxation district establishes the amount of the fee that is charged to the owner of the tax-exempt property (except churches) to defray the costs of distributing and reviewing the forms and preparing the information for DOR.

Under current law, this reporting requirement does not apply to state property, municipal property, cemeteries, archaeological sites, manure storage facilities, secondary containment structures, treatment plant and pollution abatement equipment, property of tax-exempt housing authorities if a payment in lieu of taxes is made for such property, and annual crops. Thus, while such information is compiled about other types of tax-exempt property, information about these properties is not included in the biennial report.

The bill provides that this reporting requirement also does not apply to tribal land for which a tax exemption is provided under the draft under s. 70.11 (44).

8 **SECTION 3. Initial applicability.**

9 (1) This act first applies to the property tax assessments as of January 1 of the
10 year in which this subsection takes effect, except that if this subsection takes effect

