

1 **AN ACT** *to amend* 70.337 (7); and *to create* 70.11 (43) of the statutes; **relating to:**
2 creating a property tax exemption for real property owned by an American Indian
3 tribe or band and used exclusively for governmental purposes.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft 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 governmental purposes.

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 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 simple 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 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 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. 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: (a) 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 (b) 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.]

Draft Provisions

The draft creates an exemption from property tax for real property owned by a tribe if the property is used by the tribe exclusively for governmental purposes and not for pecuniary profit of the tribe or any person. It also exempts a tribe from biennial reporting about the value of the tax-exempt property.

COMMENT: As interpreted by the department of revenue (DOR), current s. 70.11 (intro.), stats., would provide that, for the first year that a tribe claims an exemption under s. 70.11 (43) (as created by the draft), the tribe must file with the assessor, on or before March 1, a DOR form that includes a description of the purposes for which the property is used. After the first year, current law provides that such property continues to be exempt if it was exempt in the previous year and its use, occupancy, or ownership did not change in a way that makes it taxable. An assessor has authority under current law to determine if property is being used in the manner that makes it eligible for a tax exemption.

Joint Survey Committee on Tax Exemptions

Under current law, any proposal that creates a new tax exemption must be referred to the joint survey committee on tax exemptions. That committee then prepares a written report on the legality of the proposal, the fiscal effect on the state and its subdivisions, and its desirability as a matter of public policy. [s. 13.52, stats.] Thus, if the special committee on state-tribal relations recommends this proposal to the joint legislative council and if the council introduces it as legislation, the bill will be referred to the joint survey committee on tax exemptions.

1 **SECTION 1.** 70.11 (43) of the statutes is created to read:

2 **70.11 (43) Tribal land used for governmental purposes.** Real property owned by
3 a federally recognized American Indian tribe or band in Wisconsin, provided that the property
4 is used by the tribe or band exclusively for governmental purposes and not for pecuniary profit
5 of the tribe or band or any person.

NOTE: 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 governmental purposes and not for pecuniary profit of the tribe or any person.

COMMENT: The draft does not define “governmental purposes.” Does the committee wish to include a definition? If so, what purposes should be included?

COMMENT: Does the committee wish to include a requirement that the property is necessary for the location of buildings used for governmental purposes or does the committee wish to have the exemption also apply to undeveloped land, such as park land or forests?

COMMENT: This provision applies regardless of whether the land is located on or off a tribe’s reservation. Is this the committee’s intention?

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 (1), (2),
3 (13), (13m), (15), (15m), (21)-~~or~~ (30), or (43), property that is exempt under s. 70.11 (18) if
4 a payment in lieu of taxes is made for that property, lake beds owned by the state, state forests
5 under s. 28.03 or 28.035, county forests under s. 28.10, property acquired by the department
6 of transportation under s. 85.08 or 85.09₂, or 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 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

