

CORRESPONDENCE/MEMORANDUM**STATE OF WISCONSIN
Department of Revenue**

DATE: February 15, 2005

TO: State-Tribal Relations Committee

FROM: Michael L. Morgan, Secretary of Revenue

SUBJECT: WLC: 0069/2

The Department of Revenue has reviewed WLC: 0069/2, relating to creating a property tax exemption for real property owned in fee simple by an American Indian tribe or band and used exclusively for certain purposes, and would like to provide the committee with the following comments.

The department is concerned about the language, "...or any similar governmental purpose." as contained on line 5 of page 4 of the draft. This broad, undefined term, raises questions about the number of properties that could be granted tax exempt status. We believe it is preferable to specify the types of government properties that are exempt, such as, "police station, fire station, elementary or secondary school, institution of higher education, or department of public works."

We recommend deleting language that includes, "day care center, or health care facility", or any type of property that is competing with the private sector. We question, whether the committee would intend to provide a competitive advantage to any tribal operated business enterprise that competes directly in the marketplace.

Perhaps, the committee would consider adding a statement of legislative intent to the draft that would clarify the point further. For example, *"This language is not intended to create a property tax exemption for any property owned and operated by a business enterprise that would compete in the private sector. The provision is meant to exempt property, used exclusively for governmental purposes by an American Indian tribe or band."* A recent Wisconsin court decision supports this more narrow reading with regard to the existing property tax exemption for nonprofit medical research foundations provided in s. 70.11 (25), Stats.

The Marshfield Clinic claimed it was exempt from property taxes under 70.11 (4) and 70.11(25), Wisconsin Statutes. The Supreme Court refused to consider a lower court ruling that affirmed the denial of Marshfield Clinic's request for a property tax refund. The department recommends the committee consider this decision, as you review the proposed draft.