

Property Tax Attorneys

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New Standards Announced to Qualify for Low-Income Housing Property Tax Exemption—October 16th Deadline to File Certification for 2009

The requirements to qualify as property tax exempt low-income housing changed as a result of Wisconsin's recent biennial budget. Some properties that failed to qualify under the old standards may now qualify, while some properties that did qualify may no longer be treated as exempt. The changes apply retroactively for 2009, so low-income housing entities with property tax exempt status (or potential to obtain such status) must file a Certification of Occupancy by October 16, 2009.

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New Standards To Be Tax Exempt Low-Income Property

The new standards under 70.11(4a) and 70.11(4b) of the Wisconsin Statutes identify how to qualify for exemption. Entities qualify in one of two ways:

Option One for Qualifying:

- Nonprofit entity owner; AND
- Owner is benevolent association (most 501(c)(3) entities qualify); AND
- Property is used for low-income housing. This means the property meets a 75% test plus either a 20% or 40% test based on income restrictions:
 - 75% Test: 75% or more of residential units provided for low-income or very low-income individuals.
 - 20% Test: 20% or more of residential units provided for very low-income persons.
 - 40% Test: 40% or more of residential units provided for persons whose income does not exceed 120% of the very low-income limit.
- The federal Department of Housing and Urban Development sets the income limits necessary to qualify as "low-income" or "very low-income." These income limits are subject to change every year.

Option Two for Qualifying:

- Nonprofit entity owner; AND
- Owner is benevolent association (most 501(c)(3) entities qualify); AND
- Property is used for low-income housing. This means the entity meets the following four requirements:
 - 501(c)(3) entity owner; AND

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- Financed by the Housing and Economic Development Authority under Section 234.03(13) of the Wisconsin Statutes; AND
- The Housing and Economic Development Authority holds a first-lien mortgage security interest; AND
- Property existed on January 1, 2008.

The new standards provide more certainty with respect to qualification for exemption by generally looking to identifiable income limits. However, qualification for exemption could change periodically due to changes in income limits and/or use of each residential unit. Further, exempt properties will be required to comply with more administrative requirements (*i.e.*, filing an annual Certification of Occupancy) to demonstrate continued compliance with the new exemption standards.

Steps To Be Exempt For 2009 and Future Years

The change in standards to qualify for exemption applies retroactively to 2009. To obtain exempt status as of January 1, 2009, entities must take the following steps:

For previously non-exempt properties that may now qualify:

- File a Property Tax Exemption Request.
- File a Certification of Occupancy.

For properties that already are exempt or have a pending Exemption Request on file:

- File a Certification of Occupancy.

Owners of low-income housing must take the above steps by October 16, 2009. For tax years 2010 and going forward, owners must then file the Certification of Occupancy by March 1 of each year.

Other Changes and Planning Considerations

The acreage limitation (for land necessary for the location and convenience of buildings) has increased to 30 acres total, or 10 contiguous acres in a single municipality.

As a planning matter, owners of properties that fail to qualify under the new standards should consider making changes before December 31, 2009. Then, for the 2010 tax year (and potentially future years), such property may qualify and be treated as exempt, low-income housing.



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