Wisconsin Association of Homes and Services for the Aging, Inc.

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Senate Bill 403

- Current law restricts tax-exempt property owners who lease part of their property from using the leasehold income generated by that leased property for any purpose other than maintenance of the leased property and/or the construction debt retirement of that property. This is known as the "rent use" requirement.
- Senior housing providers argue this restrictive "rent use" requirement denies them the ability to provide their elderly tenants with needed services such as chore services, transportation to doctors' appointments, and meals. Other residential housing providers have similar concerns, stating the "rent use" requirement prohibits them from using their leasehold income to cover operational costs such as insurance premiums, utilities, and financing costs.
- Local assessors are beginning to more closely scrutinize the way residential housing providers are using their leasehold income. Many of those providers, be they low-income housing providers or the administrators of WHEDA projects or senior housing complexes, are concerned they may lose their property tax exemption for failure to comply with the "rent use" requirement.
- The concern of residential housing providers over the potential loss of their tax-exempt status seems to be warranted based on a recent comment by Madison City Assessor Michael Kurth, who was quoted in the December 2007 edition of *In Business Magazine* as saying **if the Legislature does not address the "rent use" requirement, "there are going to be a heck of a lot more nonprofit organizations we are going to have issues with."**
- SB 403 delineates "low-income housing" as a benevolent association exempt from paying property taxes. The bill also would exclude "low-income housing" providers from the "rent use" requirement and permit them to use their leasehold income to cover twelve specified operational costs (i.e., utilities, financing costs, insurance premiums).
- SB 403 uses an income test to determine which projects meet the definition of "low-income housing." According to WHEDA Executive Director Antonio Riley, 30 WHEDA projects consisting of over 1,100 affordable housing units would not meet the "low-income housing" test and would not be covered by SB 403. Most mixed-use housing also would not be covered by SB 403, including nearly 60% of the 5,000 tenants of WAHSA nonprofit senior apartment complexes whose annual household incomes are at or below the Homestead tax credit threshold of $24,500.
- **The concern with the "rent use" requirement and the possibility of the future denial of a property tax exemption is shared equally by low-income housing providers, WHEDA, and the operators of senior housing and other forms of mixed-use housing. Yet SB 403 only addresses the concerns of low-income housing.**

- Proponents of SB 403 argue that the bill will not affect in any way the tax status of any other form of housing. In other words, if senior housing is tax-exempt today, it will remain tax-exempt if SB 403 were to pass, even though SB 403 does not apply to senior housing that is not low-income housing. Strictly speaking, that is absolutely correct. But take that statement one step further: **If SB 403 dies, all residential housing providers who currently are tax-exempt*, including those that provide low-income housing*, will remain tax-exempt. Then why the need for SB 403: because of the overriding concern, for how long?**

- SB 403 does not address the **current** tax-exempt status of low-income housing providers; it seeks to protect their **future** tax-exempt status by loosening the restrictions of the "rent use" requirement. WHEDA projects, senior housing complexes, and mixed-use housing projects are equally vulnerable to "rent use" scrutiny as are low-income housing providers yet they are not afforded the same "rent use" protections under SB 403.

- **WAHSA supports amending SB 403 to exclude *residential housing*** (which would include low-income housing, WHEDA projects, senior housing, and other nonprofit mixed-use housing) **from the "rent use" requirement** (similar language was used to address the "lessee identity" problem in 2003 Wisconsin Act 195, the *Columbus Park* "fix") **and would permit residential housing providers to use all of their leasehold income for any purpose which *furthers the benevolent activities of the owner*** (this language was taken from 2005 Assembly Bill 573, the work product of the Legislative Council Special Committee on Tax Exemptions for Residential Properties (Columbus Park)).

- Unlike SB 403, this suggested amendment would benefit low-income housing providers as well as all other nonprofit providers of residential housing.

- **A statement was made at the executive session on SB 403 that if the bill were amended as we have suggested to include all residential housing, Wisconsin will experience "the largest property tax increase in the last 40 years."**

  That statement is simply not true.

  Low-income housing, senior housing, WHEDA properties, and any other residential housing must meet two tests under current law to be exempt from property taxes: the "rent use" requirement under s. 70.11, Wis. Stats., and the "benevolent" standard under s. 70.11 (4). SB 403 only addresses the "benevolent" standard for "low-income housing;" the amendment we are suggesting does not change that. Therefore, the benevolent standard to determine whether a residential housing project is or is not tax exempt will remain the same whether SB 403 passes in its current form, passes in the amended form we are suggesting, or dies. No new properties will become tax-exempt under the benevolent standard regardless of what happens to SB 403.

  For the statement to be accurate that amending SB 403 will result in the largest property tax increase in this state in 40 years, there would have to be a large number of property owners who meet the benevolent standard for property tax exemption but have been denied a tax exemption for failure to comply with the "rent use" requirement. We are aware of no such circumstance. Broadening the current "rent use" requirement will not impact the number of tax-exempt residential housing providers because none of those providers have been denied a tax exemption under the current law's narrower definition.

  Regardless of whether SB 403 passes, passes as amended, or dies, there will not be an increase in the number of tax-exempt residential housing properties. The purpose of the bill, and our suggested amendment to the bill, is to keep legitimate low-income and residential housing providers from losing their tax-exempt status.