

**Date:** February 24, 2009 5:30:05 PM CST

**From:** "Sen.Plale" **To:** "\*Legislative Assembly - Independents" "\*Legislative Assembly Democrats" "\*Legislative Assembly Republicans" "\*Legislative Senate Democrats" "\*Legislative Senate Republicans"

**Subject: Co-sponsorship of LRB-1318/1 Property Tax Exemption for Leased Residential Housing**

DATE: February 24<sup>th</sup>, 2009

TO: All Legislators

FROM: Senator Jeff Plale, Senator Jim Sullivan, and Senator Jon Erpenbach

SUBJECT: LRB-1318/1, Relating to the Property Tax Exemption for Leased Residential Housing

Under current Wisconsin law, there are two tests which not-for-profit residential housing providers must meet in order to be exempt from property taxation. Under s. 70.11 (4), the property must be "owned and used exclusively by . . . benevolent associations, including benevolent nursing homes and retirement homes for the aged." This is referred to as the **benevolence test**. The second test, under s. 70.11, states that leased property may be exempt from property taxation "if the lessor uses all of the leasehold income for *maintenance* of the leased property or *construction debt retirement* of the leased property, or both." (Emphasis added). This is referred to as the **rent use test**.

The statute fails to define the terms maintenance or construction debt retirement. However, recent interpretations of these words by a Dane County Circuit Court judge and the Department of Revenue are so narrow, it's almost certain that every residential housing provider in the state is out of compliance with the statute and faces the real prospect of losing their property taxation exemption. Therefore, this legislation seeks to modify the **rent use test**.

LRB-1318 would eliminate the **rent use test** for all not-for-profit residential housing providers. This would allow residential housing providers to use their rental income in any way which furthers the benevolent activities of the owner. The bill's language mirrors 2003 Wisconsin Act 195, the *Columbus Park* law. It should be noted this bill would not remove any currently taxable property from the tax rolls; all the effected property currently is exempt from property taxation. This bill simply would permit not-for-profit residential property owners to maintain their current tax-exempt status.

If you would like to co-sponsor this legislation, please call Senator Plale's office at 6-7505 by **5 p.m. on Tuesday, March 10<sup>th</sup>** Thank you.

<<09-1318P1.pdf>>

Note: Preliminary draft is attached above. LRB-1318/1 will be distributed as soon as it is available. The language will be the same in both versions.

## PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1     **AN ACT to amend** 70.11 (intro.) of the statutes; **relating to:** the property tax  
2           exemption for leased residential housing.

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***Analysis by the Legislative Reference Bureau***

Under current law, if property that is exempt from property taxes is leased, the property retains its tax exemption if the property owner uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property, or both, and, except for residential property, if the lessee would be eligible for the exemption if the lessee owned the property.

Under this bill, leasing property that is residential housing does not render the property taxable, regardless of how the property owner uses the leasehold income and regardless of whether the lessee would be eligible for the exemption if the lessee owned the property.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

3           **SECTION 1.** 70.11 (intro.) of the statutes is amended to read:

**70.11 Property exempted from taxation.** (intro.) The property described in this section is exempted from general property taxes if the property is exempt under sub. (1), (2), (18), (21), (27) or (30); if it was exempt for the previous year and its use, occupancy or ownership did not change in a way that makes it taxable; if the property was taxable for the previous year, the use, occupancy or ownership of the property changed in a way that makes it exempt and its owner, on or before March 1, files with the assessor of the taxation district where the property is located a form that the department of revenue prescribes or if the property did not exist in the previous year and its owner, on or before March 1, files with the assessor of the taxation district where the property is located a form that the department of revenue prescribes. ~~Leasing Except for residential housing, leasing a part of the property described in this section does not render it taxable if the lessor uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property, or both, and, except for residential housing, if the lessee would be exempt from taxation under this chapter if it owned the property.~~ Leasing a part of the property that is described in this section and that is residential housing does not render it taxable, regardless of how the lessor uses the leasehold income and regardless of whether the lessee would be exempt from taxation under this chapter if it owned the property. Any lessor who claims that leased property is exempt from taxation under this chapter shall, upon request by the tax assessor, provide records relating to the lessor’s use of the income from the leased property.

Property exempted from general property taxes is:

**SECTION 2. Initial applicability.**

(1) This act first applies to the property tax assessments as of January 1, 2009.

(END)

February 27, 2009

To: Wisconsin State Legislators  
From: John Sauer, Executive Director  
Tom Ramsey, Director of Government Relations

Subject: League of Wisconsin Municipalities Claims Regarding LRB-1318/1

The League of Wisconsin Municipalities made several claims we would like to address in a February 25<sup>th</sup> email sent to all legislators (review below) which urged them not to sign on as a co-sponsor to LRB-1318/1, authored by Senators Plale, Sullivan and Erpenbach. The proposal would eliminate the “rent use” condition under s. 70.11, Wis. Stats., which restricts the use of leasehold income by tax-exempt residential housing providers to “maintenance” and “construction debt retirement.” As was noted in the February 24<sup>th</sup> co-sponsorship memo on LRB-1318/1, a recent Dane County Circuit Court ruling and a Department of Revenue letter of statutory clarification have defined “maintenance” and “construction debt retirement” so narrowly as to jeopardize the tax-exempt status of virtually all not-for-profit residential housing in Wisconsin.

- In its February 24<sup>th</sup> email, the League stated the rent use statute “simply requires that a non-profit organization use rental income exclusively on maintenance of the facility or construction debt retirement.” ***What the League failed to mention is the rent use statute does NOT permit residential housing providers to maintain their property tax exemption if they use their rental incomes to cover any operational expenses, including any costs associated with providing social, healthcare and other services for residents.*** The statute basically says you can use rental income to pay for the construction of the building and for its upkeep, but as soon as you begin to operate the building or provide services to its residents, you lose your property tax exemption. To WAHSA senior housing providers, it says you’re tax exempt until you use rental income to do what your property tax exemption requires you to do, namely, provide social, healthcare and other services for your elderly residents. We submit the “rent use” statute is absurd on its face and indefensible from a policy standpoint.
- The League states “we oppose the bill because it would ultimately shift more of the property tax burden onto residential homeowners who already are paying 72% of the statewide property tax levy.” LRB-1318/1 would apply only to residential housing which already is tax-exempt; passage of the bill neither would remove currently taxable properties from the tax rolls nor “shift more of the property tax burden onto residential homeowners.” The intent of the bill is to permit currently tax-exempt residential housing providers to maintain their exemption from property taxation by eliminating the “rent use” statutory limitation.



- The League states “we understand the need to provide *low-income* housing providers with relief from the rent use requirement.” We assume that understanding is based on the realization and acceptance that it is appropriate for low-income housing providers to use their rental incomes to operate their buildings and provide services to their residents. The same should also apply to senior housing providers.
- According to the League, “LRB-1318/1 exempts all non-profit entities owning leased residential housing from the rent use requirement, including *high end senior housing marketed and used exclusively by affluent elderly.*” (Emphasis added) Yes, it would. But what the League fails to mention or to realize is these high end senior housing properties, whatever or wherever they are, *already are tax-exempt and will remain so regardless of whether LRB-1318/1 passes.* The concern is if LRB-1318/1 fails to pass, local assessors soon may apply the narrow interpretation of the “rent use” statute to all residential housing providers, be they low-income or senior housing, and present them with the prospect of losing their property tax exemption. We continue to maintain that housing providers should not be forced to relinquish their tax-exempt status simply for using their rental incomes to provide services to their residents, regardless of the income of those residents.
- LRB-1318/1 only addresses how residential housing providers are permitted to utilize their rental incomes under s. 70.11. It intentionally does not address the *benevolence* standard under s. 70.11 (4). All residential housing providers must meet both the rent use statute under s. 70.11 and the benevolence statute under s. 70.11 (4) to be exempt from property taxation. If a municipality believes a senior housing project is in violation of the benevolent statute because it is “marketed and used exclusively by affluent elderly,” it doesn’t need a statutory change to assess that project for property taxes. Indeed, that has been done. The passage of LRB-1318/1 will do nothing to limit the exposure of a residential housing provider to the s. 70.11 (4) *benevolence* statute.
- As stated by the League, 2007 SB 403 exempted only “bona fide low-income housing projects from the rent use requirement.” SB 403 ultimately died in the Assembly (and a similar provision in the 2008 budget repair bill was vetoed by the Governor) largely because many legislators felt it unfairly penalized seniors who lived in mixed-use housing. The target may have been “high end senior housing” but the bill basically held that housing projects which didn’t meet the federal definition of low-income by default would be considered “high end”. For example, under SB 403, 2/3 of the tenants of a senior housing project could have annual incomes that would otherwise make them eligible for Homestead tax credits but could be forced to pay property taxes because the remaining tenants had incomes above the low-income level. Is that how we now define “high end?”

WAHSA members continue to express an interest and a willingness to discuss a legislative solution to the 20-year old question of benevolence and senior housing. But short of that, we believe the rent use statute should be eliminated for all residential housing providers, which would permit those providers to utilize their rents in any way which supports their benevolent activities.

WAHSA respectfully requests all Legislators to please consider co-sponsoring this important legislation (LRB-1318/1). If you have any questions, feel free to contact us at 608-255-0566.

Thank You.

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**From:** Curt Witynski [<mailto:witynski@lwm-info.org>]

**Sent:** Wednesday, February 25, 2009 9:53 AM

**Subject:** Please Do Not Co-Sponsor LRB-1318/1, Relating to the Property Tax Exemption for Leased Residential Housing Owned by Non-Profit Organizations

To: Wisconsin State Legislators

From: Curt Witynski, League of Wisconsin Municipalities

Re: LRB-1318/1, Relating to the Property Tax Exemption for Leased Residential Housing Owned by Benevolent Organizations

The League of Wisconsin Municipalities strongly urges you not to sign on as a co-sponsor of LRB 1318/1, authored by Senators Plale, Sullivan and Erpenbach. The bill removes the "rent use" requirement that non-profit property owners must meet in order for their leased residential housing facilities to qualify for a property tax exemption. The rent use condition simply requires that a non-profit organization use rental income exclusively on maintenance of the facility or construction debt retirement. We oppose the bill because it would ultimately shift more of the property tax burden onto residential homeowners who already are paying 72% of the statewide property tax levy. Moreover, the rent use requirement ensures that non-profit housing projects are properly maintained and that the rental income stays within the community that is hosting and providing services to the tax exempt facility.

We understand the need to provide *low-income* housing providers with relief from the rent use requirement. That is why we worked with legislators last session on the drafting of SB 403, which passed the Senate unanimously. SB 403 exempted only bona fide low income housing projects from the rent use requirement. LRB 1318/1 exempts all non-profit entities owning leased residential housing from the rent use requirement, including high end senior housing marketed and used exclusively by affluent elderly.

Seniors who reside in their homes should not be required to subsidize the cost of municipal services provided to tax exempt high end senior housing facilities.

Please do not co-sponsor LRB-1318/1. Thanks for considering our comments.

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Curt Witynski  
Assistant Director  
League of Wisconsin Municipalities  
122 West Washington Ave.  
Madison, WI 53703

(608) 267-2380