Legislative Issue Brief

Issue: Property Tax Exemptions for Residential Housing

- In November 2003, the Wisconsin Supreme Court in *Columbus Park Housing Corporation v. City of Kenosha* held that non-profit organizations that lease their property are subject to property taxes unless the property is leased to an entity that would itself qualify for the tax exemption (known as the "lessee identity" clause). This ruling immediately jeopardized the ability of non-profit organizations to provide property tax-exempt housing for seniors and others. The Wisconsin State Legislature responded to the Court's decision by passing 2003 Senate Bill 512, which clarified that non-profit residential housing is exempt from the property tax. On April 8, 2004, the Governor signed the bill into law as 2003 Wisconsin Act 195. This new law also directed the Legislative Council to study issues surrounding the property tax exemption for property leased as residential housing, including: "(1) the impact of Columbus Park Housing v. City of Kenosha on the exemption; (2) the effect of the exemption on: municipalities, property tax payers, residents of tax-exempt housing, the availability of financing for development of low-income housing, and benevolent activities of tax exempt organizations; and (3) any other issues the committee considers relevant. The Committee shall report its findings, conclusions and recommendations to the Legislature….no later than December 15, 2004."

- The 16-member special committee, chaired by State Representative Jeff Fitzgerald (R-Horicon), has met four times since September 2004. A working group of the special committee, created in an effort to see if a compromise can be reached on this issue, met for the first time on February 10, 2005 and will meet again February 28th.

- In its *Columbus Park* decision, the Supreme Court discussed but did not rule on a provision in state statute which requires tax exempt residential housing providers receiving leasehold income to use that income only for maintenance of that leased property or to retire the construction debt of that property. Known as the "rent use" clause, the enforcement of this provision could have the same devastating effect on low income and senior housing providers as the "lessee identity" clause did: most not-for-profit residential housing providers use their leasehold income for purposes other than simply maintenance or construction debt retirement (e.g., refinancing or, in the case of senior housing, service subsidies) and therefore would be subject to property taxation under the "rent use" clause. If many of those housing providers are to survive, a "Columbus Park-like" legislative solution is needed. **WAHSA suggests the "rent use" clause in s.70.11, Wis. Stats., be amended to permit property that is leased by a benevolent association to be exempt from property taxation if the property owner uses all the leasehold income "to further the benevolent activities of the owner."**

- The perspectives on the residential property tax exemption issue have spanned the spectrum. Officials representing Wisconsin's municipalities urged the special committee to support legislation linking a housing provider's property tax exemption to the income levels of its residents (that is, the exemption would be granted only to those housing units occupied by "low-income" residents). Others have called for a statutory definition of tax-exempt "benevolent organizations" so that "high-end, luxury apartments for seniors" would no longer be exempt from property taxes, noting that wealthy seniors would not be financially devastated if required to pay the property tax. Still others have suggested that such tax-exempt organizations be required to pay a municipal service fee. Finally, several WAHSA members have presented the providers'

perspective and discussed the ways in which non-profit housing organizations help support the long-term care continuum and their communities.

- WAHSA members own, operate and/or sponsor 198 nursing homes, 68 community-based residential facilities (CBRF), 47 residential care apartment complexes (RCAC), 13 HUD Section 202 Supportive Housing for the Elderly complexes, and 104 seniors apartment complexes/independent living facilities, as well as more than 310 community service programs ranging from Alzheimer's support, homecare, hospice and adult/child daycare to Meals on Wheels.

  Most of our members provide care and services on "continuum of care" campuses. These campuses comprise any combination of a nursing home, a CBRF, a RCAC and/or independent living. The principle is to allow a resident to "age in place" on the "continuum of care" campus, beginning with independent living and, as age and disabilities increase, on to assisted living (CBRF or RCAC) and finally to the nursing home. The campus-setting provides a sense of community, a sense of security and minimizes "transfer trauma" when care needs require movement through the continuum.

  WAHSA members own/operate 97 of these "continuum of care" campuses. Of the 68 CBRFs operated by WAHSA members, only 8 are not part of a "continuum of care" campus; only 8 of the 104 independent living facilities operated by WAHSA members are freestanding and not part of a campus setting; none of the 47 WAHSA member-operated RCACs is freestanding. Only nursing homes have a significant freestanding component: 79 of the 198 WAHSA member-operated nursing homes are freestanding; 36 of those are county-operated.

  "Continuum of care" campuses are similar in philosophy, scope and approach to "continuing care retirement communities" (CCRC), which are operated under a permit issued by the Office of the Commissioner of Insurance (OCI) and regulated under Chapter 647, Wis. Stats. The "continuing care contract" defined under s.647.01(2) serves as a pre-paid health insurance policy which covers all future long-term care needs of the CCRC resident. Most "continuum of care" campuses offer similar contracts and future care assurances, although they do not meet all Chapter 647 requirements (i.e., the minimum entrance fee of $10,000). As of February 16, 2005, there were 24 CCRCs in Wisconsin with permits from the OCI; all but one are either operated by or affiliated with a WAHSA member or another not-for-profit organization.

- **Throughout the special committee discussions, we've heard from several members that the property tax system is being "abused" by "high-end" facilities which "screen out" the poor and provide only shelter and no services. The reason for describing the activities of WAHSA members above is an attempt to illustrate that our members don't fit that description.**

- **We've been told** that these facilities collect personal income and asset information to "screen out" the poor. **What we haven't been told** is that s.647.02(2)(g) Wis. Stats., requires CCRCs to provide the OCI with a figure depicting the actual or projected length of a resident's stay as part of the CCRC contract and that the OCI, under s.647.03(2), is authorized to ensure that a CCRC has sufficient financial resources to meet the needs of the CCRC and the terms of its continuing care contracts and other obligations. **We haven't been told** that Chapter 647 **virtually requires a CCRC to conduct financial screens. Indeed, some seem to believe that the only purpose for conducting a financial screen is to "screen out the poor."**

  They should tell that to Inspiration Ministries in Walworth, which conducts financial screens upon admission of its physically disabled residents, 80% of whom have annual incomes below the Homestead Tax Credit eligibility maximum of $24,500. Obviously, those screens are not intended to "screen out" the poor (or if they are, they aren't very effective): They are intended to enable Inspiration Ministries and many other housing/senior housing providers to properly budget the resources they will need to pay for the services of those they've identified as most likely being

unable to pay for all or part of the future services they will be provided**. It's for that very reason – to prepare for the possibility of residents running out of money – that most financial screens are conducted, because not-for-profit senior housing providers are not permitted to discharge residents who are no longer able to pay for the services they receive if they wish to be exempt from federal income taxation under s.501(c)(3) of the Internal Revenue Code.**

Screens are indeed used in many instances to determine whether the organization has the resources necessary to provide the promised services. As noted above, the OCI considers this a necessity. So quite often do the financial markets which finance these operations. Screens are also used to attempt to determine if resources are being divested to avoid paying for services received. Divestment must be a major factor in any decision the special committee makes, especially if it relates to an income test. The practice is all too common today in nursing homes; imagine how widespread it could become in residential housing and assisted living settings.

- **We've been told** that these independent living facilities house "healthy 50-year olds who aren't even retired." **What we haven't been told** is the average age of a resident of a WAHSA independent living facility is 82.8 years of age. **We haven't been told** that in a number of independent living facilities, the average age of the residents is higher than the residents of their campus nursing home. More importantly, **we haven't been able** to look in the eyes of these residents to see how difficult the decision was to give up the home where they raised their children, the home with a lifetime of memories, because they are no longer able to maintain it. Nor are we able to see the sense of security and relief in their eyes in the knowledge that their future health care and lifestyle needs will be met. That may only be a small consolation for the loss of their own home and previous lifestyle, but it's an important consolation.

- **We've been told** that providing property tax exemptions to senior housing shifts the burden to the community's other property tax payers. To a degree, that's true, but too often **we've ignored the fact** that the homes which our senior housing residents left were sold to younger couples who will be able to raise their children in the same environment as those before them, and yes, will be paying property taxes. Indeed, they will be paying more in property taxes than their previous owners. It's misleading to state the property tax exemption for senior housing deprives municipalities of property tax revenue; it's more accurate to state the exemption limits any additional property tax revenue.

- **We've been told** of the inequity of "wealthy" seniors living in tax-exempt housing while "poor" seniors living in their own homes pay property taxes. Regardless of the fact that terms such as "wealthy" and "poor" and "high-end" remain both relative and undefined, both the "wealthy" and "poor" are subject to future catastrophic illness. The societal value of tax exempt housing for seniors is while the "poor" resident's future long-term care needs most likely will be paid for by state taxpayers through the Medicaid program, those living in "continuum of care" campuses intend to pay for their own future care. They don't have to; they most likely have the wherewithal to divest their income and assets and let government provide for their care. Rather, they have chosen to pre-pay for their future care needs, benefiting the taxpayer by limiting Medicaid exposure and benefiting the truly poor by helping to ensure that limited Medicaid dollars go to those who truly need it.

- Entrance and service fees are set on many CCRC and "continuum of care" campuses to permit the establishment of a "benevolence" fund to subsidize the housing needs of those seniors no longer able to pay to meet those needs. Some have derisively referred to this as "self benevolence;" we ask them this simple question: without this "self benevolence," who would pay for the housing services of those who can no longer do so for themselves? The answer: government. You and I. The taxpayer. The primary difference between a for-profit provider and a not-for-profit provider is if you run out of funds, the for-profit provider will ask you to leave, with your future needs then becoming government's responsibility. The not-for-profit provider finds ways to help you to stay. Is there a societal benefit in that?

- The average nursing home in this state loses $19.44 each day for every Medicaid resident it serves. The aggregate deficit between the cost of services nursing homes in this state incur in caring for their Medicaid residents and what government reimburses them through the Medicaid program is $162.5 million. How do facilities address this deficit? They charge their private pay residents an average of $50 a day more for the same care their Medicaid residents receive. In addition, they charge those private pay residents a $75/month bed tax. (Indeed, the Governor's 2005-07 budget bill proposes to raise the bed tax to $125 per bed per month). Finally, on CCRC and "continuum of care" campuses, they set certain entrance and service fees at levels which enable them to help offset those Medicaid nursing home deficits. Who is benefited by this "self benevolence?": The nursing home residents, both private pay and Medicaid, who are receiving the care they need and the taxpayer, because private funds, and not Medicaid funds, are being used to pay for that care. Is such "self benevolence" of value to society and worthy of a tax exemption?: A question that needs to be addressed.

- Historically, the property tax exemption for senior housing seems to have focused more on wealth than need. We seem to conveniently ignore the fact we are talking about people (many widows) in their 80s who are no longer able to maintain their own homes. We seem to have cavalierly chosen to ignore what the federal government has chosen to accept: that the elderly is a charitable class and relief of the distress of the elderly, regardless of socio-economic background, is a charitable activity. The Internal Revenue Service came to that conclusion in the 1970s, that senior citizens of whatever socio-economic background face the same barriers to their basic supportive needs as they age: the need for suitable housing, physical and mental health care, civic, cultural and recreational activities, and an overall environment conducive to dignity and independence.

  Some choose to show pictures of physical structures which purportedly house the "wealthy elderly:" they don't show the weathered faces of those living inside. We don't get past brick and mortar and listen to the fears and anxieties that often go hand-in-hand with the aging process, a process that fails to discern between "rich and poor." The irony is for many of the residents of senior housing, there is a modicum of jealously of those still able to maintain their own homes; wealth, indeed, can be relative.

- **WAHSA Position:** Support an amendment to the "rent use" clause in s.70.11, Wis. Stats., to permit property that is leased by a benevolent association to be exempt from property taxation if the property owner uses all the leasehold income to further the benevolent activities of the owner. In addition, support the continued exemption from property taxation of not-for-profit nursing homes, CBRFs and RCACs, as well as senior apartments ("independent living facilities") which are part of a CCRC or a "continuum of care" campus, where resident fees are used to: Pre-pay future long-term care services in hopes of avoiding the future need for Medicaid funding; Subsidize the services needed by their senior housing neighbors who have run out of funds; or Subsidize the Medicaid deficit of the campus' nursing home.

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership association of 200 not-for-profit organizations principally serving the elderly and persons with a disability through programs ranging from nursing home care to assisted living to hospice and homecare. For more information, please contact the WAHSA staff at (608) 255-7060: John Sauer, Executive Director (jsauer@wahsa.org); Tom Ramsey, Director of Government Relations (tramsey@wahsa.org); or Brian Schoeneck, Financial Services Director (bschoeneck@wahsa.org).

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