

June 5, 2009

To: Members of the Wisconsin Assembly

From: John Sauer, Executive Director
Tom Ramsey, Director of Government Relations

Subject: **WAHSA Support for AB 75 Provision RE Property Tax Exemption for Certain Types of Housing (*Columbus Park*)-- Response to June 3, 2009 League of Wisconsin Municipalities Memo in Opposition to the *Columbus Park* Provision**

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership association of 200 not-for-profit long-term care organizations. WAHSA member corporations own, operate and/or sponsor 183 not-for-profit nursing homes, 76 community-based residential facilities (CBRF), 60 residential care apartment complexes (RCAC), and 113 apartment complexes for seniors, also referred to as retirement homes for the aged. Ninety-seven of these retirement homes for the aged are part of a campus which includes a nursing home, CBRF and/or a RCAC; the remaining 16 complexes are stand-alone, not-for-profit senior housing. WAHSA members employ over 38,000 dedicated staff who provide care and services to over 48,000 residents, tenants and clients.

The legislative debate on the property taxation of senior housing has been ongoing since 1990. The 1997 state budget contained a provision creating a 10-member Benevolent Retirement Homes for the Aging Task Force which met for six months in 1999-2000 but was unable to produce a compromise solution. The Legislative Council Special Committee on Tax Exemptions for Residential Property (*Columbus Park*) debated this issue extensively in 2004, with the result being 2005 Assembly Bill 573, which died without a vote on the Assembly floor. The issue reared its ugly head once again last session, when the debate on whether low-income housing should be exempt from property taxation under 2007 Senate Bill 403 was expanded to include a similar exemption for senior housing. The end result, once again, was incomplete.

At issue in all these debates was whether "affluent" seniors living in "high end" tax-exempt senior housing should be required to pay property taxes. WAHSA members believe a consensus was never found because "affluent" and "high-end" were never defined; those seeking change were never either willing or able to identify who it was they were targeting for taxation. The uncertainty of who would lose their tax-exempt status caused many legislators to shy away from these proposals.



The *Columbus Park* provision that was attached to AB 75 by the Joint Committee on Finance was the first real attempt in the 25+ years of debate on this issue to identify who these "affluent" seniors are and what "high-end" senior apartments should be required to pay property taxes. We are by no means comfortable in every case with the thresholds in this provision which identifies which senior housing units (by fair market value) will and will not be taxable because we know there are WAHSA members whose units are currently tax-exempt who will be required to pay property taxes under this proposal. But after years of uncertainty, where the undefined term of "benevolence" has been interpreted one way by Milwaukee County Circuit Court and another way entirely in Dane County Circuit Court, WAHSA members are willing to accept the certainty of this provision rather than the uncertainty of the differing circuit court rulings throughout the State that we anticipate the future currently holds. ***Therefore, WAHSA members, albeit somewhat reluctantly, support the Columbus Park property tax exemption provision contained in AB 75.*** The budget provision provides some certainty to residents and their non-profit senior and low-income housing providers, and to municipalities.

The remainder of this memo seeks to respond to the June 3, 2009 memo in opposition to this provision from the League of Wisconsin Municipalities, Wisconsin Realtors Association, Wisconsin Alliance of Cities, Wisconsin Towns Association, and the City of Milwaukee (referred to as "the League" memo):

- The League argues retirement homes for the aged should not be provided the same unrestricted use of the rental income they generate that this provision allows for low-income providers. In other words, the League believes senior housing providers only should be able to use their rental income for maintenance and/or construction debt retirement, as required under current law. That would preclude senior housing providers from using that rental income to subsidize the rent of tenants who have run out of funds or to subsidize the Medicaid deficit of the affiliated campus nursing home. How would such a limitation benefit society or, more specifically, the local taxpayer?
- The League memo states it opposes "a new property tax exemption for high value retirement homes for the aged." Benevolent retirement homes for the aged have been exempt from property taxation under s. 70.11(4) since 1957. This is not a brand new exemption: it is a clarification of a statute that has been on the books for over 50 years and is an attempt to stop the litigation stream surrounding this issue.
- The League memo states this provision ultimately will shift more of the property tax burden onto residential homeowners. We do not believe that assertion reflects reality. The senior housing complexes that will be impacted by this provision currently are exempt from property taxation; some apartments units within certain complexes will lose their tax exempt status if this provision becomes law. If anything, residential homeowners will be benefited by this provision. The only cases where currently taxable senior housing property may become tax-exempt under this provision is in the few instances where courts have denied tax-exempt status.

- The League continuously references "high end senior housing facilities used exclusively by affluent elderly." Yet how does the League define these "affluent" elderly and their "high-end senior housing facilities?" According to the League, an "affluent" tenant of a senior housing facility would be an individual/household residing in a unit whose assessed value is 100% of the average fair market value of residential parcels located in the municipality. Since when is the average "affluent?" The League's argument that it seeks only to require the "affluent" tenants of "high-end senior housing facilities" to pay property taxes seems to run counter to statements made in the media that the City of Milwaukee reportedly desires to tax all 1,360 senior housing units in Milwaukee in order to require seniors to pay \$8 million in property taxes.
- The League suggests that the current requirement that retirement homes must be owned by "benevolent" organizations be restored. For 20+ years, the Legislature has been unable to reach a consensus on the definition of "benevolence." Instead, the courts have taken up that cause and the results have differed from court to court. This provision requires the retirement home for the aged to be not-for-profit but lends some certainty to the determination of taxability. The AB 75 provisions hopefully will stop the well documented history of certain municipalities imposing a "creative" interpretation of current law, thereby requiring legislative intervention in order to clarify legislative intent. Let's stop the need for *Columbus Park*-like fixes.
- WAHSA members disagree with the assertion from Milwaukee and Madison staff that "all or nearly all of the individual dwelling units in high-end senior housing facilities in Milwaukee and Madison" would be tax exempt. That is why we fought hard for a threshold higher than 160%. Ultimately, however, it will be up to the local assessors to determine which of us is correct. Historically, WAHSA members have supported the position of the IRS that the elderly living in senior housing as a class, regardless of income, should be exempt from taxation. The *Columbus Park* provision, for our members, is a compromise from that historic position, a grudging acquiescence knowing that the some tenants of non-profit senior housing will now required to pay property taxes.

We respectfully ask that the State Assembly approve the *Columbus Park* provisions contained in AB 75. It's time to provide a "legislative fix" to this thorny issue and move on.

Thank you for your consideration of our interests and concerns.