

Legislature Overturns Columbus Park

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Practice Area: Health Law & Nonprofit and Tax Exemption & Tax & Real Estate

On March 11, 2004, the Wisconsin legislature passed a bill that effectively overturns last November's Wisconsin Supreme Court decision in *Columbus Park Housing Association v. City of Kenosha*. The effect of this legislation is to restore the property tax exemption previously enjoyed by residential housing owned by benevolent associations and certain other entities. The bill has been sent to Governor Doyle for his review and is likely to be signed.

The Columbus Park Decision

Historically, residential housing property owned and used exclusively by churches or religious, educational or benevolent associations was considered to be exempt from property taxes. In the *Columbus Park* case, the City of Kenosha assessed residential housing property owned by Columbus Park Housing Association, a not-for-profit benevolent organization. The association had purchased the blighted property, rehabilitated it, and rented it to low-income families who were recipients of federal rent subsidies. The Supreme Court ruled in favor of the tax assessment. The court concluded that otherwise exempt property becomes taxable when it is leased to persons who are not themselves exempt. Since the low-income tenants of the housing association would not be entitled to the exemption if they owned the property themselves, Columbus Park was not entitled to the exemption when it leased the property to those tenants.

The Supreme Court dismissed the concern that its ruling in *Columbus Park* would open the floodgates for taxation of a variety of residential housing, particularly residential care facilities for seniors. In the wake of *Columbus Park*, however, municipalities around the state have been contacting owners of residential housing facilities (such as retirement homes and assisted living facilities) to demand information relating to the property's exempt status. These have been viewed as a prelude to possible revocation of exemptions, followed by tax assessments not only for the 2004 tax year, but also for 2002 and 2003 (municipalities can go back two years in assessing "omitted" property).

SB 512

On March 1, 2004, Senators Carol Roessler (R-Oshkosh) and Cathy Stepp (R-Sturtevant) introduced Senate Bill 512 in the Wisconsin Senate. Under this bill, residential housing property that is otherwise exempt from property tax does not become taxable because it is leased, so long as the owner uses all of the rental income for maintenance of the property or construction debt retirement for the property (or both). As originally introduced, SB 512 included a "sunset" provision on January 1, 2006; as of that date, the changes made by SB 512 would be repealed, and the law as set forth in *Columbus Park* would be reinstated. SB 512 also directed a Legislative Council study on the effect of Columbus Park and SB 512 on property tax exemptions, with a report due back to the legislature no later than December 15, 2004.

SB 512 moved on a fast track. The bill received hearings in the Joint Survey Committee on Tax Exemptions, and the Committee on Economic Development, Job Creation and Housing. On March 9, the Wisconsin Senate adopted an amendment to SB 512 that eliminated the sunset provision. SB 512, as amended, was approved by the Senate on a 32-1 roll call vote later that same day; only Senator Russell Decker (DSchofield) opposed the bill.

SB 512 was immediately forwarded to the Assembly, where it was approved on March 11th, on a vote of 90-9. Prior to this approval, the Assembly rejected an amendment proposed by Representatives Lasee, Musser and Loeffelholz, which would have limited the exemption to housing for low-income residents.

Implications of SB 512

SB 512 is retroactive to January 1, 2002, such that it will apply to property tax assessments for tax years 2002, 2003 and 2004, as well as future assessments. Presumably, assessors around the state have paid close attention to the progress of SB 512, and will be aware of its passage. Nevertheless, owners of residential housing that have been contacted by municipal assessors following the *Columbus Park* decision should not ignore outstanding requests for information. Instead, owners should discuss this development with their assessors, as these owners will now be in a much better position to retain their past exemptions.

The exemption for residential housing is not automatic, even after the passage of SB 512. Property owners must still demonstrate that (1) they meet the criteria of a benevolent association or other exempt entity under § 70.11(4), Wis. Stats.; (2) the property is used exclusively for exempt purposes; (3) the property is used for residential housing; and (4) the entity uses the income from any lease or other residency agreement for maintenance of the property, construction debt retirement, or both.

During the various committee reviews of SB 512, the legislature concluded that this exemption is good public policy. Presumably, the Legislative Council will reach the same conclusion when it reports its findings, conclusions and recommendations to the legislature (as directed by SB 512) later this year.

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