Chapter 20

Property Tax Exemptions

The state constitution grants the legislature power to prescribe what property shall be taxed. This mandate also implies the power to prescribe what property is exempt from taxation.

The authority to levy property tax comes from sec. 70.01, Wis. Stats., which states, "taxes shall be levied...upon all general property in this state except property that is exempt from taxation."

The power given to the legislature to exempt property from taxation can range from exempting a person to exempting an entire class of property according to its views of public policy or expediency within the restrictions of the uniformity clause of the Wisconsin Constitution.

Part I of this chapter gives general information including the process for applying for an exemption, evaluating exemptions, categories of exemptions, and definitions that are applicable to multiple exemptions.

Part II contains detail requirements and considerations related to some of the more complex exemptions.

Part III is a list of statutory citations with links for applicable law referenced throughout the chapter.

Part 1: Overview of Exemptions

There are two categories of exempt property:

- Property specifically exempted by statute through ownership, use of the property, or a combination of ownership and use.
- Property that is exempt from property tax, but taxable by special methods.

Some taxable property is assessed by someone other than the local assessor. An example is manufacturing property which is assessed by the state. While the municipal assessor is not responsible for valuing such property it is still taxable and should not be confused with property which is exempt.

Burden of Proof

In 1998, the state legislature codified the presumption of taxability by enacting sec. 70.109, Wis. Stats., which states, "Exemptions under this chapter shall be strictly construed in every instance with a presumption that the property in question is taxable, and the *burden of proof is on the person who claims the exemption*."

In the case of *University of Wisconsin Medical Foundation, Inc.* v. *City of Madison*, 2003 WI App 204, 267 Wis.2d 504, 671 N.W.2d 292, the Court stated, "This presumption in favor of taxability is motivated by 'the public interest to stem the erosion of municipal tax bases.' *International Found. Of Employee Benefit Plans, Inc.* v. *City of Brookfield,* 95 Wis.2d 444, 454, 290 N.W.2d 175 (1981). As we explained in *International Foundation,*

> [t]he more exceptions allowed, the more inequitable becomes the apportionment of the tax burden. The continuous removal of real property from taxation thus imposes a particular hardship upon local government and the citizen taxpayer.
>
> Accordingly, the legislature mandated that only certain institutions are relieved of their normal tax load. *See* generally [Wis. Stat. §70.11… The legislature has recognized that some organizations actually serve a public rather than a private purpose and should be relieved of their tax burden.

Id. Put another way, specific and limited property tax exemptions are based on a theory of mutual consideration: the public relieves an organization of its property tax burden when it provides a public benefit. *See id.* at 455 (noting that, generally, organizations are relieved of their tax burden when they "provide a benefit to the taxpaying community")."

Exemptions Strictly Construed

In many of the cases discussed in Chapter 22, the courts consistently held that taxation is the rule and exemption the exception. In the case of *State ex rel. Bell v. Harshaw, Treasurer,* 76 Wis. 230, 45 N.W. 308 (1890), the Wisconsin Supreme Court held: "Exemptions from taxation are regarded as in derogation of the sovereign authority and of common right, and, therefore, not to be extended beyond the exact and express requirements of the language used, construed strictissimi juris. *Railroad Co. v. Thomas,* 132 U.S. 185, 10 Sup. Ct. Rep. 68*; Railroad Co. v. Dennis,* 116 U.S. 668, 6 Sup. Ct. Rep. 625."

The Exemption Application

Real Property Exemptions

In 1998 sec. 70.11 Wis. Stats., was amended to require the owner seeking exemption of a property, to file, **on or before March 1**, an application (Form PR-230) along with any necessary attachments. The form must be filed with the assessor of the taxation district where the property is located. The filing requirement applies only to new exemption requests. Owners of properties already exempt are not required to fill out the form. Failure to complete the form in its entirety and file with the assessor by March 1 may result in denial of the exemption.

Some entities are not required to file a Property Tax Exemption Request form. These include:

- Property of the State — Sec. 70.11(1) Wis. Stats
- Municipal property — Sec. 70.11(2) Wis. Stats.
- Housing exempt under section 66.12012(22) — Sec. 70.11(18) Wis. Stats.
- Crops — Sec. 70.11(30) Wis. Stats.
- Manufacturing machinery & specific processing equipment — Sec. 70.11(27) Wis. Stats.

The Property Tax Exemption Request (PR-230) compels an owner seeking exemption of property to provide the assessor with pertinent information to enable the assessor to determine whether the property meets the statutory requirements for exemption. The form has four sections that must be completed by the property owner or the owner's representative.

1. Applicant information
2. Subject Property Information
3. Tenant Information
4. Supporting documentation. Depending on the type of exemption, supporting documentation must be attached to the request. Examples of supporting documentation include copies of:
   - Proof of non-profit status
   - Partnership Agreement, Association Documents, Articles of Incorporation, Charter and By-laws, including any amendments
   - Latest annual report filed with State Department of Financial Institutions
   - Educational curriculum
   - Part II of IRS Form 1023
   - Form 990
   - Form 990T
   - Ordination papers of occupants
   - Leases and subleases
   - Concessionaire and license agreements
   - Covenants, restrictions, rules and regulations affecting use and occupancy
   - Mortgages
   - Survey of subject property
   - Appraisal of subject property
   - Deeds
   - Income data to support an exemption for low-income housing
   - Any other information that would aid in determining exempt status

Personal Property Exemptions

Exempt Computers

Sec. 70.11(39), Wis. Stats., exempts "mainframe computers, minicomputers, personal computers, networked personal computers, servers, terminals, monitors, disk drives, electronic peripheral equipment, tape drives, printers, basic operational programs, system software and prewritten software". The exemption in sec. 70.11(39), Wis. Stats., does not apply to "custom software, fax machines, copiers, equipment with embedded computerized components or telephone systems, including equipment that is used to provide telecommunications services, as defined in sec. 76.80(3), Wis. Stats."

2017 Wisconsin Act 59, effective January 1, 2018, removed the requirement to report this property. The 2018 Statement of Personal Property was updated to exclude Schedule D-1.

Leased Equipment

The assessor should attempt to assess property to the person responsible for paying the taxes. This is usually specified in the lease agreement and the information can be obtained by contacting the lessor or lessee. Although sec. 70.18, Wis. Stats., permits the assessor to assess leased equipment to either the lessor or the lessee, there are several advantages to assessing property according to the lease agreement: 1) there is less possibility of a double assessment especially when both the lessor and lessee report the same equipment; 2) there is less possibility of confusion in collecting taxes, especially when the lessee expects to pay the tax as part of the lessee's tax and later receives a separate bill from the lessor for this equipment; and 3) the lessor and lessee are more likely to cooperate in providing information about leased equipment if the assessor makes the assessment according to the lease agreement.

Evaluating Exemption Requests

It is the duty of the assessor to determine whether the property is exempt. In deciding whether a property meets the requirements for exemption, the assessor must look to the actual activities or dominant purpose of the organization. The assessor should be more concerned with what the organization *actually* does than *what it says it does* in its constitution or by-laws.

The assessor should make a physical viewing of the property to verify that the information in the application is correct and that the property is being used for the exempt purpose. The assessor may also wish to periodically re-viewing the property to verify that it continues to be used for exempt purposes.

It is the responsibility of the party seeking exemption to show that it falls within the statutory criteria for exemption. The courts have repeatedly ruled that the assessor should base exemption decisions on a "strict but reasonable" construction of the statutes. This means that an association must clearly show that it meets the criteria for exemption. If there is any doubt, the assessor should deny the exemption. However, the assessor must not be so strict as to be unreasonable. In *St. John's Lutheran Church* v. *City of Bloomer*, 118 Wis.2d 398, 347 N.W.2d 619 (1984), one reason the City denied the exemption was because the word

"benevolent" was not used in the articles of incorporation. The court ruled that the association met all of the tests for a benevolent association. To deny an exemption because the word "benevolent" was not included in the articles of incorporation was an unreasonable interpretation of the statutes.

The assessor should neither grant nor deny an exemption just because another assessor granted or denied the exemption. The assessor may wish to consult the other assessor regarding that decision. However, the facts regarding an organization may vary from municipality to municipality and from year to year. The assessor should base the decision solely on whether or not the organization meets the criteria for exemption within the particular municipality.

The assessor should be familiar with Chapter 22, which deals in part with court cases and Attorney General Opinions regarding property exemptions. The assessor can discuss Volume I with DOR. In situations where the analysis is complex, the assessor may wish to confer with the municipal attorney before making a decision. The municipal attorney may in turn confer with the County Corporation Counsel, the League of Wisconsin Municipalities, or the Wisconsin Towns Association legal staff. The assessor should keep a file containing all information regarding an exemption request. This includes all forms, correspondence, notes, etc. This will help when presented with similar exemption requests in the future. In addition, if the assessor's decision is appealed, a complete written record will help demonstrate that the assessor acted properly.

Recurring Exemption Requirements

This section contains discussion of exemption criteria that are not unique to a specific exemption, but can be applied to multiple exemptions assuming that the facts meet the specific requirements of each exemption. For requirements unique to a specific exemption, refer to Part 2 in this chapter.

Benevolence

The statutes do not define the word benevolence. Wisconsin courts have recognized that "benevolence" is a broader term than charity. The following definitions and authority may be helpful to assessors:

> "The word "benevolent" means, literally, `well-wishing.' It is a word of larger meaning than `charitable.' It has been well said that, `though many charitable institutions are very properly called benevolent, it is impossible to say that every object of man's benevolence is also an object of his charity.'" *Family Hospital Nursing Home, Inc. v. Milwaukee*, 78 Wis.2d 312, 318 (1977) (citations omitted).

Here are relevant definitions of benevolent and benevolence from The American Heritage Dictionary of the English Language, 3 ed. (1992)

- "benevolent 1. Characterized by or suggestive of doing good. 2. Of, concerned with, or organized for the benefit of charity."
- "benevolence 1. An inclination to perform, kind, charitable acts"

Non-Profit

The organization must be a non-profit organization. This means that the organization must be free from the fact or even the possibility of profits accruing to the founders, directors, officers, or members. In *Prairie du Chien Sanitarium Co. v. City of Prairie du Chien,* 242 Wis. 262, 7 N.W.2d 882 (1943), the Wisconsin Supreme Court held that the hospital did not qualify for exemption. The court decided that a group of doctors who were members of the owners association used the hospital as an adjunct to their private practice. Therefore, the property was not exempt.

This does not mean that the organization must operate at a loss or break even. The issue is what is done with the "profit." This issue was addressed in *Order of Sisters of St. Joseph v. Plover,* 239 Wis. 278, 1 N.W.2d 173 (1941). The Order operated a hospital that occasionally received income that exceeded expenses. Any "profit" was used to improve the facilities or to establish or support other hospitals or educational institutions. The court ruled that since the profit, if any, was payable to no one, but was used only to improve the facilities or expand the benevolent purpose of the organization, it was a non-profit organization.

The assessor should note that all of the income was received by the organization's pursuit of its exempt purpose. If part of the income is received from non-exempt activities, the organization may be subject to being "taxed in part." This issue is addressed more fully in another section of this chapter.

Acreage Limitations

Most organizations seeking exemption under sec. 70.11(4), Wis. Stats., are subject to an acreage limitation, beyond which the property remains taxable. The acreage limit is specific to the exemption. For many exemptions the limit is 10 acres; however, the assessor must review the statute for each specific exemption in order to determine the applicable limitation.

The acreage limitation is a cumulative figure for each municipality and does not apply to each site that an organization owns within the municipality. For example, assume that a benevolent organization has two facilities in a municipality and each facility is 10 acres. Only one of the facilities is entitled to exemption. The assessor should allow the organization to decide which one of the facilities it wants exempted. However, a benevolent organization located in several municipalities is entitled to a 10-acre exemption in each municipality. Additionally, an organization may be entitled to separate exemptions for separate purposes under sec. 70.11(4), Wis. Stats. In *Wisconsin Evangelical Lutheran Synod v. City of Prairie du Chien,* 125 Wis. 2d 541, 373 N.W.2d 78 (1985), the court ruled that the association was entitled to a 30 acre exemption for its educational purpose plus 10 acres for its religious housing purpose. The assessor must be sure that there are separate and distinct purposes to qualify for more than one exemption.

The acreage limitation is determined by the land necessary for the location and convenience of buildings. This means that assessors cannot exempt just the land located under the building. The exemption must include the land necessary for the convenience of the buildings, which includes driveways, parking areas, yards, etc. Likewise, an organization cannot base its claim for exemption only on the land located under its buildings. It must also include the land used for driveways, parking areas, yards, etc. in making its claim.

Vacant Property

The property must be exclusively used for the exempt purpose of the organization. If the property becomes vacant or is no longer used by the organization for exempt purposes, it loses its exemption.

This issue of vacant property was addressed in *Dominican Nuns v. City of La Crosse,* 142 Wis. 2d 577, 419 N.W.2d 270 (1987). The order maintained a convent on its property until December, 1983, when it moved its headquarters and all of its members to a new facility in another part of the country. The court held that the property was not "used" for any of the order's exempt activities. Heating the property, keeping it in repair, listing it for sale, and maintaining a mortgage did not make the property "exclusively used" for religious purposes. The former convent was vacant and premises, which are "wholly vacant and unoccupied," do not qualify for exemption.

Vacant land held solely for expansion, or acquired for future building, is not exempt even when owned by an exempt organization. However, vacant land adjacent, or in close proximity, to an exempt building, and currently used for exempt purposes, may qualify for exemption. Consider a church-owned lot located across the street from the church. The lot was used exclusively for church related outdoor activities such as parking, picnics, socials, recreational activities, etc. The lot was exempt as "land necessary for the location and convenience of buildings." However, vacant land located a substantial distance from an exempt building is not entitled to exemption.

Improvements Under Construction

Property under construction on the assessment date that is owned by an exempt association may be entitled to exemption. The assessor must conduct a thorough review of the association to ensure that the property will be used for an exempt purpose when completed. This includes monitoring the property to ensure that construction is proceeding at a reasonable pace. In addition, the assessor should review the property when construction is complete to ensure that it is being used for an exempt purpose.

In *Family Nursing Home, Inc. v. City of Milwaukee,* 78 Wis.2d 312, 254 N.W.2d 268 (1977), the City contended that the nursing home was not "exclusively used" for benevolent purposes on the assessment date because the home was not occupied by patients until several months later. The home was equipped and in the process of hiring staff on the assessment date. The nursing home was not used for any other purpose during the period. The court ruled that the nursing home should not be taxable during the period as it was readying itself for benevolent purposes.

The assessor must base exemption decisions on a "strict but reasonable" construction of the statutes. This means that the assessor must not interpret the exemption so narrowly as to deny reasonable claims for exemption. If a property under construction is readying itself for exempt purposes and is not being used for other purposes, it may be reasonable to exempt such property, assuming that the facts meet all specific requirements of the applicable exemption.

Leased Property

In 1955, the Legislature revised sec. 70.11(4), Wis. Stats., to require that the property be both owned, and used, by an exempt organization in order to qualify for exemption. In 2003, Wisconsin Act 195 allowed the renting of property for residential purposes provided it met the strict requirements for use of rental income.

In 2009, under Act 28, the legislature loosened restrictions on the use of rental income for certain types of residential properties, but retained strict limitations on the use of rental income for all other exemptions.

Unrestricted Use of Rental Income

Unrestricted use of rental income applies only to the following exemptions; all other exemptions are subject to the restricted use of rental income criteria below.

- benevolent low income housing
- benevolent retirement homes for the aged
- Residences occupied by at least one person who meets the medical definition of permanent disability used to determine eligibility for programs administered by the federal social security administration.

In these instances, leasing property for residential purposes "does not render it taxable, regardless of how the leasehold income is used".

Restricted Use of Rental Income

In response to the 2003 Wisconsin Supreme Court case *Columbus Park Housing Corporation v. City of Kenosha,* 2003 WI App 190, 267 Wis.2d 233, 670 N.W.2d 74, 2003 Wisconsin Act 195 changed the preamble to sec. 70.11, Wis. Stats., which allows property to be leased as residential property without losing its exemption status, provided that rental income is applied toward construction debt retirement, maintenance of the subject property, or both.

Organizations exempt under sec. 70.11, Wis. Stats., may lease their property to other exempt organizations under the following conditions:

- All of the leasehold income must be used for maintenance of the leased property, construction debt retirement of the leased property, or both, and
- The lessee would be exempt from taxation if it owned the property, and the lessee does not discriminate based on race.

Maintenance is defined in *Webster's Third Unabridged Dictionary* as "…the labor of keeping something (as buildings or equipment) in a state of repair or efficiency." The International Association of Assessing Officers defines maintenance as "An expenditure of a fixed asset that increases or tends to preserve the asset's value".

Section 70.109, Wis. Stats., provides for a strict interpretation of exemptions, a presumption of taxability, and places the burden of proof with the entity requesting the exemption. In 2003, Dane County Circuit Court ruled on the definition of maintenance in *Future Madison Eastpointe, Inc. et al*. v. *City of Madison*. The decision stated that there was clear legislative

intent to limit the expenditure of leasehold income to only include expenses for the physical upkeep of the premises.

As provided in sec 70.11 Wis. Stats., "Maintenance" is specific to the leased property. Only expenses for maintenance of the exterior structure, the grounds, and the interior components of the leased property qualify. Examples of expenses that qualify as maintenance include:

- cleaning costs
- ventilation system repairs and maintenance
- elevator repairs and maintenance
- flooring repairs
- wall repairs and painting
- refuse collection, grounds maintenance, and snow removal
- property insurance
- cost of labor and related supplies required to complete the aforementioned items
- Annual allowances set aside as reserves for replacement of building components, fixtures, and equipment.

Examples of acceptable reserves that qualify as maintenance include funds set aside for:

- flooring replacement
- roof replacement
- window replacement
- ventilation system replacement
- asphalt driveways and service roads

Expenses associated with the entity's going concern do not qualify as maintenance. Examples of non-qualifying expenses include:

- business insurance, advertising
- depreciation
- property additions and property acquisitions
- debt payments and financing fees
- management fees, legal fees, accounting fees
- taxes, including income taxes, franchise taxes, corporation taxes, and real estate taxes
- fees and expenses associated with a different property or business of the entity
- costs associated with providing social, healthcare, and other services for residents
- costs of labor and related supplies for any of the above unqualified expenses

The examples given in this section are meant to assist the assessor in identifying the types of items to consider and should not be construed as all-inclusive.

Debt Retirement. Construction debt retirement is specific to the leased property under sec. 70.11 Wis. Stats. Payment of construction debt due to initial construction of the leased property qualifies, along with debt due to subsequent construction of the leased property.

A construction loan, converted to a conventional loan, would continue to qualify as construction debt retirement. However, refinancing that includes other debt, such as new appliances, inventory, unpaid utilities, etc., is not considered construction debt retirement. When such debts are combined, the property does not comply with sec. 70.11., Wis. Stats., and would result in the property losing its tax exempt status.

Leasehold income used for debt retirement associated with the business of operating the property, the debts of a parent or subsidiary entity, and the debts incurred from the construction of another property, are not considered construction debt and would render the property taxable.

Taxed in Part

Under sec. 70.1105(1), Wis. Stats., an exempt organization may be assessed and taxed in part, when:

> "Property that is exempt under s. 70.11, and that is used in part in a trade or business for which the owner of the property is subject to taxation under sections 511 to 515 of the internal revenue code, as defined in s. 71.22 (4m), shall be assessed for taxation at that portion of the fair market value of the property that is attributable to the part of the property that is used in the unrelated trade or business. This section does not apply to property that is leased by an exempt organization to another person or to property that is exempt under sec. 70.11(34), Wis. Stats."

The Internal Revenue Service provides guidelines to determine the taxability of unrelated income in *Publication 598 Tax on Unrelated Business Income of Exempt Organizations*. This document may be viewed or downloaded at Internal Revenue Service.

Unrelated business income is defined as income from a trade or business that is regularly carried on by an exempt organization that is not substantially related to the performance of its exempt purpose or function, except for the profits derived from this activity.

Trade or business generally includes income-producing activities related to selling goods or performing a service.

Regularly carried on activities are performed with frequency and continuity comparable to commercial activities of nonexempt organizations.

Not substantially related activities do not significantly contribute to accomplishing the exempt purpose of the organization. The following examples describe activities generating unrelated business income by exempt organizations:

- A humane society provides pet boarding and grooming services to the general public for a fee.
- A Nonprofit Medical Research Foundation rents its labs to a for profit drug company for research on the effectiveness of a new drug. The research is performed entirely by the drug company's staff. The Foundation's staff and students are not involved in the research.
- An Art Gallery rents the facility to a commercial event promoter for concerts, weddings, parties and lectures.

The Internal Revenue Service determines if an organization is subject to taxation for unrelated business income. If the assessor feels an exempt organization may have unrelated business income, an Unrelated Business Income Report (PC-227) should be sent to the

organization. The organization will know if it is being taxed by the IRS for unrelated business income and should complete and return this form.

After receiving the return, the assessor should estimate the market value of the part of the property used to generate unrelated business income using the three approaches to value. If only part of the building is used to generate unrelated business income, the assessor should determine that percentage and multiply it times the market value of the building. For example, assume a lodge operates a kitchen and dining room that is regularly open to the public. The assessor estimates that the market value of the building is $500,000. The area of the kitchen and dining room is 1,000 square feet and the area of the building is 5,000 square feet. The percentage used to generate unrelated business income is 20% (1,000/5,000). The market value of the unrelated business use is $100,000 ($500,000 x .20). The percentage is not applied to the land unless the organization receives separate compensation for the land.

If an entire building is used part of the time to generate unrelated business income, the assessor can base the assessment on either the percentage of income attributable to the non-exempt use or the percentage of time the property is used for the non-exempt use. For example, an exempt organization publishes a student newspaper and also regularly does printing for the public which provides 20 percent of its income. The assessor would estimate the market value of the building and multiply it times 20 percent to estimate the market value of the unrelated business use.

Appealing Exemption Decisions

A property owner who wishes to appeal the assessor's decision should generally be advised to follow the procedures for Recovery of Unlawful Taxes, sec 74.35(2m) Wis. Stats.

Section 74.35, Wis. Stats., provides for the recovery of unlawful taxes under very specific conditions. An unlawful tax occurs when one or more of the following errors are made:

- A clerical error was made in the description of the property or in the computation of the tax;
- The assessment included real property improvements which did not exist on the assessment date (Jan 1);
- The property was exempt from taxation;
- The property was not located in the municipality;
- A double assessment was made; or
- An arithmetic, transpositional or similar error has occurred.

Please note that an "unlawful tax" does not include judgmental questions about the valuation. Valuation issues must be addressed through the Board of Review appeal process.

Recover unlawful taxes under sec. 74.35, Wis. Stats., by filing a claim with your municipality.

A claim for recovery of unlawful taxes must include all of the following:

- Be in writing,
- State the alleged circumstances for the claim,
- State the amount of the claim,
- Be signed by the claimant or the claimant's agent, and
- Be served to the municipal clerk.

A claim for the recovery of unlawful taxes paid to the wrong municipality must be filed within two years after the last date specified for timely payment of the tax. All other claims for recovery of unlawful taxes must be filed by January 31 of the year in which the tax is payable. No claim may be made unless the tax, or any authorized payment of the tax, is timely paid.

If the municipality denies the claim, it must notify you by certified or registered mail within 90 days after the claim is filed. You may appeal the decision to Circuit Court if you feel the decision is incorrect. You must commence action within 90 days after receiving notice that the claim is denied.

If the municipality does not act on the claim within 90 days, you have 90 days to appeal to Circuit Court.

There are three exemptions that cannot be appealed under sec 74.35, Wis. Stats., and must instead be resolved by the State Board of Assessors per sec 70.995(8), Wis. Stats. These three are:

1. Exempt computers under secs. 79.095(2) and (3), Wis. Stats.
2. Waste Treatment and Pollution Abatement Equipment exempt under sec 70.11(21), Wis. Stats.
3. Manufacturing machinery and equipment exempt under sec. 70.11(27), Wis. Stats.

Part 2: Specific Exemptions

Educational Institutions

The exemption for educational institutions is granted under sec. 70.11(4)(a), Wis. Stats. To qualify for exemption as an educational institution, the property must meet the following criteria:

1. The organization must be an educational association;
2. The property must be owned and used exclusively for the purpose of such association;
3. The property must be 10 acres or less. Property owned by churches and religious associations used for educational purposes is subject to a 30-acre limitation;
4. The property must be necessary for the location and convenience of buildings;
5. The property must not be used for profit.

The educational association must be engaged in "traditional" educational activities "and must provide systematic instruction, either formal or informal, directed to an indefinite class of persons. Furthermore, it must be a type of education which directly benefits the general public and would ordinarily be provided by the government or would in some way lessen the burden of government.

"*An indefinite class of persons*" means that the education is available to the general public rather than a limited or specific group of people. For example, an association that provided continuing education to the members of a certain profession was not directed to an "indefinite class of persons." The association claiming the exemption must show that the education is provided primarily to the general public rather than to a limited group of people. *"Traditional"* educational activities are not limited to a formal academic curriculum in a formal school setting. *In Janesville Community Day Care Center, Inc.,* 126 Wis.2d 231, 376

N.W.2d 78 (1985), the court ruled that the Day Care Center provided "traditional" educational activities and met all the other requirements including being a non-profit institution. The Center made daily use of structured instructional curriculum administered by a staff of teachers who had post-secondary education in early childhood training. The Center offered speech therapy, vision and hearing tests, as well as special programs tailored to both gifted children and those with learning disabilities. In addition, a public school principal testified that diverse and challenging preschool experience and education reduced the burden on public schools by eliminating the need in many instances for counseling, testing, and speech therapy and by increasing the likelihood of the students' academic success.

Religious Institutions

Sec. 70.11(4)(a), Wis. Stats., exempts property owned and used exclusively by churches or religious associations including property owned and used for housing for pastors and their ordained assistants, members of their religious orders and communities, and ordained teachers, whether or not contiguous to and a part of other property owned and used by such associations or churches.

Black's Law Dictionary defines religion as "man's relation to divinity, to reverence, worship, obedience, and submission to mandates and precepts of supernatural or superior beings. In its broadest sense it includes all forms of belief in the existence of superior beings exercising power over human beings by volition, imposing rules of conduct, with future rewards and punishments."

The courts have been reluctant to set down precise, clear-cut rules or guidelines to define religion. To do so could interfere with the freedom of religion. However, certain things appear to be common to most religions. These include a superior being or beings, some type of reverence, obedience, or worship of these beings, and some sort of mandates or code of conduct for the members of the religion.

Another requirement for exemption as a religious institution is that the property be used exclusively for religious purposes. There have been several instances where individuals or groups have tried to organize churches or religious institutions merely to avoid taxation. In *Oshkosh v. Graf, Court of Appeals, District II*, the taxpayer argued that his chiropractic personal property had been given to a church (he founded) and was exempt under sec. 70.11(4), Wis. Stats. The court disagreed on the basis that no gift to the church had occurred because he never relinquished his control over the property he continued using in his practice.

In determining whether property is used for religious purposes, the assessor should ask several questions:

- How is the property used for religious purposes?
- Are religious services conducted on a regular basis? If so, when, where, and how often?
- Is any part of the property used for pecuniary profit? If so, what areas and to what extent?

Donated Property

In the case of property purportedly donated for religious purposes:

- Does the person making the donation have any ownership or other interest, in this property, either recorded or unrecorded?
- Does the person making the donation have any control over the use of the property? e.g., Is it used for the person's business? Is it used for the person's recreational, residential, or social purposes?
- Does the person making the donation have any responsibility toward making mortgage payments or paying for repairs and maintenance of the property?
- If donated property is sold, will any portion of the proceeds pass to the donor or the donor's family, relative, heirs, or assigns?

Housing for Religious Persons

The religious institution must own the home in order to qualify for this housing exemption. Therefore, the first step in analyzing whether an exemption exists for housing dedicated to pastors and their ordained assistants, members of religious orders and communities, and ordained teachers is to determine ownership of the property.

The assessor should then obtain copies of ordination papers of pastors, assistants, teachers, etc. What specifically qualifies as "ordained" should be given wide berth given the constitutional implications. However, documentation is required.

Benevolent Associations

A property must meet all of the following criteria in order to qualify for an exemption as a benevolent association under sec. 70.11(4)(a) Wis. Stats.

1. The organization must be a benevolent association.
2. The real and personal property must be owned by the association.
3. The real and personal property must not be used for pecuniary profit (compensation for purposes not included in the objectives of the organization).
4. The organization cannot be organized under sec.185.981 Wis. Stats., or Ch. 611, 613, or 614 and offer a health maintenance organization as defined in sec. 609.01(2) Wis. Stats.
5. The organization cannot offer a limited service health organization as defined in sec. 609.01(3) Wis. Stats.
6. The organization cannot be issued a certificate of authority under Ch. 618 and offer a health maintenance organization or a limited service health organization.

Determining whether the organization operates for a benevolent purpose is sometimes difficult. The assessor should be familiar with the definitions of benevolence found in Part I of this chapter.

A mission statement of benevolence is not adequate proof that the association is a benevolent association. The assessor must look beyond the stated purpose of the organization to determine whether its activities are truly benevolent. The assessor should obtain a list of the services provided by the benevolent association. An organization claiming to be benevolent must show that it does benevolent activities and how those activities benefit society.

This does not necessarily mean that the activity benefits everyone directly. It means that because the organization provides this service, activity, or benefit, society as a whole is a better place. This includes providing services that would otherwise have to be provided at government expense and services that make people less dependent on government care. It also includes activities that make people better members of society by improving their social, physical, or mental condition.

In *M.E. Baraca Club v. City of Madison,* 167 Wis. 207, 167 N.W. 258 (1918), the Wisconsin Supreme Court held that an organization whose benevolent activities consisted of securing positions for a few young men and furnishing a small number of free meals, is not a "benevolent association" whose property is exempt from taxation.

It is not necessary that an organization be charitable to be benevolent. An organization does not have to provide its services for free or at a reduced cost to be benevolent. Providing charity is an activity that may help demonstrate the benevolence of an organization, however, it is not a requirement for being considered a benevolent association.

Benevolent Low-Income Housing

Wisconsin Act 28, passed June 2009, created sec 70.11(4a) Wis. Stats., which exempts certain benevolent low-income housing. Due to the complexity of the criteria for exemption, the assessor should approach the evaluation of the exemption request in stages.

Reporting Requirements

The property owner, must complete and submit to the assessor, no later than March 1, a *Property Tax Exemption Report* (Form PR-230) if one is not already on file. The property owner must also submit to the assessor on an annual basis, no later than March 1, the state prescribed form *Property Owner's Certification of Occupancy* (Form PR-231).

In any given year, if the property owner fails to submit the Property Owner's Certification of Occupancy (POCO), the assessor must notify the property owner. If the form is not received by March 1st, the property owner must be notified via certified mail that:

(1) They must file a statement that specifies which units were occupied on January 1 of that year by persons whose income satisfied the income limit requirements under par. (b), as certified by the property owner to the appropriate federal or state agency, and a copy of the Federal Department of Housing and Urban Development contract or Federal Department of Agriculture, Rural Development contract, if applicable.
(2) Notification that failure to file that statement within 30 days after the certified letter may result in a $10 forfeiture per day on which the form is not received by the assessor, up to $500.
(3) Additionally, failure to file the POCO may result in loss of exemption status.

A timeline for the POCO is as follows:

- Initial deadline – March 1st
- Extended deadline after notification by certified letter (30 days).

- The final date when the assessor can place a value on the property and ensure distribution of the required notice assessment is before the board of review or board of assessors in agreement with sec. 70.365, Wis. Stats.
- If the POCO is filed after BOR, a correction of the roll is allowed by the clerk under sec. 70.73, Wis. Stats.
- If a tax bill has been generated and the POCO is filed, the property will have lost it's exemption status. However, the property owner would have sec. 74.35, Wis. Stats., available as a remedial avenue for recovery of unlawful taxes.

Imposition of the forfeiture under sec. 70.11(4a)(g)(5) would typically entail issuing a long form complaint against the property owner with pursuit of the forfeiture through municipal court procedures.

Identifying a Low-Income Project

The POCO requires the owner to identify all parcels that are part of the low income project. All locations included under a single contract to provide low income housing are considered one property for purposes of defining the low-income housing project. Sec. 70.11(4a) requires that property must meet the following criteria to be considered part of a low-income housing project:

1. Property is owned by a non-profit entity and
2. Owner is a benevolent association, and
3. Property is used for low-income residential housing.

Income Limits

If the property meets the three criteria above, it is then evaluated against the following income limits:

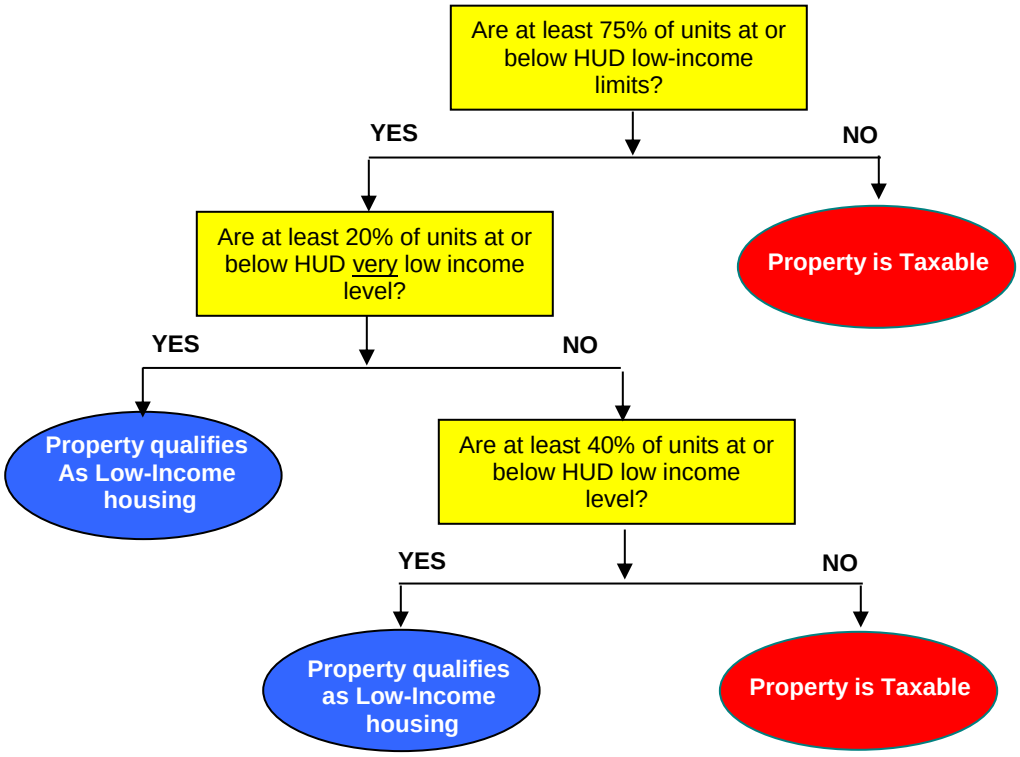
> At least 75% of the units are occupied by, or vacant and only available to, persons who meet the definition of low-income for the county according to the most recent HUD data at http://www.huduser.org/portal/datasets/il.html.

Properties meeting the 75% requirement must also meet one of the following:

1. at least 20% of the units must be occupied by very-low income persons as defined by the data provided in the HUD website above, or
2. at least 40% of the units must be occupied by very low income persons, or persons whose income is no more than 120% above the limit for very-low income persons using the HUD limits at the above website.

Diagram 20-2

Overview of Income Criteria



Determine What Portions of Property Are Exempt

For non-WHEDA projects, and for WHEDA projects not in existence on January 1, 2008, the following are exempt:

- All common areas
- All units occupied by low-income persons
- All units vacant and available only to low income persons

Determine What Portions of Property Are Taxable

There are some situations in which the overall project qualifies for exemption, yet portions of the project remain taxable and must be valued.

- Units occupied by persons not meeting the income limitations are taxable.
- Any portion of the project that exceeds 30 acres within a single municipality, or 10 acres at a given site, is taxable.

Chapter 50 Facilities – Wis. Stat. Section 70.11(4)(a)

Property owned and used exclusively by a nonprofit entity licensed, certified, or registered under Chapter 50 is exempted under Section 70.11(4)(a), Wis. Stats. Some properties may be used for multiple purposes, offering retirement facilities, assisted living facilities, and nursing home facilities. This range of services is commonly referred to as the 'continuum of care'. The assessor must ascertain Chapter 50 licensure, certification and/or registration for exemption purposes and assess, and/or exempt, the property based on the criteria for the specified use. In *Beaver Dam Community Hospitals, Inc. v. City of Beaver Dam,* 2012 WI App 102, 344 Wis.2d 278, 822 N.W.2d 491, the court held that the law does not require facilities licensed under Chapter 50, Wis. Stats., that are owned by a nonprofit to be used for benevolent activities in order to qualify for an exemption under Section 70.11 (4)(a), Wis. Stats. The court found that the plain language of the statute meant that no benevolence was required of entities licensed under Chapter 50. They City argued that the phrase "including benevolent nursing homes" was meant as a clause of limitation that required those licensed under Chapter 50 to be benevolent as well. The court disagreed, noting that Wisconsin courts have repeatedly held that "include" is a term of illustration or inclusion, not one of limitation or exclusion.

Under sec. 70.11(4)(b)1, Wis. Stats., leasing part of a property owned and operated by a nonprofit organization licensed, certified, or registered under Chapter 50, as residential housing, does not render the property taxable, regardless of how the lessor uses the leasehold income.

	***Facilities Registered, Licensed and/or Certified under Chapter 50* (examples: residential care complexes, nursing homes, hospice)**
Must be Non-Profit	Yes
Must be Benevolent	No
Acreage Limitation	10 Acres
Rent Use Limitations	No
Value Restrictions	No
Exemption Status	Exemption continues if property was exempt in previous year and use, occupancy or ownership did not change in a way that makes it taxable.

Retirement Homes for the Aged – Wisconsin Statute Section 70.11(4d)

This is a complex exemption in that the law does not specifically define 'aged' nor does it fully define the criteria for determining whether a facility is a retirement home. Adding to complexity is the fact that property can be partially taxable, the valuation of the unit requires

considerable appraisal skill, and, unlike most exemptions, the assessor must allocate value to various parts of the property to determine which portions are exempt.

Overview of the Process

The statute requires that the property be used as a non-profit facility by a benevolent association, for the purpose of providing retirement housing for the aged. In addition, the value of the unit, exclusive of common areas, must not exceed 130% of the average equalized value of improved residential property in the county for the prior year.

The steps for determining whether all or a portion of the property is exempt are identified below and discussed in detail in the following sections.

1. Verify that the property is owned and used by a non-profit entity engaged in non-profit activities
2. Verify that the entity is a benevolent association engaged in benevolent activities
3. Verify that the property is used as retirement housing for the aged
4. Remove from analysis any portion of the property not related to providing retirement homes for the aged, including any portions exempt under other statutes.
5. Value the individual units using the assessment hierarchy. Consider sale of the subject, sales comparison approach, income approach or cost approach, where appropriate.
6. Deduct or exclude the value of any common area from the individual unit value.
7. Determine whether the unit is exempt by comparing the result of step 5 with 130% of the average equalized value of improved residential property in the county for the prior year.
8. If more than 50% of the units are exempt then all common areas are exempt.
9. Identify and value any taxable areas of the property including space used to engage in 'for-profit' activities, land and improvements in excess of 30 acres necessary for the location and convenience of buildings, units exceeding the 130% limit, and common area not excluded under #8 above.

	Benevolent Retirement Homes for the Aged Under Section 70.11(4d), Wis. Stats.
Must be Non-Profit	Yes
Must be Benevolent	Yes
Acreage Limitation	30 Acres
Rent Use Limitations	No
Value Restrictions	Value of unit less common area is 130% or less of average single family residential for county
Exemption Status	Assessor evaluates unit on an annual basis to determine if it meets the value limitations (no more than 130% of less of average single family residence in the county)

Non-Profit Test

The entity must have non-profit status for this exemption under this section. In addition, the property may not be used for profit. If the occupant has the *possibility* of recovering an

amount greater than the entrance fee paid by, or on behalf of, that occupant, then the unit is being used for profit and is taxable.

There may be certain spaces within the residential facility or other buildings on the property that may appear to be profit centers for the benevolent association. For example, the retirement complex may have an association-run cafeteria for staff and residents, or a resale shop. Space utilized for these types of activities are treated as exempt common areas provided the association uses the income to support benevolent activities of the retirement facility.

Taxable profit centers may occur when the association leases space to a for-profit entity such as a salon, gift shop, restaurant, etc. Use of property in this manner does not disqualify the association from exemption so long as profits do not accrue to individuals or entities employed by or connected with the association. The portion of the property leased to for-profit organizations is subject to property taxes.

Benevolence Test

When the organization must be a benevolent association, the real and personal property must be owned by the association, and the property must not be used for pecuniary profit (compensation for purposes not included in the objectives of the organization). Benevolence does not require that the entity offer its services free of charge or at below-market rates.

> In *Milwaukee Protestant Home For the Aged v. City of Milwaukee*, 41 Wis. 2d 284, 164 N.W.2d 289 (1969) the Wisconsin Supreme Court held, "To help retired persons of moderate means live out their remaining years is 'benevolent' whether or not it is also considered, as we would consider it to be charitable." Sec. 70.11(4d)'s limitation of the exemption based on the unit's fair market value is consistent with the Court's focus on moderate means.

Chapter 22 includes case law as it relates to the issue of benevolence and may be helpful to the assessor in determining whether this test has been met.

Age Test

The Housing & Urban Development (HUD) Fair Housing Act of 1968 describes a retirement home as a residential facility in which at least 80% of the units have at least one occupant age 55 years or older.

Portions of Property Excluded from Analysis

If any portion of the property is used for exempt purposes other than providing retirement homes, these areas should be removed from analysis. Examples of areas to be removed are nursing homes and other entities that qualify as exempt under sec. 70.11(4)(a), Wis. Stats.
The retirement association may lease portions of the property to a non-exempt entity without losing exemption status, regardless of how the rental income is used. However, if the leasee is using the rented space to engage in for-profit enterprise then the space under lease is taxable.

Valuing Units

This exemption requires the assessor to value the unit exclusive of the value of common areas. Note that decks, balconies, and patios that are for the sole use of the unit occupant are not considered common area and should be valued as part of the unit.

Before valuing individual units, the assessor should consider the following:

- If the value of the least expensive unit is likely to exceed the maximum of 130% of the average cost of the equalized value of a single family residence in the county, then value the least expensive unit first. If the least expensive unit is greater than the 130% limitation, then all units, plus the common area, are taxable.
- If the value of the most expensive unit is probably less than the 130% limitation in the county, then value the most expensive unit first. If the most expensive unit is at or below the 130% limitation, then all units are exempt and do not need to be valued.

When selecting comparable sales or rentals, the assessor should consider the following:

- Comparable functional utility of units
- Similar design of units (e.g., townhouse, one story, garden style, basement, parking level)
- The existence of any common area amenities (swimming pools, clubhouses, etc.)
- Comparison to condominiums and/or rentals in age-restricted associations and projects, if available.
- Similar external amenities (e.g., proximity to desirable shops and services)

Sales Comparison Approach

In accord with sec. 70.32 Wis. Stats., and case law, the sales comparison method typically provides the most reliable indicator of value. The assessor should first look to whether there are adequate comparable sales to use this method for valuing units. For average to higher end retirement homes, condominium sales may be most representative of value. For modest to average retirement units, sales of rental property may yield a more accurate unit value. Sales of age-restricted apartment projects and age-restricted condominiums should be utilized, if available.

In seeking comparable sales, the assessor should attempt to avoid those with amenity-type common areas such as clubhouses, swimming pools, and fitness centers. These amenities are likely to give the unit a higher value than those without amenities. Because the statute requires that the unit be valued independent of common areas, choosing sales without these amenities will simplify unit valuation.
In cases where retirement projects have significant common area amenities, the assessor may find that the quality of units more closely approximates sales where amenities are similar. In those instances, the sale must be adjusted to exclude the value of amenities.

In small communities, it may be necessary to look for sales of age-restricted housing in nearby communities of similar appeal. Private, age-restricted facilities are likely to be more similar to subject in design, functional utility, and appeal than housing projects that have no age restriction.

Income Approach

In some cases, comparable sales will be unavailable and the assessor will need to use the income approach in valuing units.

The easiest way to apply the income approach is to base the unit value on market rents of comparable apartments and/or condominiums, whichever are most similar to the retirement units. As with the sales comparison approach, the assessor must adjust market rents to eliminate the value of common area amenities.

A more complicated application of the income approach is to base unit value on cash flow. This method is complicated because of the many steps and judgments involved, can be more prone to disputable results. Cash flow analysis requires significant data gathering by the assessor to ascertain income and expenses, apportioning them for amenities as needed. Some considerations in applying this method include:

- Develop value based on market rent for units of similar size, design, amenities, and functional utility
- Calculate a capitalization rate based on typical market expenses and income of apartment buildings or condominiums, whichever is most similar to the subject in amenities, functional utility, design, and location.
- Develop value based on the monthly fee of the unit (contract based) subtracting the cost of any items not related to the maintenance of the unit or to maintenance and repair of the common areas directly supporting the residential units. The monthly fee should be adjusted to eliminate any portion of the fee intended for medical services, nursing care, therapy, cleaning services within the unit, and any other amenities not found in the typical residence apartment or condominium.
- Consider the value and/or cost of any entrance or endowment fees, any reversionary interest of the resident, and the potential for profit of any reversionary interest.

Cost Approach

The cost approach is typically not a reliable indicator of value for retirement homes unless the facility is under construction or in its first year of operation. The assessor may need to consider the cost approach in ascertaining the value of unique amenities. An example might be tennis courts, a chapel, a commercial quality kitchen, or other unique spaces.

Adjust Unit Value to Exclude Common Areas

By statute, common areas are to be excluded when valuing individual units. Before valuing the unit, the assessor should already have removed common area amenities such as swimming pools, fitness centers, cafeterias, etc. Following valuation of the unit, an adjustment must be made for general and service type common areas such as land under the units, parking lots and sidewalks, hallways, elevators, mailboxes and foyers, and similar areas required to service the building and provide access to units. The department suggests calculating the contributory value of these areas at 20% of the market value of the unit. The assessor should therefore reduce the value of the unit by 20% to account for these areas before comparing the unit value to the 130% limitation in the next step.

Communities who choose to adjust for common areas by a method other than the 20% adjustment must fully document the method used, apply the method consistently, and prepare to adequately defend departure from the standard 20% adjustment, should the need arise.

Determine Whether Unit is Exempt

Compare the adjusted value of the unit from step 6 with the statutory limit for the county in which the property is located. A chart of these values can be found on DOR's website.

The chart shows 130% of the average equalized value of residential property by county for the preceding assessment year. If the unit is at or below the 130% limit, the unit is exempt. Units exceeding 130% of the limit are taxable.

Determine Whether Common Areas are Exempt

If at least 50% of the units are exempt then all common areas are exempt. If fewer than 50% of the units are exempt then all common areas are taxable.

When valuing taxable common area, exclude any common area that is shared with another activity. For example, if a hallway, entryway, or parking lot is used by both a nursing home and the retirement home, prorate the value between the two entities based on percent of use, square footage, time, or some other logical and quantifiable method.

Identify Taxable Portions of Property

1. Units are taxable if they do not house at least one resident who meets the minimum age requirement.
2. Units are taxable if the unit value exceeds 130% of the average equalized value of a single family residence in the county for the prior year.
3. Land and improvements supporting for-profit activities are taxable and must be valued.
4. Common areas are taxable if more than 50% of the units are taxable.
5. Land and improvements in excess of 30 acres, or which are not necessary for the location and convenience of buildings, are taxable and must be valued, provided the excess is not used for a separate exempt use. For example,
   - a retirement home of 40 acres could potentially have 30 exempt acres and 10 taxable acres
   - a 40 acre property that has both retirement units and a nursing home would be entitled to a maximum of 30 acres under the retirement exemption and 10 acres under the nursing home exemption.

Fraternal Societies

Section 70.11(4), Wis. Stats., exempts fraternal societies operating under a lodge system (except university, college, and high school fraternities and sororities).

Black's Law Dictionary defines fraternal as "Relating or belonging to a fraternity or association of persons formed for mutual aid and benefit, but not for profit." Thus, the activity

of the organization must be to provide mutual aid and benefit to the members. This definition is sufficiently broad to include many organizations. However, there are some limitations.

The fraternal society must be operating under the lodge system. This is a form of organization that includes local branches chartered by a parent organization. These local branches may be called lodges, chapters, etc. There must be parent and local organizations that are active. An organization that operates on its own without a parent and branches would not be exempt.

In addition, any fraternal society engaging in racial discrimination loses eligibility for this exemption. This includes not only the organization's constitution and by-laws but also its actual practices. The organization may claim that it does not discriminate. However, if its activities demonstrate racial discrimination, it is not exempt.

The assessor must also review public or non-member use of lodge facilities. Public use of parts of the lodge may make those areas subject to being "taxed in part" under sec. 70.1105, Wis. Stats. In *Madison Aerie No. 623 F.O.E. v. City of Madison,* 275 Wis. 472, 82 N.W.2d 207 (1957), the Wisconsin Supreme Court found that the dining area, bar, and bowling alley of the lodge were open to both members and non-members. The Court held that because these areas were open to the public, they were no longer exempt. This issue is more fully discussed earlier in this chapter under the "Taxed in Part" section of Part I.

United States Government Owned Property

Most U.S. Government real and personal property is exempt from the general property tax, as long as beneficial ownership does not accrue to someone other than the federal government. The assessor should refer to WPAM Chapter 22 for court cases and Attorney General Opinions that discuss assessment of U.S. Government property. The federal government does permit the assessment and taxation of certain federally owned property under the United States Code (U.S.C.). This generally consists of property acquired as a result of foreclosures on property on which federal agencies have insured the mortgage. As a result of these foreclosures, the federal agencies take ownership of these properties until they can be resold. The assessor should value these properties in the same manner as similarly classed properties are valued e.g., foreclosed agricultural property should be assessed as is other agricultural property.

The following federally owned properties should be assessed. The number in parenthesis is the United States Code reference that authorizes assessment. In addition, property owned by these agencies but not assessed in any of the prior 2 years should be assessed as omitted property under sec. 70.44, Wis. Stats.

1. Real property acquired as a result of foreclosure on which the mortgage is insured by the Federal Housing Administration (12 U.S.C. §1706b).
2. Real property acquired as a result of foreclosure on which the mortgage is insured by the Department of Housing and Urban Development (12 U.S.C. §1714).
3. Non-administrative property held by the Farmers Home Administration (42 U.S.C. §1490).
4. Buildings and lands leased to Post Offices are taxable to the lessor (39 U.S.C. §2005).

Archaeological Sites

Section 70.11(13m), Wis. Stats., exempts archaeological sites that are identified by the State Historical Society including any contiguous land necessary to protect the site and are listed in the national register of historic places in Wisconsin or the state register of historic places. This exemption applies to land only.

Note: Properties where part is exempt due to an archaeological site may not necessarily experience a reduction in total property value. As with other property factors and market conditions, the market must be carefully analyzed to determine the effect on value.

Cemetery Exemption

Section 70.11(13), Wis. Stats., includes an exemption for four different categories of cemetery: (1) cemetery, (2) land adjoining burial mounds, (3) personal property, and (4) burial sites.

To qualify as a cemetery, a separate parcel of land owned by a cemetery authority, defined in Section 157.061(2), Wis. Stats., and used exclusively as public burial grounds is required. For land adjoining burial mounds, a separate parcel of land owned, occupied, and used exclusively by a cemetery authority for cemetery purposes is required. Personal property must be owned by the cemetery authority and necessary for the care and management of burial grounds.

Wisconsin state law extends equal protection to all human burial places. All burial sites in Wisconsin, no matter how old they are or who is buried in them, and no matter if they are marked or unmarked, are protected by state law. Burial sites do not need to be in a separate parcel of land. They can be a portion of a parcel. Provisions of protection are balanced with benefits such as tax exemptions for private property owners. Private land owners who own human burial sites have certain rights and responsibilities. They must protect the burials on their land from disturbance. In return, they may be eligible for property tax exemptions under sections 70.11(13) and 157.70, Wis. Stats.

There are several steps included in securing a property tax exemption for the land associated with a burial site. An assessor may investigate whether the steps have been completed when evaluating an exemption. The first step is to ensure the burial site is listed in the Wisconsin Burial Sites Catalog (this catalog can be accessed via the Wisconsin Historical Society at www.wisconsinhistory.org). Second, contact the Burial Sites Preservation Unit at the Wisconsin Historical Society (www.wisconsinhistory.org or (608) 264-6579) to confirm the exemption request was facilitated by their office. Finally, if all of the requirements are met, the request for the burial site to be removed from the property tax rolls should be granted.

Native American Property

Real Property

Native American owned real property on an Indian reservation is **not** subject to state and local taxation unless an Act of Congress provides for state and local taxation.

On February 8, 1887, Congress enacted the General Allotment Act which applies to all Wisconsin tribes. Under that Act, real property that an individual Native American owns on a reservation in fee simple is subject to property tax. However, due to certain language in the Treaty of 1854[1], real property located within the reservation boundary of Bad River, Lac Courte Oreilles, Lac du Flambeau, and Red Cliff Chippewa bands is **exempt** if:

- It was allotted before February 8, 1887 under that Treaty,
- It is owned in fee simple by the tribe or tribal members, and
- There has been no conveyance of the land to nontribal members since it was first allotted under the 1854 Treaty. For example, if the land had been exempt under the provisions of the 1854 Treaty, but was then sold to a nontribal member, the land would lose its exemption and be subject to property tax. Even if the land was later repurchased by an 1854 Treaty Tribe, the land would remain subject to property tax.

Assessors should review tax roll information at the Municipality and County along with ownership information at the Register of Deeds office. The information will assist in determining if a property has changed ownership, was subject to property tax, and remains subject to property tax even though re-purchased by an 1854 Treaty Tribe.

As with other exemptions, a property owner may contest a determination that their property is subject to tax under sec. 74.35(2m), Wis. Stats., by paying the alleged unlawful tax in a timely manner, and properly serving the Municipal Clerk with a claim to recover the unlawful tax, before January 31 of the year in which the tax is due. The procedure and details for filing such claims is outlined in sec. 74.35, Wis. Stats.

Non-Native American owned real property on an Indian reservation is subject to state and local taxation unless an Act of Congress expressly prohibits such taxation. It is the responsibility of the owner to provide evidence of the Federal law that prohibits taxation.

Personal Property

Personal property on land held in trust is not subject to tax unless: (1) owned by non-Native Americans and (2) not an improvement to real estate. Structures or buildings and other items of personal property owned jointly by non-Native Americans and Native Americans on reservation land not in trust are taxed according to the extent of non-Native American ownership.

For the purposes of determining Native American ownership, a corporation is considered to

1 See Wisconsin Attorney General Opinion 72 OP Atty Gen. 74 (1983).

be a Native American corporation and not taxable if the corporation is owned and controlled by Native Americans who are enrolled members of the tribe of the tribal land on which the corporation operates. Control requires ownership of 51% or more of the corporation's stock. For example, a structure used for a shopping center constructed on land held in trust for the tribe and located on the reservation where the ownership of the structure is shared by a Native American (individual or tribe) and a non-Native American the structure would be taxed at a value equal to the same percent of its fair market value as the non-Native American's ownership interest is to the total ownership; i.e., if each party owns 50% of the structure one half of its fair market value is taxable.

Guidelines

The guidelines provide a standard for determining the property tax status of Native American property in Wisconsin.

Guideline One: Real Estate Held in Trust. All real estate exclusively owned by a Native American or a Native American tribe when held in trust by the Federal Government is not taxable. "Exclusive ownership" means control of all rights in the property

- Property held in trust by the Federal Government is not taxable, regardless of whether it is located on or off the reservation
- Either an individual tribal member or the tribe can be the beneficiary of trust status

Guideline Two: Real Estate Owned by Native Americans. In general, any real estate owned by either a Native American individual or a Native American tribe which is not held in trust by the Federal Government is taxable.

- Property that is not within reservation boundaries or on trust land is taxable.
- Property within the reservation boundaries that is owned in fee simple by an individual tribal member or tribe is taxable, except for certain allotted property, within the reservation boundaries of one of the four Chippewa tribes included under the Treaty of 1854, (Bad River, Lac Courte Oreilles, Lac du Flambeau, and Red Cliff.)
- Property within the reservation boundaries of the Bad River, Lac Court Oreilles, Lac du Flambeau and Red Cliff Tribes, owned in fee simple by the tribe or tribal member, is taxable if it has not been continuously owned by the tribe or tribal member since allotment (e.g. if the land was conveyed to and owned by a nontribal member, even if the land was later repurchased by the tribe.)
- Property within the reservation boundaries of the Bad River, Lac Court Oreilles, Lac du Flambeau and Red Cliff Tribes, owned in fee simple by the tribe or tribal member, is NOT taxable if it has been continuously owned by the tribe or a tribal member since allotment.

Guideline Three: Personal Property Owned by Native Americans. Any personal property owned by an enrolled member of the tribe upon whose reservation the personal property is kept or a Native American tribe on a reservation is not subject to tax.

- Personal property owned by Native Americans and kept on trust land or on the owner's tribal reservation is not subject to tax.

Guideline Four: Personal Property Owned by Non-Native Americans on Trust Land. Personal property owned by non-Native Americans located on trust land is taxable to the owner.

- This can include personal property which is leased to a Native American or to the tribe such as gambling machines.

Guideline Five: Structures on Leased Land in Trust. A structure owned by a non-Native American on leased land in trust is not subject to tax.

Guideline Six: Personal property owned by non-Native Americans on land not in trust. Personal property owned by non-Native Americans located on land not in trust is subject to tax.

Guideline Seven: Personal Property Owned jointly by non-Native Americans and Native American individuals or tribes. Personal property located on land not in trust owned jointly by non-Native Americans and Native Americans is taxed according to the extent of non-Native American ownership.

- Where each party owns 50% of the property it is taxed on 50% of its value
- Native American corporation's interest not taxable
- This tax treatment is similar to that allowed by sec. 70.11(8), Wis. Stats.

Computer Exemptions

Section 70.11(39), Wis. Stats., exempts "mainframe computers, minicomputers, personal computers, networked personal computers, servers, terminals, monitors, disk drives, electronic peripheral equipment, tape drives, printers, basic operational programs, system software and prewritten software". The exemption in sec. 70.11(39), Wis. Stats., does not apply to "custom software, fax machines, copiers, equipment with embedded computerized components or telephone systems, including equipment that is used to provide telecommunications services, as defined in sec. 76.80(3), Wis. Stats.".

Computer exemption guidelines can be found on the DOR website.

2017 Wisconsin Act 59, effective January 1, 2018, removed the requirement to report this property. The 2018 Statement of Personal Property was updated to exclude Schedule D-1.

Energy Systems

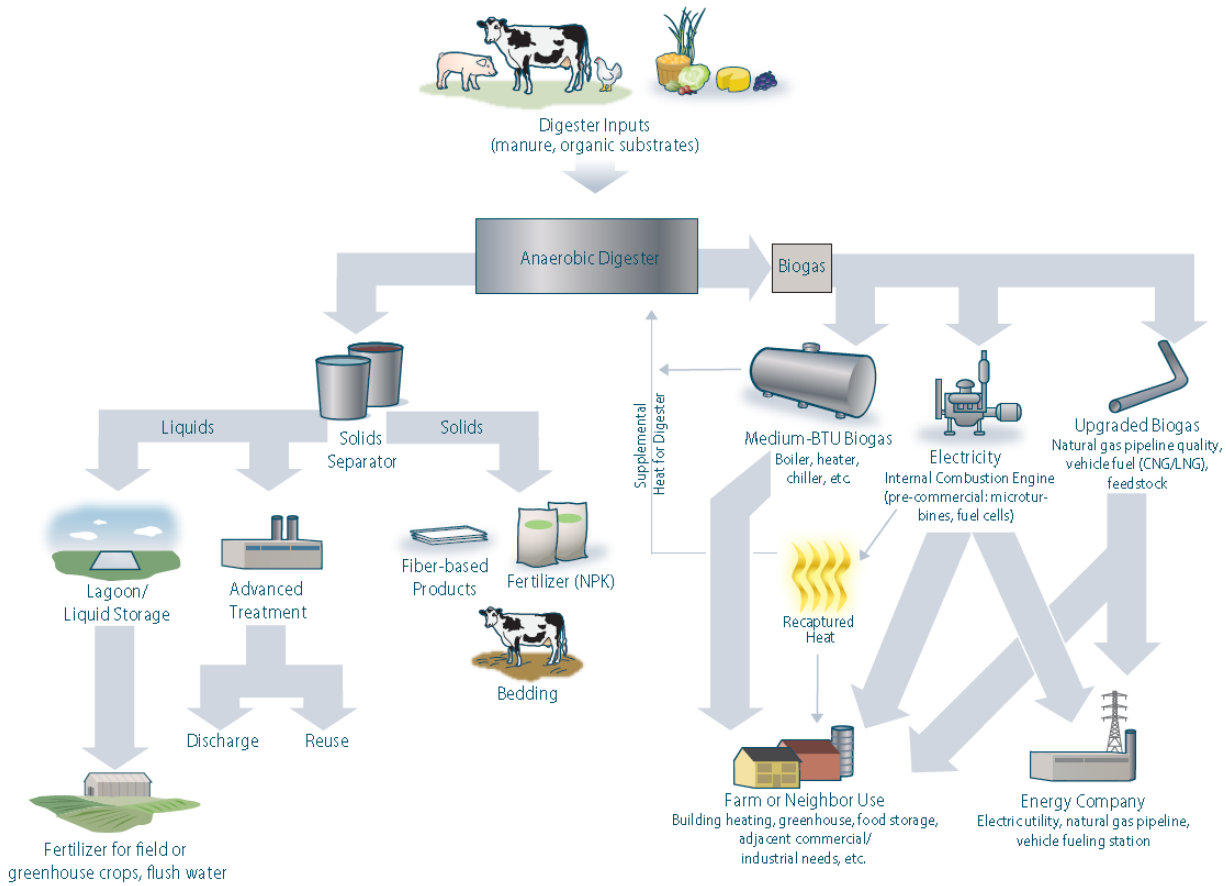
2013 Act 20 amended state law (sec. 70.111 (18), Wis. Stats.) to identify additional exempt energy systems. Eligible equipment and structures must directly convert biomass into biogas or synthetic gas. The equipment and any structure must be located at the same site to qualify for the exemption. Equipment and components that are part of a conventional energy system are not eligible for exemption.

Definitions:

- Biogas: a mixture of methane and carbon dioxide produced by the bacterial decomposition of organic wastes and used as a fuel
- Synthetic gas: a gas that qualifies as a renewable resource under state law (sec. 196.378 (1) (h) 1. h, Wis. Stats.). It is derived from biomass and other wastes. It is often referred to as a gaseous fuel derived from other solids such as plastics or rubber wastes

- Biomass: defined under section 45K (c) (3) of the Internal Revenue Code, as any organic material *other* than oil and natural gas (or any product thereof), and coal (including lignite) or any product thereof
- Synthetic gas cleaning equipment: removes multi contaminants in a bio-gas fuels compression system. The cleaning equipment removes outlet contamination concentrations when biogas is compressed. The feed materials used in these systems dictates the cleaning equipment installed
- Compression equipment: a compressor may be used to bubble collected gas back through the digester and to compress gas prior to combustion in gas generators
- Digester: directly converts biomass, as defined under section 45K (c) (3) of the Internal Revenue Code, into biogas or synthetic gas
- Anaerobic manure digesters: (methane digesters) collect manure and convert the energy stored in its organic matter into methane, which is used to produce energy (gas or electricity) for on-farm or off-farm use
- Biomass feedstock: any renewable, biological material that can be used directly as a fuel or converted to another form of fuel or energy product. They can include: corn starch, crop residues, purpose grown grass crops and woody plants

Basic Anaerobic Digester System Flow Diagram



Exempt Equipment

1. Generates electricity, heat, or compressed natural gas exclusively from biogas or synthetic gas.
2. Used exclusively for the direct transfer or storage of biomass, biogas or synthetic gas.

Examples of exempt equipment:
- Manure, substrate and other biomass feedstock collection and delivery systems
- Pumping and processing equipment
- Gasifiers and digester tanks
- Biogas and synthetic gas cleaning and compression equipment
- Fiber separation and drying equipment
- Heat recovery equipment

Exempt Structures

Must be used in one of these ways:
1. Exclusively to shelter or operate the equipment that converts biomass into biogas or synthetic gas
2. Portion used in part to shelter or operate the equipment that converts biomass into biogas or synthetic gas

Examples:
1. Taxable: a facility engaged in the production of ethanol (fermentation and distillation) from corn or other materials does not qualify as an "energy system" under state law (sec. 70.111(18), Wis. Stats.). However, this activity is typically classified as manufacturing. Manufacturing machinery and equipment used in the production process are exempt under state law (sec. 70.11(27), Wis. Stats.)
2. Exempt: anaerobic digesters utilizing whey products to generate methane gas
3. Exempt: anaerobic digesters utilizing manure to generate methane gas

The structure and all equipment are exempt if:

- All are located at the same site
- This includes manure, substrate, and other biomass feedstock collection and delivery systems.

Pumping and Processing Equipment		Fiber Separation

Fiber Separation		Gasifiers and Digester Tanks

Digesters		Fiber Separators and dryers are exempt

Fiber Separator Exempt

Complex Mix Digester		Plug-Flow Digester

Covered Lagoon Digester

Fiber Separators and Manufacturing Assessment

Dry organic materials and equipment used to bag value added materials sold for soil conditioners are not exempt. Since the sale of soil conditioners do not represent a predominant source of income for the operation, this portion is assessed locally.

Biogas/ Compressed Natural Gas (CNG)
Biogas converted to CNG (for transportation) fuel adds income to the digester operations. However, the income from electrical generation and tipping fees associated with treating materials taken in by the operation may exceed CNG sales. For this reason the Department of Revenue may not assess this portion of the operation as manufacturing since the predominant activity is not CNG production.

The local assessor must assess personal property directly associated with the sale and distribution of CNG auto fuels. The law exempts all equipment associated with the creation, compression and cleaning of methane gas, whether the gas is used for electrical power generation or as automotive fuel.

Local assessors must discover, list and value personal property associated to retail operations when CNG auto fuels are part of a commercial operation connected to or part of the digester facility.

BIO CNG System		CNG Pumps

Manufacturing Assessment
Operations that may qualify as a manufacturer under state law (sec. 70.995, Wis. Stats.) should contact the Manufacturing & Utility District Office before March 1 for the year requesting classification. These operations will be asked to write a letter explaining the operation or make an appointment with DOR staff to visit and discuss the operation.

Part 3: Exemption Sources

The following list includes statutory cites for referenced law in this chapter.

Wisconsin Statutes
1. Section 66.0435, Wis. Stats., Manufactured and Mobile Home Communities, https://docs.legis.wisconsin.gov/statutes/statutes/66/IV/0435
2. Section 70.109, Wis. Stats., Presumption of Taxability,

https://docs.legis.wisconsin.gov/statutes/statutes/70/109
3. Section 70.11, Wis. Stats., Property Exempted From Taxation, https://docs.legis.wisconsin.gov/statutes/statutes/70/11
4. Section 70.111, Wis. Stats., Personal Property Exempted From Taxation, https://docs.legis.wisconsin.gov/statutes/statutes/70/111
5. Section 70.112, Wis. Stats., Property Exempted from Taxation because of Special Tax, https://docs.legis.wisconsin.gov/statutes/statutes/70/112
6. Section 70.177, Wis. Stats., Federal Property, https://docs.legis.wisconsin.gov/statutes/statutes/70/177
7. Section 70.18, Wis. Stats., Personal Property, To Whom Assessed, https://docs.legis.wisconsin.gov/statutes/statutes/70/18
8. Section 70.42, Wis. Stats., Occupation Tax on Coal, https://docs.legis.wisconsin.gov/statutes/statutes/70/42
9. Section 70.421, Wis. Stats., Occupational Tax on Petroleum and Petroleum Products Refined in this State https://docs.legis.wisconsin.gov/statutes/statutes/70/421
10. Chapter 76, Wis. Stats., Taxation of Public Utilities and Insurers, https://docs.legis.wisconsin.gov/statutes/statutes/76
11. Section 77.02, Wis. Stats., Forest Croplands, https://docs.legis.wisconsin.gov/statutes/statutes/77/I/02
12. Section 77.04, Wis. Stats., Taxation, https://docs.legis.wisconsin.gov/statutes/statutes/77/I/04
13. Section 77.80, Wis. Stats., Managed Forest Land, https://docs.legis.wisconsin.gov/statutes/statutes/77/VI/80
14. Section 185.981, Wis. Stats., Cooperative Health Care, https://docs.legis.wisconsin.gov/statutes/statutes/185/981
15. Section 613.80, Wis. Stats., Hospital Service Insurance Corporations, https://docs.legis.wisconsin.gov/statutes/statutes/613/VI/80

Federal Statutes

1. 50 U.S.C. §574 https://www.gpo.gov/fdsys/pkg/USCODE-1995-title50/html/USCODE-1995-title50-app-soldiersa-dup1-sec574.htm
2. 12 U.S.C. §1714 https://www.gpo.gov/fdsys/pkg/USCODE-2011-title12/html/USCODE-2011-title12-chap13-subchapII-sec1714.htm
3. 42 U.S.C. §1490 https://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap8A-subchapIII-sec1490.htm
4. 39 U.S.C. §2005 https://www.gpo.gov/fdsys/pkg/USCODE-2007-title39/html/USCODE-2007-title39-partIII-chap20-sec2005.htm