

Property tax exemption for rental housing owned by non-profits

The City of Madison partners with non profit housing organizations to create and sustain affordable housing for people with disabilities who have very low household incomes. Over the years, the CDBG Commission and CDA have allocated millions for this purpose. The city tax assessor collaborated in this effort by routinely granting property tax exemptions to non profits that own and manage rental property reserved for very low income households. The tax exemption is absolutely necessary in order for non profit organizations to operate this housing with rents kept low to insure affordability. Recently, the tax assessor abruptly changed 25 years of policy and practice and said any new requests for necessary tax exemptions would be put on hold until an ambiguity in state law is resolved. This decision catches two households recently acquired by Movin' Out and puts the tenants—four very low income individuals whose disabilities and poverty make them quite vulnerable—at risk of displacement.

Background. Wisconsin Statutes section 70.11 provides, as it has for more than 25 years, that leasing a part of property that is otherwise tax exempt will not make it taxable “. . . if the lessor uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property, or both.” Definitions of “maintenance” and “construction debt retirement” are not provided in the statutes.

Most Low-Income Housing is financed with loans that did not directly pay for the buildings to be constructed. Either the buildings were purchased used, and the buyer got new loans to finance the purchase, or the buildings have been refinanced through the years. Municipalities have provided many of these loans.

New Position. Madison, Milwaukee, and other municipalities have recently taken the position that paying debt service on these loans from rent disqualifies the Low-Income Housing for property tax exemption. This is a change from the position Madison and Milwaukee took for more than 25 years. The debt service had been very reasonably considered to be either “maintenance” or “construction debt retirement”.

The new interpretation of old, established law will result in hundreds of Low-Income Housing units in Madison being subject to property taxation, when they have not been taxed in the past. Movin' Out and other non-profit rental providers do not believe this is an appropriate position for tax assessors to be taking, especially at the expense of low-income families.

Statutory Amendment. We recognize that the statute is not as clear as it could be. We fear that other municipalities might adopt this new interpretation of the statute, posing a serious threat to Low-Income Housing throughout Wisconsin. Adding the following language to the statute, just before the statutory language quoted in the second paragraph above, would remove that threat: “. . . : (1) if the leased property is operated as low income residential housing as provided in Secs. 3.01 and 3.02 of Internal Revenue Service Rev. Proc. 96-32; or (2)”