

Property Tax Exemption for Nonprofit Housing at Risk

The Wisconsin Supreme Court recently issued a decision in *Columbus Park Housing Corporation v. City of Kenosha*, Case No. 02-0699, which adversely affects the property tax exemption for many nonprofit organizations renting housing to the elderly and low income individuals and families. The Court held that when a nonprofit benevolent association makes its property available for rent to individuals, regardless of whether those rents are government subsidized or paid by the resident, the facility will be subject to property tax. The facility would not qualify for tax exemption under Wis. Stats. § 70.11 because it cannot fulfill the requirement that when an otherwise tax exempt facility is available for rent, the tenant must also qualify for exemption from property tax as if it owned the property. The Court noted, however, that its decision will not affect the tax exemption for facilities that charge fees for the primary and dominant purpose of providing services (such as nursing homes and continuing care facilities) as those residents are not lessees for purposes of § 70.11.

Background

Columbus Park is a non-stock, nonprofit corporation that acquires blighted property, rehabilitates the property and makes it available for rent to qualified low-income families under Section 8 of the Federal Fair Housing Act. Columbus Park charges its tenants rent equal to 30% of their income and receives subsidies from the federal government to achieve a specified rent for the unit. Columbus Park argued that it was entitled to property tax exemption as property owned and used exclusively by a benevolent association for the benevolent purpose of providing housing to low income individuals.

Although the City conceded the nonprofit status and benevolent purpose of Columbus Park, it refused to grant the exemption on the grounds that Columbus Park did not satisfy the "lessee identity condition" for exemption. That condition is based on the portion of the preamble in the statute which reads:

"Leasing a part of the property described in this section does not render it taxable if the lessor uses all of the leasehold income for maintenance of the leased property, construction debt retirement of the leased property or both and if the lessee would be exempt from taxation under this chapter if it owned the

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property." Wis. Stat § 70.11(intro). (Emphasis added).

Columbus Park argued that the lessee identity condition was intended to apply to leases for commercial purposes and should not apply to individuals who are themselves the objects of the benevolent association's benevolent activities. Further, Columbus Park warned the Court that if it were to interpret the preamble to § 70.11 literally, "severe consequences will result because a variety of property owned by benevolent organizations, including inter alia, nursing homes, summer camps and portions of hospitals dedicated to the treatment of drug and alcohol abuse would be denied tax exemptions."

The Court's Decision

The Supreme Court literally interpreted the language of the statute and held that because the tenants would not be exempt from property taxation if they owned the property, Columbus Park could not satisfy the lessee identity condition and did not qualify for exemption from property tax.

The Court was not persuaded by Columbus Park's slippery slope argument and distinguished facilities such as nursing homes, continuing care facilities and others which charge residents fees for the "primary and dominant purpose of the provision of services." The Court stated that residents in these facilities would not constitute "lessees" for the purpose of the exemption as there is no "lease" of the property. The Court did not explain how the test of whether a fee is for the "primary and dominant purpose of the provision of services" would be applied. Thus, it is not clear how this decision would apply to other entities that are not nursing homes or continuing care facilities but do have a significant service component for their fees.

The Court specifically said that its ruling is not a determination of whether low income housing or other facilities operated for benevolent purposes should receive a tax exemption but rather the ruling was a strict application of the law as written. It acknowledged that Columbus Park's efforts to serve the poor are indeed laudable. However, whether an organization should benefit from a tax exemption is a legislative policy decision and the Court is bound to strictly interpret tax exemption statutes. "This court has long held that it is the province of the legislature, not the courts, to determine public policy ... we must apply the statute as written, not interpret it as we think it should have been written." Thus, the Court left open the possibility of a legislative solution to address the adverse results of its decision.



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