

one person at least 55 years old. *Friendship Village Milwaukee v. Milwaukee*, 181 Wis. 2d 207, 511 N.W.2d 345 (Ct. App. 1993).

The legislature may not delegate the power to grant tax exemptions to a county board. *UW-LaCrosse Foundation v. Town of Washington*, 182 Wis. 2d 490, 513 N.W.2d 417 (Ct. App. 1994).

The determination of "land necessary for location and convenience of buildings" under sub. (4) is discussed. *Friendship Village v. Milwaukee*, 194 Wis. 2d 787, 535 N.W.2d 111 (Ct. App. 1995).

A youth soccer association failed to establish that it was substantially and primarily devoted to educational purposes. Although its program had educational elements, it was not entitled to tax exempt status as an educational association. *Kickers of Wisconsin, Inc. v. Milwaukee*, 197 Wis. 2d 675, 541 N.W.2d 193 (Ct. App. 1995).

No notice of claim under s. 893.80 is ever required on a claim arising from a county board determination under sub. (20) (d). *Little Sissabagama Lake Shore Owners Assoc. v. Town of Edgewater*, 208 Wis. 2d 259, 559 N.W.2d 914 (Ct. App. 1997).

Whether a clinic building is a "doctor's office" under sub. (4m) is not dependent on whether or not it is operated as part of a for-profit practice owned by physicians or as a nonprofit corporation. A clinic operated by a nonprofit corporation that contains offices for doctors, provides outpatient care only, and is open for regular business hours is a "doctors office." *St. Clare Hospital v. City of Monroe*, 209 Wis. 2d 364, 563 N.W.2d 170 (Ct. App. 1997).

The exemption under sub. (13m) will not be applied to reduce the value of a remaining taxable property not a part of the exempt archeological site. *Wrase v. City of Neenah*, 220 Wis. 2d 166, 582 N.W.2d 457 (Ct. App. 1998).

The exclusivity requirement under sub. (4) does not prohibit occasional commercial use. The question is how consequential the use is compared to the total use of the property. The party seeking the exemption must present more than "recollections" and "observations" of use. *Deutches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).

The sub. (4) exemption of up to 10 acres of land is tied to and follows from the exemption of buildings. It does not allow for the exemption of buildings necessary for the use of the land. *Deutches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).

Section 70.11 (intro.), and not s. 70.1105, applies if an exempt organization leases part of its property to a for-profit entity. Section 70.1105 applies when the exempt organization engages in for-profit activities. However the methodology for determining exemptions under each is the same. *Deutches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).

Revisions to subs. (4) and (4m) by 1995 Act 27 were constitutional. *Group Health Cooperative of Eau Claire v. DOR*, 229 Wis. 2d 846, 601 N.W.2d 1 (Ct. App. 1999).

Property that on the assessment date was wholly vacant and unoccupied, and on which no construction had commenced, was not being readied for a benevolent use and was properly determined as not being used exclusively for benevolent purposes under sub. (4). *Group Health Cooperative of Eau Claire v. DOR*, 229 Wis. 2d 846, 601 N.W.2d 1 (Ct. App. 1999).

In applying the exempt lessee condition in the section introduction, a housing authority that subsidized low-income tenant's rent payments to a benevolent organization property owner cannot be found to be the tenant, which as a governmental entity would be entitled to property tax exemption. Under the established legal definition of lessee, the lessees are the low-income individuals to whom the benevolent organization rents. *Columbus Park Housing Corp. v. City of Kenosha*, 2003 WI 143, 267 Wis. 2d 59, 671 N.W.2d 633, 02-0699.

The standard under *Sisters of Saint Mary* that properties that are "reasonably necessary" to the operation of an exempt use are also exempt is restricted to hospitals subject to sub. (4m). *UW Medical Foundation, Inc. v. City of Madison*, 2003 WI App 204, 267 Wis. 2d 504, 671 N.W.2d 292, 02-1473.

Benevolent ownership of property is not enough to satisfy sub. (4); benevolent use is also required. A property owner must detail its use of the property so that tax assessors know what type of activities, if any, are occurring on the property. Unsupported opinion testimony and generalized assertions about the purportedly benevolent use will not suffice. *UW Medical Foundation, Inc. v. City of Madison*, 2003 WI App 204, 267 Wis. 2d 504, 671 N.W.2d 292, 02-1473.

All provision of medical care is not "benevolent" merely because it makes the recipients better members of society by improving their physical and mental condition. A benevolent foundation that charged market rates for medical services, advertised extensively to promote them, and typically forbore collecting for its services only when accounts were deemed uncollectible was not engaged in a benevolent use of its clinic properties. *UW Medical Foundation, Inc. v. City of Madison*, 2003 WI App 204, 267 Wis. 2d 504, 671 N.W.2d 292, 02-1473.

For a claim under sub. (25) to survive summary judgment, the property owner must establish in the summary judgment record that there is, at a minimum, a factual dispute that the main purpose to which the properties were primarily devoted was one or more of medical research, physician education, or care for destitute individuals. *UW Medical Foundation, Inc. v. City of Madison*, 2003 WI App 204, 267 Wis. 2d 504, 671 N.W.2d 292, 02-1473.

The property tax exemption for pollution control facilities provided in sub. (21) (a) applies to pollution control facilities incorporated into new plants to be constructed, in addition to those installed to abate or eliminate existing pollution sources. 60 Atty. Gen. 154.

Standards for determining whether a nonprofit corporation qualifies for tax exempt status as a retirement home under sub. (4) are discussed. 66 Atty. Gen. 232.

Preferential tax treatment may not be given to any organization that discriminates on the basis of race. *Pitts v. Dept. of Revenue*, 333 F. Supp. 662.

The property tax exemption and nonprofit homes for the aged. 53 MLR 140.

Tax exemption and religious freedom. 54 MLR 385.

**70.1105 Taxed in part. (1)** 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 s. 70.11 (34).

**(2)** Property, excluding land, that is owned or leased by a corporation that provides services pursuant to 15 USC 79 to a light, heat, and power company, as defined under s. 76.28 (1) (e), that is subject to taxation under s. 76.28 and that is affiliated with the corporation shall be assessed for taxation at the portion of the fair market value of the property that is not used to provide such services.

**History:** 1997 a. 35 s. 243; 2001 a. 16.

Section 70.11 (intro.), and not s. 70.1105, applies if an exempt organization leases part of its property to a for-profit entity. Section 70.1105 applies if the exempt organization engages in for-profit activities. However the methodology for determining exemptions under each is the same. *Deutches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).

**70.111 Personal property exempted from taxation.** The property described in this section is exempted from general property taxes:

**(1) JEWELRY, HOUSEHOLD FURNISHINGS AND APPAREL.** Personal ornaments and jewelry, family portraits, private libraries, musical instruments other than pianos, radio equipment, household furniture, equipment and furnishings, apparel, motor bicycles, bicycles, and firearms if such items are kept for personal use by the owner and pianos if they are located in a residence.

**(2) ANIMALS.** Farm poultry, farm animals, bees and bee equipment and fur-bearing animals under 4 months of age and the hides and pelts of all farm and fur-bearing animals in the hands of the grower.

**(3) BOATS.** Watercraft employed regularly in interstate traffic, watercraft laid up for repairs, all pleasure watercraft used for recreational purposes, commercial fishing boats and equipment that is used by commercial fishing boats, charter sailboats and charter boats, other than sailboats, that are used for tours.

**(3m) CHARTER SPORT FISHING BOATS.** Motorboats, and the equipment used on them, which are regularly employed in carrying persons for hire for sport fishing in and upon the outlying waters, as defined in s. 29.001 (63), and the rivers and tributaries specified in s. 29.191 (5) (a) 1. and 2. if the owner and all operators are licensed under s. 29.512 or under s. 29.514 or both and by the U.S. coast guard to operate the boat for that purpose.

**(4) CROPS.** Growing and harvested crops, and the seed, fertilizer and supplies used in their production or handling, in the hands of the grower, including nursery stock and trees growing for sale as such, medicinal plants, perennial plants that produce an annual crop and plants growing in greenhouses or under hotbeds, sash or lath. This exemption also applies to trees growing for sale as Christmas trees.

**(5) FAMILY SUPPLIES.** Provisions and fuel to sustain the owner's family; but no person paying board shall be deemed a member of a family.

**(6) FEED.** Feed and feed supplements owned by the operator or owner of a farm and used in feeding on the farm and not for sale.

**(7) HORSES, ETC.** All horses, mules, wagons, carriages, sleighs, harnesses.

**(9) TOOLS AND GARDEN MACHINES.** The tools of a mechanic if those tools are kept and used in the mechanic's trade; and garden machines and implements and farm, orchard and garden tools if those machines, implements and tools are owned and used by any person in the business of farming or in the operation of any orchard or garden. In this subsection, "machine" has the meaning given in sub. (10) (a) 2.

**(10) FARM MACHINERY AND EQUIPMENT.** (a) In this subsection:

1. "Building" means any structure that is intended to be a permanent accession to real property; that is designed or used for sheltering people, animals or plants, for storing property or for working, office, parking, sales or display space, regardless of any contribution that the structure makes to the production process in it; that in physical appearance is annexed to that real property; that is covered by a roof or encloses space; that is not readily moved

or disassembled; and that is commonly known to be a building because of its appearance and because of the materials of which it is constructed.

2. "Machine" means an assemblage of parts that transmits force, motion and energy from one part to another in a predetermined manner.

(b) Tractors and machines; including accessories, attachments, fuel and repair parts for them; whether owned or leased, that are used exclusively and directly in farming; including dairy farming, agriculture, horticulture, floriculture and custom farming services; but not including personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement to real property and not including buildings or improvements to real property, regardless of any contribution that that personal property makes to the production process in them and regardless of the extent to which that personal property functions as a machine.

(c) For purposes of this subsection, the following items retain their character as tangible personal property, regardless of the extent to which they are fastened to, connected to or built into real property:

1. Auxiliary power generators.
2. Bale loaders.
3. Barn elevators.
4. Conveyors.
5. Feed elevators and augers.
6. Grain dryers and grinders.
7. Milk coolers.
8. Milking machines; including piping, pipeline washers and compressors.
9. Silo unloaders.
10. Powered feeders, but not including platforms or troughs constructed from ordinary building materials.

(11) **CHEESE.** Natural cheese owned by the Wisconsin primary manufacturer or by any other person while in storage for the purpose of further aging in preparation for cutting, packaging or other processing.

(14) **MILKHOUSE EQUIPMENT.** Milkhouse equipment used by a farmer, including mechanical can coolers, bulk tanks and hot water heaters. This exemption shall apply whether such equipment is deemed personal property or is so affixed to the realty as to be classified in the category of real estate.

(17) **MERCHANTS' STOCK-IN-TRADE; MANUFACTURERS' MATERIALS AND FINISHED PRODUCTS; LIVESTOCK.** As of January 1, 1981, merchants' stock-in-trade, manufacturers' materials and finished products and livestock.

(18) **SOLAR AND WIND ENERGY SYSTEMS.** Solar energy systems and wind energy systems. In this subsection, "solar energy system" means equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy, but does not include equipment or components that would be present as part of a conventional energy system or a system that operates without mechanical means. In this subsection, "wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy, but does not include equipment or components that would be present as part of a conventional energy system.

**Cross Reference:** See also s. Tax 12.50, Wis. adm. code.

(19) **CAMPING TRAILERS AND RECREATIONAL MOBILE HOMES.** (a) Camping trailers as defined in s. 340.01 (6m).

(b) Mobile homes, as defined in s. 66.0435, that are no larger than 400 square feet and that are used primarily as temporary living quarters for recreational, camping, travel or seasonal purposes.

(20) **LOGGING EQUIPMENT.** All equipment used to cut trees, to transport trees in logging areas or to clear land of trees for the commercial use of forest products.

(21) **STRUCTURES FOR GINSENG.** Any temporary structure in the hands of a grower of ginseng used or designed to be used to provide shade for ginseng plants.

(22) **RENTED PERSONAL PROPERTY.** Personal property held for rental for periods of one month or less to multiple users for their temporary use, if the property is not rented with an operator, if the owner is not a subsidiary or affiliate of any other enterprise which is engaged in any business other than personal property rental, if the owner is classified in group number 735, industry number 7359 of the 1987 standard industrial classification manual published by the U.S. office of management and budget and if the property is equipment, including construction equipment but not including automotive and computer-related equipment, television sets, video recorders and players, cameras, photographic equipment, audiovisual equipment, photocopying equipment, sound equipment, public address systems and video tapes; party supplies; appliances; tools; dishes; silverware; tables; or banquet accessories.

(23) **VENDING MACHINES.** All machines that automatically dispense soda water beverages, as defined in s. 97.29 (1) (i), and items included as a food or beverage under s. 77.54 (20) (a) and (b) upon the deposit in the machines of specified coins or currency, or insertion of a credit card, in payment for the soda water beverages, food or beverages.

(24) **MOTION PICTURE THEATER EQUIPMENT.** Projection equipment, sound systems and projection screens that are owned and used by a motion picture theater.

(25) **DIGITAL BROADCASTING EQUIPMENT.** Digital broadcasting equipment owned and used by a radio station, television station, or cable television system, as defined in s. 66.0419 (2) (d).

**History:** 1971 c. 315; 1973 c. 90; 1973 c. 336 s. 36; 1975 c. 39, 224; 1977 c. 29 ss. 746, 1646 (2), (3), (4); 1977 c. 142, 273; 1979 c. 3, 199, 349; 1981 c. 20, 221; 1983 a. 27 ss. 1179 to 1179m; 1983 a. 88, 201, 243, 276; 1985 a. 29; 1987 a. 387, 399; 1989 a. 31; 1991 a. 269; 1993 a. 85; 1995 a. 27; 1997 a. 248; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 30, 105.

Personal property held out for rental is not "stock-in-trade" under sub. (17). *Menomonee Falls v. Falls Rental World*, 135 Wis. 2d 393, 400 N.W.2d 478 (Ct. App. 1986).

Farm machinery, which is also a fixture, is not personal property eligible for exemption under sub. (9). *Pulsfus v. Town of Leeds*, 149 Wis. 2d 797, 440 N.W.2d 329 (1989).

"Interstate traffic" in sub. (3) means interstate commerce; what constitutes a boat in interstate commerce is discussed. *Town of LaPointe v. Madeline Island Ferry*, 179 Wis. 2d 726, 508 N.W.2d 440 (Ct. App. 1993).

A mobile home is an improvement to real property under s. 70.043 (1) when the home is resting for more than a temporary time, in whole or in part, on some other means of support than its wheels, but a mobile home may be personal property and exempt under s. (19) (b) although it may have some weight off its wheels. *Ahrens v. Town of Fulton*, 2002 WI 29, 251 Wis. 2d 135, 641 N.W.2d 423.

In applying sub. (20), the use of the equipment rather than the primary purpose of the underlying business is the determining factor in deciding whether equipment is exempt from taxation. De minimis uses of the property are not sufficient to invoke this exemption. *Village of Lannon v. Wood-Land Contractors, Inc.* 2003 WI 150, 267 Wis. 2d 158, 672 N.W.2d 275, 02-0236.

**70.112 Property exempted from taxation because of special tax.** The property described in this section is exempted from general property taxes:

(1) **MONEY AND INTANGIBLE PERSONALTY.** Money and all intangible personal property, such as credit, checks, share drafts, other drafts, notes, bonds, stocks and other written instruments.

(4) **SPECIAL PROPERTY AND GROSS RECEIPTS TAXES OR LICENSE FEES.** (a) All special property assessed under ss. 76.01 to 76.26 and property of any light, heat, and power company taxed under s. 76.28, car line company, and electric cooperative association that is used and useful in the operation of the business of such company or association. If a general structure for which an exemption is sought under this section is used and useful in part in the operation of any public utility assessed under ss. 76.01 to 76.26 or of the business of any light, heat, and power company taxed under s. 76.28, car line company, or electric cooperative association and in part for nonoperating purposes of the public utility or company or association, that general structure shall be assessed for taxation under this chapter at the percentage of its full market value that