Chapter 21

Legal Review of 2010 – 2011 Court Decisions

The following cases relevant to assessors were decided by Wisconsin appellate courts and presented at the Department of Revenue Assessor Schools. For details or clarification, the assessor should refer to the actual court documents, consult with the municipal attorney, or contact their District Equalization Office.

Wisconsin Supreme Court

None

Wisconsin Court of Appeals

Beaver Dam Community Hospitals, Inc. v. City of Beaver Dam. Wisconsin Court of Appeals, 2012 WI App 102, 344 Wis. 2d 278, ___ N.W.2d___. Petition for review was filed September 24, 2012.

WHAT ASSESSORS SHOULD KNOW:

The law does not require facilities licensed under Ch. 50, Wis. Stats. (e.g. hospitals, hospices, nursing homes, community-based residential facilities and certain other facilities) that are owned by a nonprofit to be used for benevolent activities in order to qualify for an exemption under. § 70.11(4)(a). **However, the City of Beaver Dam has asked the Wisconsin Supreme Court to review this ruling.**

THE COURT'S REASONING:

In 2009 and 2010, the City of Beaver Dam assessed taxes on real and personal property used for Eagle's Wings, a community-based residential facility licensed under Chapter 50 of the Wisconsin Statutes and owned by a tax-exempt nonprofit corporation, the Beaver Dam Community Hospitals. The hospital contested the assessments and sought a refund of taxes paid, asserting that the facility was exempt under sec. 70.11(4)(a), as a Chapter 50 facility owned by a nonprofit entity. The circuit court agreed with the hospital, and the City appealed.

On appeal, the City argued that the exemption applied only to benevolent associations. Because there was no showing of "benevolent use" of the facility, the City asserted it was not exempt. The Court of Appeals rejected this argument.

Section 70.11(4)(a) exempts:

> Property owned and used exclusively by churches or religious, educational or benevolent associations, *or by a nonprofit entity that is operated as a facility that is licensed, certified, or registered under ch. 50,* including benevolent nursing homes but not exceeding 10 acres of land necessary for location and convenience of buildings while such property is not used for profit.

The court found that the plain language of the statute meant that no benevolence was required of entities licensed under Chapter 50. The 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.