

# CITY OF MILWAUKEE



**OFFICE OF CITY ATTORNEY**  
 800 CITY HALL  
 200 EAST WELLS STREET  
 MILWAUKEE, WISCONSIN 53202-3551  
 TELEPHONE (414) 286-2601  
 TDD 286-2025  
 FAX (414) 286-8550

**GRANT F. LANGLEY**  
 City Attorney

**RUDOLPH M. KONRAD**  
 Deputy City Attorney

**PATRICK B. McDONNELL**  
**LINDA ULISS BURKE**  
 Special Deputy City Attorneys

BEVERLY A. TEMPLE  
 THOMAS O. GARTNER  
 BRUCE D. SCHRIMPF  
 ROXANE L. CRAWFORD  
 SUSAN D. BICKERT  
 HAZEL MOSLEY  
 HARRY A. STEIN  
 STUART S. MUKAMAL  
 THOMAS J. BEAMISH  
 MAURITA F. HOUREN  
 JOHN J. HEINEN  
 MICHAEL G. TOBIN  
 DAVID J. STANOSZ  
 SUSAN E. LAPPEN  
 DAVID R. HALBROOKS  
 JAN A. SMOKOWICZ  
 PATRICIA A. FRICKER  
 HEIDI WICK SPOERL  
 KURT A. BEHLING  
 GREGG C. HAGOPIAN  
 ELLEN H. TANGEN  
 MELANIE R. SWANK  
 JAY A. UNORA  
 DONALD L. SCHRIEFER  
 EDWARD M. EHRlich  
 LEONARD A. TOKUS  
 MIRIAM R. HORWITZ  
 MARYNELL REGAN  
 G. O'SULLIVAN-CROWLEY  
 DAWN M. BOLAND

Assistant City Attorneys

July 9, 2003

Alderman Michael S. D'Amato  
 Third Aldermanic District  
 City Hall, Room 205

Re: American Society for Quality Property Tax Refund Claim

Dear Alderman D'Amato:

During a meeting with Attorneys Margaret Derus and Barbara Boxer, Commissioner Mary Reavey, Chief Assessor Pete Weissenfluh and myself, I received a copy of a letter sent to you by Attorney Derus dated June 25, 2003, after she knew that our office was involved in this matter. In fact, the City Attorney's office was not even copied on the letter. We take this opportunity to rebut Attorney Derus' argument.

American Society for Quality (ASQ) applied for an exemption under §70.11, Stats. If ASQ timely applied and could prove entitlement to an exemption per §70.11, Stats., then ASQ would be granted the exemption. ASQ did not prove entitlement; therefore, the Assessor's Office denied the exemption. ASQ then filed a claim to recover the amount of taxes paid for the tax year 2002 pursuant to §74.35, Stats. Section 74.35, Stats., provides that a "person aggrieved by the levy and collection of an unlawful tax assessed against his or her property may file a claim to recover the unlawful tax against the taxation district which collected the tax." The Assessor's Office maintained that ASQ is not a tax-exempt entity and did not honor the claim.

Attorney Derus perverts the meaning of §74.35, Stats., in stating that: "The City Council has the authority to independently determine whether property should be granted exempt status." Section 74.35(3)(c) provides:

If the governing body of the taxation district determines that an unlawful tax has been paid and that the claim for recovery of the unlawful tax has complied with

Alderman Michael S. D'Amato

Page 2

July 9, 2003

all legal requirements, the governing body shall allow the claim. The taxation district treasurer shall pay the claim not later than 90 days after the claim is allowed.


The plain language provides that the council may refund unlawful taxes that have been paid (i.e., if ASQ overpaid taxes, the Common Council can refund the overpayment, or, if the property owner proves entitlement to a tax exemption, and the Assessor's Office reverses its position and exempts the property, the Common Council can refund the taxes). The Common Council does not grant exemptions, it refunds unlawful taxes. The matter of a tax exemption is a matter of law.

ASQ may commence a circuit court action to recover the amount of the claim not allowed. If there are any questions, please feel free to call the undersigned.

Very truly yours,



GRANT F. LANGLEY  
City Attorney



GENEVIEVE O'SULLIVAN-CROWLEY  
Assistant City Attorney

GOS:wt:69775  
1056-2003-1884

- c. Margaret M. Derus  
Barbara K. Boxer  
Chief Assessor, Pete Weissenfluh  
Commissioner Mary Reavey

reinhardt.com



June 25, 2003

Margaret M. Derus, Esq.  
Direct Dial: 414-298-8304

SENT BY FACSIMILE

Alderman Michael S. D'Amato  
City of Milwaukee  
City Hall  
200 East Wells Street  
Milwaukee, WI 53202

Dear Alderman D'Amato:

Re: American Society for Quality  
Property Tax Refund Claim

A question has arisen regarding the City Council's role in acting on claims for refund of property taxes based on the exempt status of property in the City of Milwaukee. The Wisconsin legislature has granted the authority to the City Council to act on those determinations.

Under Wis. Stats. § 74.35 a person aggrieved by the levy and collection of an unlawful tax assessed against his property may file a claim to recover that tax with the City. I am attaching a copy of the statute for your reference. An unlawful tax includes a dispute as to whether property is exempt from property tax. The governing body (in this case the City Council) is given the authority to make a determination that the tax is unlawful (*i.e.*, the property is tax exempt), that the tax has been paid and that the claim for refund is to be paid. *See* Wis. Stats. § 74.35(3)(c). The City Council is not required to defer to the City Assessor's Office in making its determination.

The City Council's authority in the statute is also logical. The law is designed to allow the City Council to take action on a claim based on its own determination that the City Assessor's Office erred in deciding that property was not exempt. If this statute did not exist, the only recourse open to the property owner would be to file an action in circuit court and embroil the City in litigation before the City's governing

P.O. Box 2965, Milwaukee, WI 53201-2965 • 1000 North Water Street, Suite 2100, Milwaukee, WI 53202  
Telephone: 414-298-1000 • Facsimile: 414-298-8097 • Toll Free: 800-553-6215

Madison, WI • Telephone: 608-229-2200 • Toll Free: 800-728-6239  
Waukesha, WI • Telephone: 262-951-4500 • Toll Free: 800-928-5529

Alderman Michael S. D'Amato

June 25, 2003

Page 2

body has an opportunity to resolve the dispute. Thus, it is clear that the City Council has the authority to independently determine whether property should be granted exempt status and to grant a refund of property taxes paid on the exempt property.

I would be happy to answer any other questions you may have in regard to these provisions.

Thank you for your consideration.

Yours very truly,



Margaret M. Derus

MW\993238MMD:LAC

Enc.

cc Barbara K. Boxer, Esq. (w/enc.)

2025 01-02 Wis. Stats.

## PROPERTY TAX COLLECTION 74.35

(d) Retain all collections of omitted property taxes under s. 70.44.

(dm) Pay to each taxing jurisdiction within the district its proportionate share of the taxes and interest under s. 70.995 (12) (a).

(e) Pay to the state treasurer all collections of occupational taxes on milk farms, 30% of collections of occupational taxes on iron ore concentrates and 10% of collections of occupational taxes on coal docks.

(f) Pay to the county treasurer 20% of collections of occupational taxes on coal docks, 20% of collections of the taxes imposed under ss. 77.04 and 77.84 (2) (a) and all collections of payments for closed lands under s. 77.84 (2) (b).

(g) Retain for the taxation district all collections of occupational taxes on grain storage and petroleum and petroleum products and 70% of collections of occupational taxes on iron ore concentrates and coal docks.

(h) Retain for the taxation district all woodland tax law collections under s. 77.16 and 80% of collections of the taxes imposed under ss. 77.04 and 77.84 (2) (a).

(i) Pay in full to each taxing jurisdiction within the district all personal property taxes included in the tax roll which have not previously been paid to, or retained by, each taxing jurisdiction, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district its proportionate share of personal property taxes.

(j) Pay to each taxing jurisdiction within the district its proportionate share of real property taxes, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district its proportionate share of real property taxes.

(1m) MARCH SETTLEMENT BETWEEN COUNTIES AND THE STATE. On or before March 15, the county treasurer shall send to the state treasurer the state's proportionate shares of taxes under sub. (1) (i) and (j).

(2) SUBSEQUENT SETTLEMENTS. On or before the 15th day of each month following the month in which an installment payment of real property taxes is required by the ordinance, the taxation district treasurer shall do all of the following:

(a) Pay to the proper treasurer all collections of delinquent special assessments, special charges and special taxes not previously settled for, as directed by sub. (1) (a) to (h).

(b) Pay to each taxing jurisdiction within the district its proportionate share of real property taxes collected, except that the taxation district treasurer shall pay the state's proportionate share to the county, and the county treasurer shall settle for that share under s. 74.29. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district its proportionate share of real property taxes.

(3) APPROVAL OF PAYMENT NOT REQUIRED. The taxation district treasurer shall make payments required under subs. (1) and (2) whether or not the governing body of the taxation district has approved those payments. Following a payment required under subs. (1) and (2), the taxation district treasurer shall prepare and transmit a voucher for that payment to the governing body of the taxation district.

History: 1987 a. 378; 1991 a. 39; 1995 a. 408; 2001 a. 16.

**74.31 Failure to settle timely.** If the taxation district treasurer or county treasurer does not settle as required under ss. 74.23 to 74.30:

(1) INTEREST CHARGE. The taxation district or county which has not settled shall pay 12% annual interest on the amount not timely paid to the taxing jurisdiction, including this state, to which money is due, calculated from the date settlement was required.

(2) PENALTY. The taxing jurisdiction, including this state, to which money is due may demand, in writing, payment from the

taxation district or county which has not settled. If, within 3 days after receipt of a written demand, settlement is not made, the taxation district or county shall pay the taxing jurisdiction, including this state, making the demand a 5% penalty on the amount remaining unpaid.

History: 1987 a. 387; 1991 a. 39.

## SUBCHAPTER V

## ADJUSTMENT

**74.33 Sharing and charging back of taxes due to palpable errors.** (1) **GROUNDS.** After the tax roll has been delivered to the treasurer of the taxation district under s. 74.03, the governing body of the taxation district may refund or rescind in whole or in part any general property tax shown in the tax roll, including agreed-upon interest, if:

(a) A clerical error has been made in the description of the property or in the computation of the tax.

(b) The assessment included real property improvements which did not exist on the date under s. 70.10 for making the assessment.

(c) The property is exempt by law from taxation, except as provided under sub. (2).

(d) The property is not located in the taxation district for which the tax roll was prepared.

(e) A double assessment has been made.

(f) An arithmetic, transpositional or similar error has occurred.

(2) **EXCEPTIONS.** The governing body of a taxation district may not refund or rescind any tax under this section if the alleged error may be appealed under s. 70.995 (8) (c) or if the alleged error is solely that the assessor placed a valuation on the property that is excessive.

(3) **CHARGING BACK AND SHARING TAXES.** If an error under sub. (1) has been discovered, the governing body of the taxation district shall proceed under s. 74.41.

History: 1987 a. 378; 1991 a. 39; 1993 a. 307; 1995 a. 408.

A potential error in classifying a mobile home as real, not personal, property was not a clerical error under sub. (1) (a), nor could it be considered to be the inclusion of a real property improvement that did not exist under sub. (1) (b), as the property did exist. *Aidrens v. Town of Fulton*, 2000 WI App. 268, 240 Wis. 2d 124, 621 N.W.2d 643. Affirmed on other grounds, 2002 WI 29, 251 Wis.2d 135, 641 N.W.2d 423.

**74.35 Recovery of unlawful taxes.** (1) **DEFINITIONS.** In this section "unlawful tax" means a general property tax with respect to which one or more errors specified in s. 74.33 (1) (a) to (f) were made. "Unlawful tax" does not include a tax in respect to which the alleged defect is solely that the assessor placed a valuation on the property that is excessive.

(2) **CLAIM AGAINST TAXATION DISTRICT.** (a) A person aggrieved by the levy and collection of an unlawful tax assessed against his or her property may file a claim to recover the unlawful tax against the taxation district which collected the tax.

(b) A claim filed under this section shall meet all of the following conditions:

1. Be in writing.
2. State the alleged circumstances giving rise to the claim, including the basis for the claim as specified in s. 74.33 (1) (a) to (e).
3. State as accurately as possible the amount of the claim.
4. Be signed by the claimant or his or her agent.
5. Be served on the clerk of the taxation district in the manner prescribed in s. 801.11 (4).

(2m) **EXCLUSIVE PROCEDURE.** A claim that property is exempt, other than a claim that property is exempt under s. 70.11 (21) (a) or (27), may be made only in an action under this section. Such a claim may not be made by means of an action under s. 74.33 or an action for a declaratory judgment under s. 806.04.

(3) **ACTION ON CLAIM.** (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail

**74.35 PROPERTY TAX COLLECTION**

01-02 Wis. Stats. 2026

to take final action on the claim within 90 days after the claim is filed.

(b) The taxation district shall notify the claimant by certified or registered mail whether the claim is allowed or disallowed within 90 days after the claim is filed.

(c) If the governing body of the taxation district determines that an unlawful tax has been paid and that the claim for recovery of the unlawful tax has complied with all legal requirements, the governing body shall allow the claim. The taxation district treasurer shall pay the claim not later than 90 days after the claim is allowed.

(d) If the taxation district disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by certified or registered mail that the claim is disallowed.

(4) **INTEREST.** The amount of a claim filed under sub. (2) or an action commenced under sub. (3) may include interest computed from the date of filing the claim against the taxation district, at the rate of 0.8% per month.

(5) **LIMITATIONS ON BRINGING CLAIMS.** (a) Except as provided under par. (b), a claim under this section shall be filed by January 31 of the year in which the tax is payable.

(b) A claim under this section for recovery of taxes paid to the wrong taxation district shall be filed within 2 years after the last date specified for timely payment of the tax under s. 74.11, 74.12 or 74.87.

(c) No claim may be filed or maintained under this section unless the tax for which the claim is filed, or any authorized installment payment of the tax, is timely paid under s. 74.11, 74.12 or 74.87.

(d) No claim may be made under this section based on the contention that the tax was unlawful because the property is exempt from taxation under s. 70.11 (21) (a) or (27).

(6) **COMPENSATION FOR TAXATION DISTRICT.** If taxes are refunded under sub. (3), the governing body of the taxation district may proceed under s. 74.41.

History: 1987 a. 378; 1989 a. 104; 1991 a. 39; 1997 a. 237.

**74.37 Claim on excessive assessment. (1) DEFINITION.** In this section, a "claim for an excessive assessment" or an "action for an excessive assessment" means a claim or action, respectively, by an aggrieved person to recover that amount of general property tax imposed because the assessment of property was excessive.

(2) **CLAIM.** (a) A claim for an excessive assessment may be filed against the taxation district, or the county that has a county assessor system, which collected the tax.

(b) A claim filed under this section shall meet all of the following conditions:

1. Be in writing.
2. State the alleged circumstances giving rise to the claim.
3. State as accurately as possible the amount of the claim.
4. Be signed by the claimant or his or her agent.
5. Be served on the clerk of the taxation district, or the clerk of the county that has a county assessor system, in the manner prescribed in s. 801.11 (4) by January 31 of the year in which the tax based upon the contested assessment is payable.

(3) **ACTION ON CLAIM.** (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail to take final action on the claim within 90 days after the claim is filed.

(b) The taxation district or county that has a county assessor system shall notify the claimant by certified or registered mail whether the claim is allowed or disallowed within 90 days after the claim is filed.

(c) If the governing body of the taxation district or county that has a county assessor system determines that a tax has been paid which was based on an excessive assessment, and that the claim

for an excessive assessment has complied with all legal requirements, the governing body shall allow the claim. The taxation district or county treasurer shall pay the claim not later than 90 days after the claim is allowed.

(d) If the taxation district or county disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by certified or registered mail that the claim is disallowed.

(4) **CONDITIONS.** (a) No claim or action for an excessive assessment may be brought under this section unless the procedures for objecting to assessments under s. 70.47, except under s. 70.47 (13), have been complied with. This paragraph does not apply if notice under s. 70.365 was not given.

(b) No claim or action for an excessive assessment may be brought or maintained under this section unless the tax for which the claim is filed, or any authorized installment of the tax, is timely paid under s. 74.11 or 74.12.

(c) No claim or action for an excessive assessment may be brought or maintained under this section if the assessment of the property for the same year is contested under s. 70.47 (13) or 70.85. No assessment may be contested under s. 70.47 (13) or 70.85 if a claim is brought and maintained under this section based on the same assessment.

(5) **INTEREST.** The amount of a claim filed under sub. (2) or an action commenced under sub. (3) may include interest computed from the date of filing the claim against the taxation district, at the rate of 0.8% per month.

(6) **EXCEPTION.** This section does not apply in counties with a population of 500,000 or more.

**NOTE:** The supreme court in *Hankin v. Village of Shorewood*, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141, held sub. (6) to be unconstitutional and severed from the remainder of the statute.

(7) **COMPENSATION.** If taxes are refunded under sub. (3), the governing body of the taxation district or county that has a county assessor system may proceed under s. 74.41.

History: 1987 a. 378; 1989 a. 104; 1993 a. 292p 1995 a. 408.  
Sections 70.47 (13), 70.85 and 74.37 provide the exclusive method to challenge a municipality's bases for assessment of individual parcels. All require appeal to the board of review prior to court action. There is no alternative procedure to challenge an assessment's compliance with the uniformity clause. *Hermann v. Town of Delavan*, 215 Wis. 2d 370, 572 N.W.2d 855 (1998).

Claimants who never received notice of a changed assessment under s. 70.365 were exempt from the obligation to proceed before the board of review. However, they were required to meet the January 31 filing date in sub. (2), regardless of the fact that they never received the notice. *Reese v. City of Pewaukee*, 2002 WI App 67, 252 Wis. 2d 361, 642 N.W.2d 596.

**74.39 Court-ordered reassessment. (1) COURT MAY ORDER.** Except as provided in sub. (3), in any action under s. 74.35 (3) or 74.37 (3), if the court determines that a reassessment of the property upon which the taxes were paid is necessary, the court, before entering judgment, shall continue the action to permit reassessment of the property. If, based on the reassessment, the court determines that the amount of taxes paid by the plaintiff is not excessive, judgment shall be entered for the defendant. If, based on the reassessment, the court determines that the amount of taxes paid by the plaintiff is excessive, judgment shall be entered for the plaintiff for the amount of the excessive taxes paid.

(2) **CHALLENGE OF REASSESSMENT.** The validity of a reassessment under sub. (1) may be challenged under s. 75.54. A reassessment under s. 75.54 shall be made by the assessor of the assessment district in which the property to be reassessed is located.

(3) **EXCEPTION.** The court may proceed to judgment without ordering a reassessment under sub. (1), if the court finds that to do so is in the best interests of all parties to the action and if the court is able to determine the amount of unlawful taxes with reasonable certainty.

History: 1987 a. 378.

**74.41 Charging back refunded or rescinded taxes; sharing certain collected taxes. (1) SUBMISSION OF REFUNDED OR RESCINDED TAXES TO DEPARTMENT.** By October 1 of each year, the clerk of a taxation district may submit to the depart-