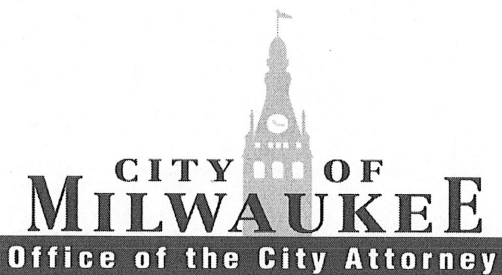


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December 17, 2019

To the Honorable Common Council
of the City of Milwaukee
Room 205 – City Hall

Re: Resolution authorizing the denial of Saint John’s Communities
LLC’s claim of alleged unlawful tax

Dear Council Members:

Enclosed please find a resolution recommending denial of the above-referenced claim, which we ask be introduced and referred to the Committee on Judiciary and Legislation with the following recommendation.

On November 8, 2019, Saint John’s Communities LLC (“Saint John’s”) filed a claim against the City, pursuant to Wis. Stat. § 74.35, seeking a refund of an alleged unlawful tax imposed on its property for tax year 2019 in the amount of \$480,000. Saint John’s believed the tax was unlawfully imposed on its property because its newly constructed residential tower was exempt.

We advised Saint John’s that its claim for unlawful tax was premature. Pursuant to Wis. Stat. § 74.35, a claim for unlawful tax may only be filed against the City if a taxpayer is “aggrieved by the levy and collection of an unlawful tax.” Wis. Stat. § 74.35(2)(a). At the time Saint John’s filed its claim against the City, the City had not yet levied or collected any purported unlawful tax from Saint John’s for tax year 2019. Further, and also pursuant to Wis. Stat. § 74.35, “[n]o claim may be filed or maintained under this section [Wis. Stat. 74.35] unless the tax for which the claim is filed or any authorized installment payment of the tax, is timely paid.” Wis. Stat. § 74.35(5)(c). Here, again, Saint John’s had not yet paid any tax for 2019. Pursuant to statute, Saint John’s claim could not be filed or maintained.

On December 5, 2019, Saint John’s filed a second claim against the City, pursuant to Wis. Stat. § 74.35, seeking the same refund of an alleged unlawful tax imposed on its property for tax year 2019 in the amount of \$480,000. Saint John’s again alleged the tax was unlawful because its newly constructed residential tower was



exempt. This time Saint John's alleged its claim was timely pursuant to Wis. Stat. § 74.33.

However, Saint John's Wis. Stat. § 74.35 claim for unlawful tax continues to be premature. As stated previously, Wis. Stat. § 74.35(5)(c) requires the contested tax to be paid *before* a taxpayer may contend its taxes were unlawful on the basis that its property was exempt. Saint John's has not paid any tax for the 2019 tax year. Further, Saint John's reliance on Wis. Stat. § 74.33 to assert its claim is timely is misplaced. Wisconsin Stat. § 74.35(2m) is titled "EXCLUSIVE PROCEDURE," and provides, in relevant part: "A claim that a property is exempt ... may be made only in an action under this section [Wis. Stat. § 74.35]. *Such a claim may not be made by means of an action under s. 74.33*" (Emphasis added). Pursuant to statute, Saint John's current claim cannot be filed or maintained against the City because Saint John's has not yet paid the alleged unlawful tax.


In any event, even assuming Saint John's claim was not deficient, Saint John's newly constructed residential tower would be taxable for tax year 2019 because, pursuant to Wis. Stat. § 70.11, Saint John's failed to timely file an application for exemption.

In consultation with the City Assessor, the City Attorney now recommends denial of Saint John's claim of alleged unlawful tax.

Very truly yours,



GRANT F. LANGLEY
City Attorney



ALLISON N. FLANAGAN
Assistant City Attorney

ANF/mal