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Wisconsin Legislature Considering Significant Changes to Property Tax Assessment Objection Procedure and Judicial Review

On Wednesday December 5, 2007 at 10:00 a.m., the Wisconsin State Senate Committee on Tax Fairness & Family Prosperity will hold a hearing on proposed changes to the current procedure for taxpayer challenges to property tax assessments that would significantly curtail a taxpayer's ability to challenge an assessment. The hearing will be held in the State Capitol Building, Room 411 South.

Currently, Wisconsin taxpayers other than manufacturers (who are assessed by the State Department of Revenue) have two principal avenues available to challenge a local property tax assessment — the objection and certiorari review procedure under Section 70.47, Wis. Stats., or a claim for recovery of an excessive assessment under Section 74.37, Wis. Stats. Both avenues require the taxpayer to first file an objection to the assessment and participate in a hearing before the local board of review. Court review of the board's determination under the Section 70.47 certiorari review procedure is limited to a review of the record evidence presented before the board, with the court giving the decision of the board substantial deference. Review under Section 74.37, on the other hand, permits a taxpayer to challenge the assessment anew on any grounds in a refund action filed in circuit court, regardless of the evidence previously submitted to the board. Under the refund procedure, the court is not required to give the board of review's prior decision any deference. From a taxpayer's perspective, bringing an excessive assessment claim followed by a refund action under Section 74.37 may have significant advantages over seeking certiorari review of a board of review's determination under Section 70.47 where, for example, the taxpayer did not have the opportunity to obtain a certified appraisal or compile other evidence prior to the board of review hearing, or where the valuation and other issues are beyond the board's expertise.

2007 Senate Bill 329 and its counterpart, 2007 Assembly Bill 580, would amend these procedures by effectively eliminating the opportunity to file a refund action on a claim for excessive assessment so long as the municipality enacted an ordinance adopting certain minimum protections designed to make the board of review hearing more meaningful.

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Specifically, the proposed legislation would:

- Permit local taxation districts to pass an ordinance allowing a taxpayer to obtain a 60-day extension prior to a hearing on an objection to permit more time to collect evidence and prepare its "case." Currently, boards of review need only give the taxpayer 48 hours advance notice of a hearing once an objection has been filed.
- Require the taxpayer and the local assessor to present all evidence (as outlined in the Property Assessment Manual for Wisconsin Assessors) supporting their positions on the assessment. If the taxpayer takes advantage of the 60-day extension, the taxpayer and the assessor must simultaneously exchange all reports, documents, and exhibits either intends to use at the hearing on the objection at least 10 days prior to the hearing.
- Require boards of review to allow "a reasonable amount of time for a hearing" on an objection to an assessment.
- Permit a court on certiorari review of a board's decision under Section 70.47 to consider new evidence outside the record before the board where the evidence was not available at the time of the hearing before the board or where the board refused to consider the evidence.
- Permit a court on certiorari review to determine the correct amount of the assessment where the taxpayer rebuts the presumption of correctness afforded to the assessment with "a sufficient showing," rather than requiring the objection to be remanded to the board of review for redetermination of the assessment.
- Eliminate the de novo court review available to a taxpayer under a Section 74.37 excessive assessment claim if the taxation district enacts a 60-day extension ordinance, regardless of whether the taxpayer took advantage of the extension.

The impact of this legislation, if passed, would be to expand the ability of a taxpayer to challenge a board of review's determination on an assessment in court under the certiorari procedures of Section 70.47, Wis. Stats., while at the same time effectively eliminating the taxpayer's current ability to have a court or jury determine the appropriate assessment after presentation of any and all relevant evidence and full trial, without deference to the local board of review. The net effect of these amendments is to **reduce** a taxpayer's ability to challenge local property tax assessments.