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

On March 13, 2008, Wisconsin Governor James Doyle signed into law 2007 Wisconsin Act 86 (Act 86), which significantly curtails non-manufacturing property owners' options for challenging property tax assessments in municipalities that adopt ordinances allowing taxpayers to obtain a 60-day postponement of board review hearings. Act 86 applies retroactively to property tax assessments as of January 1, 2008.

Prior to the enactment of Act 86, all Wisconsin taxpayers other than manufacturers (who are assessed by the State Department of Revenue) had the choice of two principal avenues to obtain court review of local property tax assessments: (1) the certiorari review procedure under Section 70.47, Wis. Stats., or (2) a claim for recovery of an excessive assessment and de novo refund action under Section 74.37, Wis. Stats. Both avenues required the taxpayer first to 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 procedure was 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, permitted a taxpayer to seek relief from the taxation district and, if unsuccessful, to challenge the assessment anew on any grounds in a de novo refund action filed in circuit court. In the de novo circuit court action, the parties could present evidence not submitted to the board previously, and the court was not required to give any deference to the board of review's prior decision.

**Act 86 eliminates the uniformity of these review options, empowering municipalities to deprive property owners of the Section 74.37 claim for excessive assessment and de novo court review option so long as the municipality adopts an ordinance that gives property owners the right to request a 60-day postponement of the board of review hearing (extension ordinance).** To take advantage of the extension, the taxpayer must pay a \$100 fee. The 60-day period may be further extended by the taxpayer upon a showing of good cause. In contrast, absent an extension ordinance boards of review may schedule hearings on 48 hours' notice.

Under Act 86, other board of review procedures and court review options also vary according to whether or not the municipality has adopted an extension ordinance.

- In municipalities that adopt an extension ordinance, and regardless of whether or not the taxpayer invokes the extension, both the taxpayer and the assessor are required to present “all evidence” (to be specified in the Wisconsin Property Assessors Manual) at the board of review hearing.
- If the municipality has enacted an extension ordinance, and if the taxpayer requests an extension, then the taxpayer and assessor must simultaneously exchange reports and other exhibits they intend to submit at the hearing at least 10 days prior to the hearing.
- If the municipality has enacted an extension ordinance, and regardless of whether or not the taxpayer requests an extension, the board of review may, upon a showing of good cause, compel the attendance of witnesses for deposition prior to the hearing.
- If a taxpayer is seeking review of a board of review determination in a municipality that has enacted an extension ordinance, then the traditional certiorari review standards under Section 70.47 are modified. So long as the taxpayer rebuts the presumption of correctness (by coming forward with evidence that supports the taxpayer’s position), then the court on review determines the assessment without deference to the board of review. Moreover, the court on review may consider evidence outside the board of review record if the evidence was not available as of the time of the board of review hearing, or if the board of review refused to consider the evidence, or if the court otherwise determines the evidence should be considered to determine the correct assessment.

Act 86 also makes a number of modifications to board of review and court review procedures that do not depend on whether the

municipality has enacted an extension ordinance, and which should be beneficial to all taxpayers. Specifically, Act 86:

- Requires boards of review to allow “a sufficient amount of time for a hearing” on an objection to an assessment to permit both the taxpayer and the assessor to present their evidence
- Requires boards of review to compel the attendance of witnesses at the hearing at the request of either the taxpayer or the assessor, whereas prior law only mandated attendance on behalf of the assessor and gave the board the discretion to determine whether to compel witnesses at the taxpayer’s request
- Permits the parties to agree that, where a subsequent year’s assessment has not been resolved as of the time a Section 70.47 action is filed in court to challenge a prior year’s assessment, the court may review the subsequent year’s assessment in the same action without an additional hearing by the board of review

Finally, Act 86 reduces the interest rate payable on refund claims. Whereas interest on refunds previously was allowed at the rate of 0.8 percent per month, or 9.6 percent per year, the interest rate now is tied to the annual discount rate determined by the last auction of six-month U.S. treasury bills.

## **Implications of Act 86**

The elimination of the de novo refund action option in municipalities that adopt an extension ordinance deprives property owners in those municipalities of important rights. Board of review hearings do not provide taxpayers with equivalent protections as de novo refund actions in court. Board of review hearings typically are not conducted by legal professionals; are not governed by rules of evidence; do not permit as much time for taxpayers to prepare their cases; and may be less objective because boards frequently include public officials and public employees. For these reasons, the Wisconsin Supreme Court struck

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down as unconstitutional a prior provision of the Wisconsin Statutes that excluded Milwaukee County property owners from the right to file de novo refund actions. *Nankin v. Village of Shorewood*, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141 (invalidating former Section 74.37(6), Wis. Stats. on equal protection grounds). The sections of Act 86 that delegate to municipalities the power to deprive property owners of the right to file de novo refund actions appear to suffer from the same equal protection infirmities recognized in *Nankin*, inviting a similar constitutional challenge.

The City of Milwaukee Assessor's Office is expected to ask the Common Council to adopt an extension ordinance immediately so that the denial of the right to a de novo refund action will apply to Milwaukee property owners for their 2008 assessments. It is uncertain at this time whether and if so, when, other municipalities will follow suit.

In addition to the unfairness of selectively depriving property owners in certain municipalities of important appeal rights, Act 86 also creates administrative burdens for taxpayers who own property in multiple municipalities. As discussed above, there are important procedural distinctions in both board of review hearings and court review proceedings depending on whether the municipality has enacted an extension ordinance. Taxpayers will need to be vigilant to assure they understand what procedures apply in each municipality in which they own property.

In municipalities that enact extension ordinances, it is critical that taxpayers be prepared to make a complete and thorough evidentiary record at the board of review hearing, as there is no assurance that a reviewing court will permit additional evidence to be submitted. Moreover, a 60-day extension may not be sufficient time to obtain an independent appraisal or compile other evidence that supports the property owner's valuation. Taxpayers therefore should be proactive in communicating with local assessors even before assessment notices are issued. If efforts to persuade the assessor about the correct level of assessment are unsuccessful and it appears likely that the assessment will be objectionable, it would be wise to commission an appraisal and/or start assembling other evidence immediately rather than waiting for the 60-day extension period to be triggered.