

**HUSCH BLACKWELL**



## Understanding Wisconsin Property Taxes – And How to Reduce Your Tax Burden

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# PART 1: WISCONSIN PROPERTY TAXATION

## Overview

### I. An Approach to Property Tax Administration

- A. General.
- B. Identify Issues.
- C. Plan for Property Tax Savings.
- D. Assert Favorable Positions.

### II. Overview of Property Tax System

- A. Local Assessment of Non-Manufacturing Property.

All “general property” (i.e., all real and personal property) in the State of Wisconsin is subject to property taxation unless specifically exempt from taxation. Such property is assessed as of the close of January 1 of each year and, accordingly, the status and value of all property is fixed on that date. State and county taxes are apportioned among the municipalities and the share of state and county taxes of each municipality is included in the municipal assessment of property taxes.

- B. State Assessment of Manufacturing Property.

All manufacturing property in Wisconsin is assessed by the Wisconsin Department of Revenue (the “Department”) rather than by local taxation districts. Wis. Stat. § 70.995. Assessment by the Department ensures the uniform treatment and equal assessment of all manufacturers in Wisconsin.

- C. State Assessment of Utility Property.

### III. Resources to Understanding Wisconsin Property Tax Law

- A. Wisconsin Constitution.

(1) Uniformity Clause; Article VIII, Section 1: “The rule of taxation shall be uniform ...”

[The uniform basis of assessment for Wisconsin property tax purposes is the property’s full value that could ordinarily be obtained at a private sale.]

- B. Wisconsin Statutes (Wis. Stat.).

(1) Wis. Stat. Chapter 70.

(2) Wis. Stat. Chapter 74.

- C. Wisconsin Administrative Code.

(1) Rule Section Tax 12.

- D. Wisconsin Property Assessment Manual (The Manual).

- E. Wisconsin Department of Revenue Publications.

- F. Northwestern Reporter (N.W. & N.W.2d).

- G. Wisconsin Reporter (Wis. & Wis. 2d).

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- I. Internet Resources.

## **Valuation Methods**

### **I. Overview – Wisconsin Statutes**

#### A. Wis. Stat. Section 70.32. Real Estate, How Valued.

(1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03 (2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

(1g) In addition to the factors set out in sub. (1), the assessor shall consider the effect on the value of the property of any zoning ordinance under s. 59.692, 61.351 or 62.231, any conservation easement under s. 700.40, any conservation restriction under an agreement with the federal government and any restrictions under ch. 91.

(1m) In addition to the factors set out in sub. (1), the assessor shall consider the impairment of the value of the property because of the presence of a solid or hazardous waste disposal facility or because of environmental pollution, as defined in s. 299.01 (4).

(3) Manufacturing property subject to assessment under s. 70.995 shall be assessed according to that section.

#### B. Court Decisions – Practical Application.

(1) When market value is established by a fair sale of the property, or sales of reasonably comparable property are available, it is error for an assessor to resort to other factors in order to determine its fair market value, although such factors in the absence of such sales would have a bearing on its value. *State ex rel. Markarian v. Cudahy*, 45 W (2d) 683, 173 NW (2d) 627.

(2) While a sale establishes value, the assessment still has to be equal to that on comparable property. Sub. (2) (b) requires the assessor to fix a value before classifying the land; it does not prohibit him from considering the zoning of the property when it is used for some other purpose. *State ex rel. Hensel v. Town of Wilson*, 55 W (2d) 101, 197 NW (2d) 794.

(3) When an assessment must be based on a recent sale of the property the assessor cannot increase the value because no commission was paid to a broker. *State ex rel. Lincoln F. Warehouse v. Bd. of Rev.* 60 W (2d) 84, 208 NW (2d) 380.

(4) Under an option agreement, the sellers' right to repurchase their homestead and their right of first refusal for the purchase of industrial buildings to be construction on the property were factors going only to the willingness of the parties to deal, not their compulsion to do so; and the value of these rights, together with the monetary amount per acre, comprised the total sale price of the land. *State ex rel. Geipel v. Milwaukee*, 68 W (2d) 726, 229 NW (2d) 585.

(5) Evidence of net income from unique property was admissible to show market value. An assessor's unconfirmed valuation based on estimated replacement cost less depreciation could not stand alone because of uncontroverted evidence of actual costs of recent construction. *Rosen v. Milwaukee*, 72 W(2d) 653, 242 NW (2d) 681.

(6) District-wide use of comparative sales statistics to determine annual percentage increases of assessments was invalid under sub. (1). *State ex rel. Kaskin v. Board of Review*, 91 W (2d) 272, 282 NW (2d) 620 (Ct. App. 1979). See also *Lloyd v. Board of Review of City of Stoughton*, 179 W (2d) 33, 505 NW (2d) 465 (Ct. App. 1993).

(7) An assessor erred in failing to consider disadvantages and liabilities which affect the fair market value of dams. *State ex rel. Wis. Edison Corp. v. Robertson*, 99 W (2d) 561, 299 NW (2d) 626 (Ct. App. 1980).

(8) The lease of comparable property constituted the "best information" regarding fair market value of leasehold improvements. *State ex rel. Keane v. Bd. of Review*, 99 W (2d) 584, 299 NW (2d) 638 (Ct. App. 1980).

(9) Sub. (1) requires the use of a cash equivalency adjustment in assessing property based upon the sale of comparable properties. *State ex rel. Flint v. Kenosha County Rev. Bd.*, 126 W (2d) 152, 376 NW (2d) 364 (Ct. App. 1985).

(10) An assessment largely based upon consideration of equalized value was invalid. The court erred by remanding with the requirement that a new assessment consider the actual subsequent sale of subject property. *State ex rel. Kesselman v. Sturtevant*, 133 W (2d) 122, 394 NW (2d) 745 (Ct. App. 1986).

(11) The board erred as a matter of law by basing an assessment on "market" rental income when there was a recent arms-length sale of the property. *Darcel v. Manitowoc Review Bd.*, 137 W (2d) 623, 405 NW (2d) 344 (1987).

(12) In determining market value under sub. (1), the board must determine whether financing arrangements between the seller and buyer affected the sale price; sub. (1) prohibits assessment exceeding market value. *Flood v.*

*Lomira Board of Review*, 153 W (2d) 428, 451 NW (2d) 422 (1990).

(13) Discussion of factors applicable to the assessment of commercial property following sale. *State v. Greendale Bd. Of Review*, 164 W (2d) 31, 473 NW (2d) 554 (Ct. App. 1991).

(14) Section 70.32 establishes a unitary taxing scheme; mineral rights are taxed as an element of the real estate and not separately. *Cornell University v. Rusk County*, 166 W (2d) 811, 481 NW (2d) 485 (Ct. App. 1992).

(15) The capitalization of income method based on estimated market rents rather than on actual rent was an improper method of assessing subsidized rental property. *Metro. Holding v. Milwaukee Review Bd.*, 173 W (2d) 626, 495 NW (2d) 314 (1993).

(16) Compliance with the s. 73.03 (2a) assessment manual is not a defense when the method of assessment violates s. 70.32 (1). *Metro. Holding v. Milwaukee Review Bd.*, 173 W (2d) 626, 495 NW (2d) 314 (1993).

(17) When an assessor disavows the correctness of comparable property shown on the tax roll, the burden is on the assessor to explain why the assessment is incorrect. *Brighton*

Square Co. v. Madison, 178 W (2d) 577, 504 NW (2d) 436 (Ct. App. 1993).

(18) A taxpayer challenging an assessment has the burden of proving a sale was an arm's-length transaction. The taxpayer has the burden of proof on each "Property Tax Assessment Manual" condition that must be met. Doneff v. Review Board of Two Rivers, 184 W (2d) 203, 516 NW (2d) 383 (1994).

(19) The use of owner-operator income to value property is allowed if the net income reflects the property's chief source of value, the income is produced without skill of the owner or the owner's skill and labor are factored out and other valuation approaches are considered. Waste Management v. Kenosha County Review Bd., 184 W (2d) 541, 516 NW (2d) 695 (1994).

(20) There is no bright line rule for the number of comparable properties that must be shown to prove that the rule of uniformity is being violated. Assessments which are discriminatory and made based on arbitrary and improper considerations cannot stand. State ex rel. Levine v. Fox Point Board of Review, 191 W (2d) 363, 528 NW (2d) 424 (1995).

(21) Where property is encumbered by a bundle of rights, it must be appraised at its value using the current value of that bundle of rights. City of West Bend v. Continental IV Fund, 193 W (2d) 481, 535 NW (2d) 24 (Ct. App. 1995).

(22) Real property shall be valued base on the best information available. The best information is a recent arms-length sale of the property followed by recent sales of comparable property. If either of those are not available the assessor may look to all factors which collectively have a bearing on the value of the property. State ex rel. Campbell v. Town of Delevan, 210 W (2d) 240, 565 NW (2d) 209 (Ct. App. 1997).

(23) Equalized value is not a measure of fair market value of individual properties, and it is improper for an assessor to take it into account in valuing property. Noah's Ark Family Park v. Village of Lake Delton, 210 W (2d) 302, 565 NW (2d) 230 (Ct. App. 1997). Affirmed, 216 W (2d) 386, 573 NW (2d) 852 (1998).

(24) For purposes of the uniformity clause, there is only one class of property. The burden of taxation must be borne as nearly as practicable among all property, based on value. Compliance with the requirement of s. 70.05 (5) that property be assessed at fair value at least once every 5 years is not a substitute for compliance with the uniformity clause and sub. (1). Approving an increased assessment for only one property despite evidence that it and other properties had recent sales at a price above prior assessments violated the law and its approval by the board of review was arbitrary. Noah's Ark Family Park v. Village of Lake Delton, 210 W (2d) 302, 565 NW (2d) 230 (Ct. App. 1997). Affirmed 216 W (2d) 386, 573 NW (2d) 852 (1998).

## II. Property Concepts and Rights in Property (Wisconsin Property Assessment Manual)

### A. Real Property.

Real estate refers to the physical items; the land and any structures and improvements located on the land. Real property is the rights, privileges, and benefits of owning the real estate. These two terms are often misused and misunderstood. The term real estate is sometimes used to mean real property and real property is used to mean real estate. For assessment purposes real property is defined in s. 70.03, Stat., as follows: “The terms ‘real property’, ‘real estate’ ...shall include not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto.” Thus, in Wisconsin assessment law real property encompasses the definitions of both real estate and real property.

### B. Bundle of Rights.

In s. 70.03, Stat., the definitions of real property includes “...all fixtures and rights and privileges appertaining thereto.” In essence it is these rights and privileges that the assessor is valuing. These rights are called the bundle of rights and consist of use, possession, enjoyment, disposition, exclusion, or the right not to exercise any of these rights.

### C. Full and Market Value.

The basis for the assessor’s valuation of real property is found in s. 70.32, (1) Stat., “Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual under s. 73.03(2a), Stat., from actual view or from the best information that the assessor can practicably obtain at the full value which could ordinarily be obtained therefor at private sale.”

“Real Estate Appraisal Terminology” also defines value as “The present worth of future benefits arising out of ownership to typical users or investors. “The investor is actually buying the future income of the property. The buyers are typically purchasing all future rights to the property. It is these future or anticipated benefits that give value to the property.

### D. Cost or Sales Price vs. Market Value.

In the process of valuing real property the assessor will encounter the terms “cost” and “sale price.” These terms are not synonymous with market value. Cost and sale price represent an historical figure for a specific property at a specific time.

While the cost or sale price may be indicative of market value, there are situations where this is not the case. For example, when a parent sells property to a son or

daughter, the sale price is usually less than the market value of the property.

When there is an arm’s-length sale of the property itself, the assessor should consider that sale if, according to professionally acceptable appraisal practices, the sale conforms to recent arm’s-length sales of reasonably comparable property. If it is an arm’s length sale that is in line with recent arm’s-length sales of reasonably comparable property, and if it is the best information available, the assessor should use the sale price as a basis for the assessment.

When the assessment cannot be based upon the sale price of the property itself, the

next step is to use recent arm's-length sales of reasonably comparable property as the basis of the assessment. Reasonably comparable sales are competitive properties with characteristics similar to the subject which have sold recently on the local market. The assessor should carefully examine each sale to determine if the sale price is indicative of market value. If the reasonably comparable sales are useable arm's-length transactions, the assessor can then rely upon those sales to determine the market value of the subject. If there are no reasonably comparable sales, the assessor must then analyze and collectively consider all of the information available which can be used to estimate the value of the subject. This would include like sales, a sale of the subject which may not be recent, the cost and income approaches to value, asking prices, options to purchase, outside appraisals of the subject, and the assessments of other comparable properties. After considering all of this information, the estimates of value from the several approaches are then correlated into one final value estimate.

### **III. Valuation Principles**

- A. Supply and Demand.
- B. Highest and Best Use.
- C. Substitution.
- D. Contribution.
- E. Increasing and Decreasing Returns.
- F. Anticipation.
- G. Change.
- H. Conformity and Balance.

### **IV. Improvement Valuation**

- A. The Approaches to Value – Generally.

There are three traditional approaches to value: the sales comparison approach, the cost approach, and the income approach. When appraising, the appraiser should consider all available data. Then the appraiser should identify the most appropriate approach considering the type of property. For example, appraisers typically use the sales comparison approach in markets where adequate sales exist. They typically use the cost approach in cases of special purpose structures or where reduced sales or rental data activity exist. Finally, appraisers typically use the income approach when available rental properties and an active rental market exists. Usually, more than one – and often all three – of the approaches apply to a given property. The only limiting factor: whether available and appropriate data exist for the subject property.

- B. Sales Comparison Approach.

This approach embraces the premise that sale prices of properties indicate the value of other properties. Moreover, this approach describes the principle of substitution which states that a buyer will pay no more for a property than the cost of acquiring a substitute property of equal desirability and utility.

- (1) Significance of Real Estate Transfer Return.
- (2) Significance of Arm's Length Transactions.

(3) Elements of Comparison and the Adjustment Process. The following basic elements of comparison should be considered in the sales comparison approach. Some of the adjustments that might be made in the sales comparison approach are also illustrated. For a more detailed discussion of important elements of comparison, review the Appraisal Institute's *The Appraiser of Real Estate*.

- Real property rights conveyed.
- Financing terms.
- Time (market conditions).
- Location.
- Physical characteristics (e.g., size, construction quality, and condition).
- Economic characteristics (e.g., operating expenses, lease terms, management, and tenant mix).

(4) Gross Rent Multiplier. The gross rent multiplier (GRM) is used to provide a direct estimate of value based on the relationship between the gross income and sale prices of similar properties. The GRM is simply the sale price divided by the annual or monthly gross income.

#### C. The Cost Approach.

(1) Principle of Substitution. The cost approach is based on the principle of substitution. That is, that a well-informed buyer will pay no more for a property than the cost of construction an equally desirable substitute property with like utility.

(2) Basic Steps.

- Estimating the land value.
- Estimating reproduction or replacement cost new of the structure.
- Estimating accrued depreciation.
- Subtract the accrued depreciation from the estimate of a cost new to arrive at a present value for the improvements.
- Add the present value of the improvements to the estimated land value for a total property value.

(3) Reproduction Cost vs. Replacement Cost.

(4) Estimating Cost.

- Unit-in-place.
- Model.

(5) Depreciation.

- Physical life.
- Actual Age/Effective Age.
- Remaining economic life.

- (6) Physical Depreciation.
  - Curable.
  - Incurable.
- (7) Functional Obsolescence.
  - Curable.
  - Incurable.
- (8) Economic Obsolescence.
- (9) Estimating Depreciation.
  - Age-Life Method.
  - Engineering Breakdown Method.
  - Comparative Sales Method.
  - Observed Condition Method.
    - Physical Curable.
    - Physical Incurable.
    - Functional Curable.
    - Functional Incurable.
    - Economic.

(10) Depreciation Tables.

D. The Income Approach.

(1) Generally. In applying the income approach there is one basic formula that is used to arrive at an estimate of market value. In this formula  $V = \text{value}$ ,  $I = \text{net income}$ , and  $R = \text{capitalization rate}$ .

$$I R = V$$

For example, if the income from an apartment building is \$70,000, and the capitalization rate is 14% the value of the property is then the following:

\$70,000

$$.14 = \$500,000$$

In using this method the assessor has to calculate two estimates. One is to arrive at an estimate of net income by deducting the appropriate expenses from an estimate of the market rent of the property. The other is the derivation of the capitalization rate.

(2) Capitalization Rates. The capitalization rate is composed of a number of elements:

- Discount Rate: the rate of return required by investors to compensate for the risk assumed, the non-liquidity of their investment, and the use of their money. Non-liquidity means that the investment cannot be as quickly converted into cash as can bonds, stocks, or savings accounts.
- Recapture Rate: the annual rate of return which will provide the investor with a return of the depreciable portion of the investment over the remaining economic life of the asset.

- **Effective Tax Rate:** the tax rate of a municipality is expressed as a percentage of each dollar of the market value of the property. The most appropriate effective tax rate to use is the current year's average net tax rate for all property in the municipality.

The process of arriving at these estimates can involve a great deal of time and effort. There are a number of procedures that the assessor can use to arrive at market value estimate utilizing this approach. Since the income approach is most often used in the valuation of commercial and manufacturing property, a more detailed explanation of the procedures will be given in the chapter on commercial valuation.

(3) **Income Approach.** Value can be defined as “the present worth of anticipated future benefits.” While this is true of all approaches to value, this definition is particularly useful in applying the income approach. The income approach is the conversion of anticipated future benefits (income) into an estimate of the present worth of the property. This conversion process is called capitalization. The income approach can be used when there are no comparable sales. It also can be used by the assessor because it represents the way investors think when they buy and sell income property in the market.

The eight steps in applying the income approach are:

- Estimate potential gross income.
- Deduct for vacancy and collection loss.
- Add miscellaneous income.
- Determine operating expenses.
- Subtract operating expenses to derive net income.
- Select the correct capitalization method.
- Derive the capitalization rate.
- Apply the capitalization rate to net income to arrive at a value estimate.

#### E. Reconciliation of All Three Approaches.

Reconciliation is the process by which the appraiser evaluates and selects from the alternative approaches to value. Keep in mind that the three approaches to value are designed to be economically “independent.” That is, the foundation for each reflects independent method and data. For the sales comparison approach, it's sales date. For the cost approach, it's cost of construction material, cost of labor, and depreciation data. For the income approach, it's rental and financial data.

How does the appraiser decide, or reconcile the approaches? The best guidance that can be offered is to review market activity for the subject and determine the attributes by which the market uses to evaluate alternative real estate decisions. Generally, the greatest weight should be placed on the approach for which the greatest amount of reliable and appropriate data is available that will yield the highest degree of confidence.

## **Exemptions**

### **I. Taxation Of Property**

All general property is subject to Wisconsin property tax unless specifically exempt. See Wis. Stat. §§ 70.01, 70.109.

#### A. General Property.

General property is defined as all taxable real and personal property except (1) property used in the extraction of metalliferous minerals, (2) property of public utilities and insurers (Ch. 76), and (3) property relating to forest croplands and managed forest lands (subchapters I and VI of ch. 77). See Wis. Stat. § 70.02.

#### B. Real Property.

“Real property” generally includes “not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto. . .” Wis. Stat. § 70.03.

#### C. Personal Property.

“Personal property” includes “all goods, wares, merchandise, chattels, and effects, of any nature or description, having any real or marketable value, and not included in the term ‘real property’ . . .” Wis. Stat. § 70.04.

### **II. Exemptions**

#### A. Categories of Exemptions.

There are three types of exempt property:

- Property specifically exempted by statute (further described below);
- Property which is taxable, but assessable by someone other than the local assessor (such as Chapter 76 property); and
- Property that is exempt from property tax, but taxable by special methods (see Wis. Stat. § 70.112)).

#### B. Statutory Exemptions.

Statutory exemptions for real (and personal) property can generally be found at Wis. Stat. § 70.11. Examples of these exemptions are as follows:

- State and municipal property (§ 70.11(1), (2));
- Grounds of any incorporated college or university (§ 70.11(3));
- Property owned and used exclusively by educational institutions or associations, religious associations, or benevolent associations (§ 70.11(4));
- Real property owned and personal property used exclusively by hospitals (§ 70.11(4m));
- Property used for abatement of air and water pollution (§ 70.11(21));
- Property owned and used exclusively for nonprofit medical research foundation purposes (§ 70.11(25));
- Manufacturing property (§ 70.11(27)); and Computers and related equipment (§ 70.11(39)). Additional statutory exemptions for personal property can be found in Wis. Stat. § 70.111.

C. Common Characteristics.

The exemptions found in Wis. Stat. § 70.11 are generally based on ownership of the property, use of the property, or a combination of ownership and use. Therefore, to qualify for exemption, the statutes may require that the property be both “owned” and “used exclusively” by a qualifying organization.

(1) Used Exclusively.

Exclusive use does not mean 100% of use; rather, it means overwhelming or vast predominant use. See *Deutsches Land, Inc. v. City of Glendale*, 215 Wis. 2d 549, 573 N.W.2d 535 (1998). Accordingly, the property can be used for non-exempt purposes on a limited, inconsequential, or incidental basis and still qualify for exemption.

D. Land v. Buildings.

Land, by itself, cannot qualify for exemption under Wis. Stat. § 70.11(4). Rather, the exemption for the land is based on the exemption for the building(s). Therefore, if the building is not used for exempt purposes, the land used with the building similarly cannot qualify for exemption. Moreover, the land must be “necessary for the location and convenience of buildings” (rather than the building being necessary for the location and convenience of land). See *Deutsches Land, Inc. v. City of Glendale*, 215 Wis. 2d 549, 573 N.W.2d 535 (1998).

E. Date Exemption Is Determined.

Property is assessed as of January 1. Similarly, whether property qualifies for exemption is determined as of January 1.

F. Application Process.

A property that was previously subject to tax, may qualify for exemption based on a change in the use, occupancy or ownership of such property. Beginning with the 1999 tax year, to qualify for most statutory exemptions, the owner must, on or before March 1 of the year in the exemption is sought, file a property tax exemption request (Form PR-230) with the assessor of the taxation district in which the property is located. See Wis. Stat. § 70.11 (preamble).

The exemption request requires the following information:

- Application Information.
- Subject Property Information.
- Tenant Information.
- Attachments.
  - Proof of non-profit status.
  - Partnership Agreement, Association Documents, Articles of Incorporation, Charter and Bylaws.
  - Latest annual report filed with the Department of Financial Institutions.
  - Educational curriculum.
  - Part II of IRS Form 1023.
  - Form 990.

- Form 990T.
- Leases and subleases.
- Concessionaire and license agreements.
- Covenants, restrictions, rules and regulations affecting use and occupancy.
- Mortgages.
- Survey of subject property.
- Appraisal of subject property.
- Deeds.

### III. Partially Exempt Property

#### A. Leased Property.

Leased property is exempt if it meets the following conditions: (1) the exempt owner uses the rent for maintenance of the property, construction debt retirement, or both and (2) the tenant itself would be entitled to exemption if it owned the property. See Wis. Stat. § 70.11 (preamble). If the exemption is claimed under 70.11(4), the tenant must also not discriminate on the basis of race. If these conditions are not met, the exempt organization can still qualify for a partial exemption on the portion of the property that is not leased.

#### B. Non-leased Property.

Property exempt under sec. 70.11 and used in part in a trade or business for which the owner is subject to taxation as unrelated business income (under I.R.C. §§ 511-515) is assessed at that portion of the fair market value attributable to the part of the property used in the unrelated trade or business. See Wis. Stat. § 70.1105 (formerly Section 70.11(8)).

##### (1) Proof of Exempt v. Non-Exempt Use.

Where both the property is used for both exempt and non-exempt purposes, the owner of the property must maintain accurate and detailed records documenting the actual exempt use as compared to the actual non-exempt use. See *Deutsches Land, Inc. v. City of Glendale*, 215 Wis. 2d 549, 573 N.W.2d 535 (1998). Therefore, it is not enough for the owner to document the non-exempt use, in turn identifying the exempt use by inference. *Id.*

##### (2) Archaeological Sites.

An archaeological preservation covenant granted on part of property owner's land will qualify for partial exemption. See Wis. Stat. 70.11(13m); *Wrase v. City of Neenah* (Wis. Op. 98-40-0559).

#### C. Calculation of Partial Exemption.

The partial exemption can be calculated on the basis of:

- square footage;
- percentage of income; or
- percentage of time.

## IV. Uniformity Clause

Article VIII, § 1 of the Wisconsin Constitution generally provides that the “rule of taxation shall be uniform ...” Wisconsin courts have stated that “for a tax to conform to the Uniformity Clause, it must meet the following standards:

1. For direct taxation of property, under the uniformity rule there can be but one constitutional class.
2. All within that class must be taxed on a basis of equality so far as practicable and all property taxed must bear its burden equally on an ad valorem basis.
3. All property not included in that class must be absolutely exempt from property taxation.
4. Privilege taxes are not direct taxes on property and are not subject to the uniformity rule.
5. While there can be no classification of property for different rules or rates or property taxation, the legislature can classify as between property that is to be taxed and that which is to be wholly exempt, and the test of such classification is reasonableness.
6. There can be variations in the mechanics of property assessment or tax imposition so long as the resulting taxation shall be borne with as nearly as practicable equality on an ad valorem basis with other taxable property.

ANR Pipeline Co. v. Department of Revenue, 209 Wis. 2d 600, 568 N.W.2d 37, 1997 Wisc. App. LEXIS 261, at \*17 (Ct. App. 1997).

Based on the above standards, there are two classes of property for purposes of the Uniformity Clause: (1) taxable property (including partially-exempt property) and (2) exempt property. In comparing property within the same class of property, the taxing authority cannot use “an arbitrary method of assessment that use[s] improperly considerations.” Noah ‘s Ark Family Park v. Board of Review of the Village of Lake Delton, 216 Wis. 2d 387, 393, 573 N.W.2d 852, 855 (1998). The Wisconsin Supreme Court has recognized that “perfect uniformity of taxation is not obtainable [given that] [a]ssessors and boards of reviews are faced with real constraints in terms of staff power and funds.” *Id.* at 394, 573 N.W.2d at 855. Nevertheless, where, for example, one property is singled out for special treatment, the Uniformity Rule has been violated. *Id.*

## **Personal Property Taxes**

### **I. Personal Property Defined**

Personal property is all goods, wares, merchandise, chattels, and effects, of any nature and description, having real or marketable value, and not included in the term “real property.”

### **II. Personal Property — How Assessed**

The self-reporting form is called a Statement of Personal Property, and is comprised of ten separate schedules (14 for manufacturers), with each category of personal property reported on a separate schedule or schedules. The first schedule on the report is a summary of amounts from the other schedules. On the other schedules, the owner reports the property’s original cost by year of acquisition and a declared or indexed value for the property, as of January 1. Declared values reflect the owner’s opinion of true cash value. Indexed values are calculated by multiplying the property’s original cost by a composite conversion index factor based on age or year of acquisition. Each year, the Department of Revenue develops the index factors, which reflect inflation and depreciation, and has them preprinted on the schedule. One of the schedules (two for manufacturers) is for reporting the value of exempt computers, related equipment and software. Although not subject to tax, these values are used to calculate state aid payments that hold local governments harmless from the effects of the exemption. Generally, assessors distribute the forms to property owners shortly before the January 1 assessment date, and owners are required to complete and return the forms prior to March 1.

### **III. Personal Property — To Whom Assessed**

### **IV. Personal Property — Hot Topics**

- A. Treatment Plant and Pollution Abatement Equipment.
- B. Manufacturers’ Machinery and Equipment.
- C. Computers and Related Equipment.

Section 70.11(39), Stat., exempts “mainframe computers, minicomputers, personal computers, networked personal computers, servers, terminals, monitors, disk drives, electronic peripheral equipment, tape drives, printers, basic operational programs, system software, prewritten software and custom software” if the owner fulfills the requirement under s. 70.35 to report the fair market value of all such equipment. The exemption in s. 70.11(39), Stat., does not apply to “fax machines, copiers, equipment with embedded computerized components or telephone systems, including equipment that is used to provide telecommunications services, as defined in s. 76.80(3).”

- D. Classification.

# **PARTS 2 & 3: APPEALING WISCONSIN PROPERTY TAX ASSESSMENTS OF NON-MANUFACTURING PROPERTY: PROCEDURAL HURDLES AND STRATEGIC DECISIONS**

## **I. Valuation Appeals**

A. All objections to the amount or valuation of real or personal property must be made in writing and filed with the Commissioner of Assessments on or before the 3rd Monday in May. Wis. Stat. § 70.47(16). Such objections are then investigated by the Board of Assessors. In cities of the first class, the Board of Assessors is the first avenue of assessment appeal. The Board is responsible for investigating and ruling on all taxpayer objections to valuation. A taxpayer who has received notice of the Board of Assessors' determination will be deemed to have accepted that determination unless the taxpayer notifies the Commissioner of Assessments in writing, within 10 days, of the desire to present testimony before the Board of Review.

After a Board of Review hearing and determination, a taxpayer may appeal the Board of Review's determination in the following ways:

(1) Direct Appeal to Circuit Court. Taxpayers may appeal the determination of the Board of Review by filing with the circuit court, no later than 90 days after the taxpayer receives notice of the Board's determination, an action for certiorari to set aside the assessment. Wis. Stat. § 70.47(16), (13). The Circuit Court is limited to reviewing the record produced at the Board of Review.

(2) Appeal to Department of Revenue. A taxpayer may, no later than 20 days after the Board of Review's determination, file a written complaint with the Department of Revenue alleging that the assessment of one or more items or parcels of property in the taxation district the value of which does not exceed \$1,000,000 is "radically" out of proportion to the general level of assessment of all other property in the district and request that the Department "revalue" the subject property. A taxpayer filing such a complaint must pay a filing fee of \$100 to the Department of Revenue. Wis. Stat. § 70.85. The Department of Revenue may revalue the subject property and adjust the assessment of the property to the assessment ratio of other property within the taxation district, if the Department determines that (i) the assessment of the property is not within 10% of the general level of assessment of all other property in the taxation district, (ii) the revaluation of the property can be satisfactorily completed without a reassessment of all other property within the taxation district and (iii) the revaluation can be accomplished before November 1 of the year in which the assessment was made or within 60 days of receipt of the complaint, whichever is later. Wis. Stat. § 70.85. A taxpayer may appeal the Department of Revenue's determination by filing with the circuit court of the county in which the property is located an action for certiorari to set aside the assessment. Wis. Stat. § 70.85(4)(c).

(3) Appeal to Taxation District for Excessive Assessment. Taxpayers may file a claim with the clerk of the taxation district to recover the amount of any tax that was imposed because the assessment of the property was excessive. Wis. Stat. § 74.37. The taxpayer is not limited to the record produced at the Board of Review hearing.

A claim filed against the taxation district under Wis. Stat. § 74.37 must (i) be in writing, (ii) state the alleged circumstances giving rise to the claim, (iii) state as accurately as possible the amount of the claim, (iv) be signed by the claimant or his agent and (v) be served on the clerk of the taxation district by January 31 of the year in which the tax based upon the contested assessment is payable. Wis. Stat. § 74.37(2). In general, no claim or action for an excessive assessment may be brought unless (i) the taxpayer has objected to the assessment before the Board of Review, (ii) the tax for which the claim is filed (or any authorized payment thereof) is timely paid and (iii) the taxpayer has not appealed the Board's determination by filing an action for certiorari or has appealed the Board's determination to the Department of Revenue (as described above). Wis. Stat. § 74.37(4).

If the taxation district disallows the claim (either by denying the claim or by failing to take any action on the claim within 90 days after the claim has been filed), the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The claimant must commence this action within 90 days after the taxation district disallows the claim. Wis. Stat. § 74.37(3).

[BEWARE: Effective January 1, 2008, appeals of property tax assessments in the City of Milwaukee are subject to slightly different procedures that impact appeals. The constitutionality of the legislation permitting Milwaukee to incorporate the new procedures is being litigated.]

## **II. Exemption Appeals**

### **A. Appeal of “Unlawful Assessment” Under Wis. Stat. § 74.35.**

A property tax assessment is invalid, or “unlawful,” under Section 74.35 if the property is exempt by law from taxation. An aggrieved taxpayer may appeal an “unlawful” assessment by timely paying the tax and filing a refund claim therefor against the municipality which assessed and collected the tax. The taxpayer’s claim must (i) be in writing, (ii) state the alleged circumstances giving rise to the claim (including the reason the tax is alleged to be “unlawful”), (iii) state as accurately as possible the amount of the claim, (iv) be signed by the taxpayer or the taxpayer’s agent and (v) be served on the clerk of the assessing municipality by January 31 of the year in which the tax based upon the contested assessment is payable. No claim may be made under Section 74.35 unless the tax for which the claim has been filed, or any authorized installment payments thereof, have been timely paid.

If the municipality disallows the claim (either by denying the claim or by failing to take any action on the claim within 90 days after the claim has been filed), the taxpayer may commence an action in circuit court to recover the amount of the claim not allowed. The taxpayer must commence this action within 90 days after the municipality disallows the claim.

## **PART 4: COMMON AND CURRENT PROPERTY TAX ISSUES**

- I. Should I Respond to an Assessor's Request for Information?**
- II. Should I Approach an Assessor Before the Assessment is Made?**
- III. How Does a Post-January 1 Transaction Impact My Assessment?**
- IV. Can I Use the Fact That My Neighbor is Under-Assessed to Lower My Own Assessment?**
- V. Are Assessments Based, In Part, on the Business Value of an Enterprise?**
- VI. Should I Appeal My Assessment? And, If So, What Should I Expect?**
- VII. Should I Hire a Consultant or Attorney?**
- VIII. Does it Matter That My Assessor is a Contract Assessor Rather Than an Employee of the City?**

## **PART 5 – SPECIAL ADDENDUM**

### **Critiquing an Appraisal**

#### **I. Purpose of an Appraisal**

The purpose of an appraisal is to communicate the premises, data, reasoning, and opinions that make up the valuation process.

#### **II. Purpose For Reviewing an Appraisal**

Problems with appraisals can result for any number of reasons, including:

- Lack of time to properly complete the appraisal.
- Lack of quality control or inconsistency. Lack of competence.
- Lack of experience with the property type.
- Lack of effort, sloppiness, or carelessness.
- Lack of familiarity with certain financing, environmental regulations, or governmental policies and legislation.
- Failure to understand the assignment.
- Failure to understand the Uniform Standards of Professional Appraisal Practice.

#### **III. The Appraiser**

The following are issues that should be considered with respect to the appraiser:

- Ethics.
- Presentation Skills.
- Consistency.

#### **IV. The Appraisal Report**

The following are issues that should be considered with respect to the appraisal report:

- USPAP checklist.
- Math errors and typos.
- Assumptions reported?
- Admissible?

## **V. The Appraisal**

The following are issues that should be considered with respect to the appraisal report:

- USPAP checklist.
- Assumptions.
- Methodology and techniques
- Support.
- Judgment.

## **VI. Appraisal Reviews**

There are two types of appraisal reviews – technical reviews and administrative reviews.

A. Technical Reviews.

Technical reviews are performed by an appraiser consistent with Standard 3 of the Uniform Standards.

B. Administrative Reviews.

Administrative reviews do not need to be performed by appraisers and are generally known as compliance reviews.

## **VII. Technical Review Checklist**

The following are items that should be investigated when conducting a technical review:

- Scope of review.
- Concluded value.
- Property/location data.
- Significant assumptions.
- Major valuation issues.
- Risks.
- Limiting conditions.
- Certification.

## VIII. Administrative Review Checklist

The following are items that should be considered in conducting an administrative review:

- The name and address of the subject property are consistent throughout the report.
- The client is correctly identified and addressed in the letter of transmittal.
- The information in the summary of important conclusions is consistent with the information in the body of the report.
- The value conclusion and valuation date in the reconciliation are consistent with those in the letter of transmittal and summary of important conclusions.
- The numerical conclusions of each valuation approach are consistent with those in the reconciliation and summary of important conclusions.
- The letter of transmittal and the certification(s) have been signed by the appropriate persons.
- Any certification statements or contingent and limiting conditions requiring inclusion/exclusion/modification have been so adjusted.
- The “personal inspection” statement in the certification is accurate.
- Any special limiting conditions set forth in the body of the report are included in the assumptions and limiting conditions section.
- The definition of market value is appropriate to the assignment.
- All exhibits and addenda referenced in the text are included in the report in proper sequence.