

State of Wisconsin



2017 Assembly Bill 838

Date of enactment: April 16, 2018
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2017 WISCONSIN ACT 358

AN ACT to repeal 70.105, 70.47 (7) (c), 70.47 (8) (j), 70.47 (16) (c), 74.37 (4) (d) and 74.37 (6); and to amend 70.47 (8) (d), 70.47 (13), 70.47 (16) (a), 73.03 (2a) and 74.37 (4) (c) of the statutes; relating to: changes to board of review proceedings and elimination of the property tax assessment freeze (suggested as remedial legislation by the Department of Revenue).

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Revenue and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 70.105 of the statutes is repealed.

NOTE: Deletes a property tax assessment freeze applicable to certain replacement property that was found unconstitutional by the Wisconsin Supreme Court in *Gottlieb v. City of Milwaukee*, 33 Wis. 2d 408, 147 N.W.2d 633 (1967).

SECTION 2. 70.47 (7) (c) of the statutes is repealed.

NOTE: SECTIONS 2, 4, 7, and 10 delete provisions the Wisconsin Supreme Court found unconstitutional in *Metropolitan Associates v. City of Milwaukee*, 2011 WI 20.

SECTION 3. 70.47 (8) (d) of the statutes is amended to read:

70.47 (8) (d) It may and upon request of either the assessor or the objector shall compel the attendance of witnesses for hearing, except objectors who may testify by telephone, and the production of all books, inventories, appraisals, documents and other data which may throw light upon the value of property, and, with regard to an objection that is subject to sub. (7) (c) or (16) (e),

may, on a showing of good cause, compel the attendance of witnesses for depositions.

NOTE: SECTIONS 3, 5, 6, 8, and 9 repeal language the Wisconsin Supreme Court found unconstitutional in *Metropolitan Associates v. City of Milwaukee*, 2011 WI 20, and reinstate statutory language that existed prior to the modifications made by 2007 Wisconsin Act 86 deemed unconstitutional by the court.

SECTION 4. 70.47 (8) (j) of the statutes is repealed.

SECTION 5. 70.47 (13) of the statutes is amended to read:

70.47 (13) REVIEW CERTIORARI. Except as provided in this subsection and in ss. s. 70.85 and 74.37, appeal from the determination of the board of review shall be by an action for certiorari commenced within 90 days after the taxpayer receives the notice under sub. (12). The action shall be given preference. If the court on the appeal finds any error in the proceedings of the board which renders the assessment or the proceedings void, or if the court determines that the board lacked good cause to deny a request for a deposition subpoena, it shall remand the assessment to the board for further proceedings in accordance with the court's determination and retain jurisdiction of the matter until the board has determined an assessment in accordance with the court's order. For this purpose, if final adjournment of the board occurs prior to the court's decision on the appeal, the

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

court may order the governing body of the assessing authority to reconvene the board. If the appellant challenges the value determination that the board made at a proceeding under sub. (7) (c), the court shall presume that the board's valuation is correct, except that the presumption may be rebutted by a sufficient showing by the appellant that the valuation is incorrect. If the presumption is rebutted, the court shall determine the assessment without deference to the board of review and based on the record before the board of review, except that the court may consider evidence that was not available at the time of the hearing before the board, that the board refused to consider, or that the court otherwise determines should be considered in order to determine the correct assessment. In the event that an objection to the previous year's assessment has not been resolved, the parties may agree that the assessment for the previous year shall also apply for the current year and shall be included in the court's review of the prior year's assessment without an additional hearing by the board.

SECTION 6. 70.47 (16) (a) of the statutes is amended to read:

70.47 (16) (a) In 1st class cities all objections to the amount or valuation of real or personal property shall be first made in writing and filed with the commissioner of assessments on or before the 3rd Monday in May. No person may, in any action or proceeding, question the amount or valuation of real or personal property in the assessment rolls of the city unless objections have been so filed. The board may not waive the requirement that objections be in writing. Persons who own land and improvements to that land may object to the aggregate valuation of that land and improvements to that land, but no person who owns land and improvements to that land may object only to the valuation of that land or only to the valuation of improvements to that land. If the objections have been investigated by a committee of the board of assessors under s. 70.07 (6), the board of review may adopt the recommendation of the committee unless the objector requests or the board orders a hearing. At least 2 days' notice of the time fixed for the hearing shall be given to the objector or attorney and to the city attorney of the city. The provisions of the statutes relating to boards of review not inconsistent with this subsection apply to proceedings before the boards of review of 1st class cities, except that the board need not adjourn until the assessment roll is completed by the commissioner of assessments, as required in s. 70.07 (6), but may immediately hold hearings on objections filed with the commissioner of assessments, and the changes, corrections and determinations made by the board acting within its powers shall be prima facie correct. Appeal from the determination shall be by an action under sub. (13) for certiorari commenced within 90 days after the taxpayer receives the notice under sub. (12). The action shall be given preference. If the court on the appeal finds any error in the

proceedings of the board that renders the assessment or the proceedings void or, with regard to an objection that is subject to par. (c), if the court determines that the board lacked good cause to deny a request for a deposition subpoena, it shall remand the assessment to the board for further proceedings in accordance with the court's determination and retain jurisdiction of the matter until the board has determined an assessment in accordance with the court's order. If the appellant challenges the value determination that the board made at a proceeding under sub. (16) (c), the court shall presume that the board's valuation is correct, except that the presumption may be rebutted by a sufficient showing by the appellant that the valuation is incorrect. If the presumption is rebutted, the court shall determine the assessment without deference to the board of review and based on the record before the board of review, except that the court may consider evidence that was not available at the time of the hearing before the board or that the board refused to consider, or that the court otherwise determines should be considered in order to determine the correct assessment. In the event that an objection to the previous year's assessment has not been resolved, the parties may agree that the assessment for the previous year shall also apply for the current year and shall be included in the court's review of the prior year's assessment without an additional hearing by the board.

SECTION 7. 70.47 (16) (c) of the statutes is repealed.

SECTION 8. 73.03 (2a) of the statutes is amended to read:

73.03 (2a) To prepare and publish, in electronic form and on the Internet, assessment manuals. The manual shall discuss and illustrate accepted assessment methods, techniques and practices with a view to more nearly uniform and more consistent assessments of property at the local level. The manual shall be amended by the department from time to time to reflect advances in the science of assessment, court decisions concerning assessment practices, costs, and statistical and other information considered valuable to local assessors by the department. The manual shall incorporate standards for the assessment of all types of renewable energy resource systems used in this state as soon as such systems are used in sufficient numbers and sufficient data exists to allow the formulation of valid guidelines. The manual shall incorporate standards, which the department of revenue and the state historical society of Wisconsin shall develop, for the assessment of nonhistoric property in historic districts and for the assessment of historic property, including but not limited to property that is being preserved or restored; property that is subject to a protective easement, covenant or other restriction for historic preservation purposes; property that is listed in the national register of historic places in Wisconsin or in this state's register of historic places and property that is designated as a historic landmark and is subject to restrictions imposed by a municipality or by a landmarks commission. The man-

ual shall incorporate general guidelines about ways to determine whether property is taxable in part under s. 70.1105 and examples of the ways that s. 70.1105 applies in specific situations. The manual shall state that assessors are required to comply with s. 70.32 (1g) and shall suggest procedures for doing so. The manual or a supplement to it shall specify per acre value guidelines for each municipality for various categories of agricultural land based on the income that could be generated from its estimated rental for agricultural use, as defined by rule, and capitalization rates established by rule. The manual shall include guidelines for classifying land as agricultural land, as defined in s. 70.32 (2) (c) 1g., and guidelines for distinguishing between land and improvements to land. ~~The manual shall specify the evidence to be exchanged under s. 70.47 (7) (e) and (16) (e).~~ The cost of the development, preparation, and Internet publication of the manual and of revisions and amendments to it shall be paid from the appropriation under s. 20.566 (2) (bm).

SECTION 9. 74.37 (4) (c) of the statutes is amended to read:

74.37 (4) (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 ~~(7) (e), (13), or (16) (e)~~ or 70.85. No assessment may be contested under s. 70.47 ~~(7) (e), (13), or (16) (e)~~ or 70.85 if a claim is brought and maintained under this section based on the same assessment.

SECTION 10. 74.37 (4) (d) of the statutes is repealed.

SECTION 11. 74.37 (6) of the statutes is repealed.

NOTE: Deletes a subsection preventing residents of a county with a population of 500,000 or more from using the process for filing a claim or action for excessive assessment established in s. 74.37, Stats. The Wisconsin Supreme Court found this subsection unconstitutional in *Nankin v. Village of Shorewood*, 2001 WI 92.

SECTION 12. Initial applicability.

(1) The treatment of section 70.105 of the statutes first applies to taxes based on the assessment as of the January 1 after publication.