



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Assembly Committee on Housing and Real Estate

Wednesday, August 25, 2021

10:00 A.M.

Room 412 East, Wisconsin State Capitol

Chairman Summerfield and members of the Assembly Committee on Housing and Real Estate, thank you for affording me with the opportunity to testify in favor of Assembly Bill 399.

Assembly Bill 399 cleans up two inconsistencies in statutes dealing with interest paid on property tax refunds. The inconsistencies in current law have negative financial impacts on city, town, and village taxpayers.

Under current law, the method for calculating interest paid on refunds differs significantly depending on which statute a property taxpayer uses to challenge whether or how much property taxes he or she owes.

- Under sec. 74.35, "Recovery of Unlawful Taxes," which is used, for example, to claim the property was exemption from taxation, the community must, when refunding taxes, include interest at the rate of .8 percent per month from the date on which the individual filed the claim. This equals a 9.6 percent annual interest rate.
- Property owners seeking to claim an overpayment of property taxes caused by an alleged over assessment of property taxes caused by an alleged over assessment of the property, must proceed under a different statute, sec. 74. 37, relating to obtaining a refund of extra taxes paid as a result of an excessive assessment. When communities refund property taxes to owners under section 74.37, the interest on refund payments is calculated at the average annual discount rate determined by the last auction of six-month U.S. Treasury bills.

The interest is typically much higher under sec. 74.37. From 1987 to 2007, the interest rate was the same under both statutes, .8 percent per month. In 2007, the legislature passed Act 86, which made several changes to the process for challenging over assessments of a property, including modernizing the interest amount under sec. 74.37. The interest rate outlined in sec. 74.35 has not been changed or modernized since 1987. Assembly Bill 399 makes the interest rate calculation under both statutes the same by tying them to the six-month U.S. Treasury bills.

Additionally, Assembly Bill 399 requires all jurisdictions, including the county and school districts, to contribute the cost of interest payments on property tax refunds. Under current law, all local taxing jurisdictions contribute proportionately to the cost of the tax refund, but only the village, city, or town pays the interest on the refund.



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This bill allows the city, village, or town collect from each underlying taxing jurisdiction its proportionate share of the interest paid on property tax refunds.

I am happy to answer any questions you might have as it relates to this legislation.



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To: Assembly Committee on Housing and Real Estate

From: Jerry Deschane, Executive Director, League of Wisconsin Municipalities
Toni Herkert, Government Affairs Director, League of Wisconsin Municipalities

Date: August 25, 2021

Re: AB 399 – Interest Claims of Excessive Assessment and the Recovery of Unlawful Property Taxes

Good morning Chairman Summerfield, Vice Chair Allen and members of the Assembly Housing and Real Estate Committee. Thank you for holding this important public hearing and allowing the League an opportunity to testify before you today. On behalf of our nearly 600 members, The League of Wisconsin Municipalities supports AB 399 related to the interest of claims of excessive assessment and the recovery of unlawful property taxes. The league worked with the authors on drafting this bill because of statutory discrepancies dealing with interest paid on property tax refunds that were brought to our attention by member communities.

This legislation cleans up two specific inconsistencies in the statutes dealing with interest paid on property tax refunds. The variations in current law have negative financial impacts on city, village, and town taxpayers.

1. Under current law, the method for calculating interest paid on tax refunds differs significantly depending on which statute a property taxpayer uses to challenge whether or how much property taxes he or she owes.
 - Under sec. **74.35, Recovery of Unlawful Taxes**, which is used, for example, to claim that the property was exempt from taxation, the community must, when refunding taxes, include interest at the rate of .8 percent a month from the date on which the person filed the claim. This equals a 9.6% annual interest rate.
 - Property owners seeking to claim an overpayment of property taxes caused by an alleged over assessment of the property must proceed under a different statute, **74.37, to obtain a refund of extra taxes paid as a result of an excessive assessment**. When communities refund property taxes to owners under sec. 74.37, the interest on the refund payment is calculated at the average annual discount rate determined by the last auction of 6-month U.S. treasury bills for the period of time between when the tax was due and the date that the claim was paid.

The interest is typically much higher under 74.35 than under 74.37. From 1987 to 2007 the interest rate was the same under both statutes, .8 per month. In 2007, the Legislature passed Act 86, which made several changes to the process for challenging over assessments of property, including modernizing the interest amount under sec. 74.37. The interest rate specified in sec. 74.35 has not been changed or modernized since 1987. This bill aligns the interest calculation under both statutes once again by tying the interest rate in both provisions to the 6-month treasury bill.

2. The second modification in this legislation requires all taxing jurisdictions, including the county and the school district, to contribute to the cost of interest payments on property tax refunds. Under current law, all local taxing jurisdictions contribute proportionately to the cost of the tax refund, but only the city, village, or town pays the interest on the refund. This bill allows the city, village, or town, to collect its proportionate share of the interest paid on property tax refunds from each underlying taxing jurisdiction. The League sought this change for the following reasons.

- The same fairness argument justifying sharing the cost of the tax refund with all taxing jurisdictions applies to sharing the cost of the interest on that refund.
- Under current law, the interest on tax refunds made to manufacturing properties can be charged back and shared with all taxing jurisdictions.
- Large tax refunds are relatively rare. Most tax assessment or tax exemption challenges are settled early in the process. However, when there is a court appearance, not only do municipalities pay the cost of assessing the property, but they also defend that assessment on behalf of all taxing jurisdictions. If everyone gains in an assessment victory, why is the loss solely absorbed by the municipality. We assert that the interest owed on the tax refund should be shared between all taxing jurisdictions.
- The City of Wauwatosa is here to provide an example involving a tax lawsuit brought by the Medical College of Wisconsin. The court sided with the property owner and the city refunded the taxes paid. The litigation took 27 months. The interest owed was \$79,261. The city paid all of it. The tax refund itself was divided proportionally between the taxation districts. If the interest had been similarly shared, Milwaukee County's portion of the interest would have been 20.2% or \$16,010. The school district's share would have been 37.1 % or \$29,405. The city would have been responsible for 30.6% or \$24,253. MATC and MMSD would have picked up the remaining 12%.

We are hopeful that the committee can see the common sense in this legislation, and we urge members to vote in favor of recommending passage of AB 399 as introduced. Thank you for your time today and we will take any questions.