



## Legislative Fiscal Bureau

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January 11, 2024

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Revenue: Section 13.10 Request for Aid Payments to Local Governments Affected by the 2022 Court Decision *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. Evers* -- Agenda Item 1

### REQUEST

On November 6, 2023, the Department of Revenue (DOR) submitted a request for transfer of \$3,613,000 in 2023-24 from the Joint Committee on Finance's program revenue (PR) supplemental appropriation to the Shared Revenue and Tax Relief appropriation to make payments to compensate for not being able to legally impose local general property taxes on real property exempt from taxation under the 1854 Treaty of La Pointe. The source of revenue for the funds requested is tribal gaming revenues. Under the request, money would be provided to both counties and municipalities.

### BACKGROUND

In 2022, the U.S. 7th Circuit Court of Appeals ruled in *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. Evers* that under the 1854 Treaty of La Pointe, the state of Wisconsin and its political subdivisions are prohibited from taxing all real property within the Bad River, Lac Courte Oreilles, Lac du Flambeau, and Red Cliff reservations if that property is owned by one of the four Ojibwe tribes or one or more tribal members, regardless of whether the property had been previously owned by a non-tribal member. As a result, the amount of taxable property in taxing jurisdictions that encompass parts of those reservations has been reduced, as a portion of property that had previously been taxed became exempt from taxation.

### Property Tax Implications of Court of Appeals Decision

In reducing the amount of taxable property within certain taxing jurisdictions, the federal court ruling has three implications in relation to current, future, and past property taxes among the affected jurisdictions. As a result of the ruling, property taxes that had been levied on the properties that became exempt from taxation are shifted to other properties within the jurisdictions. Additionally,

counties are unable to recover any previously levied taxes that had been considered delinquent on those now exempt properties. Finally, certain taxes that had been paid on those exempt properties while the case was under consideration must be refunded to taxpayers. Each of these implications is discussed in greater detail below.

*Property Tax Shifts.* Similar to other instances where property is exempt from taxation, the property taxes that had been levied on the property ruled exempt will shift to other properties, that remain taxable, within each taxing jurisdiction. As mentioned above, the Court of Appeals decision had the effect of reducing the amount of taxable property within the affected taxing jurisdictions. Property that became exempt from taxation is now removed from tax rolls. DOR indicates that the Court of Appeals decision resulted in approximately \$43.7 million in property value being removed from local tax rolls in 2022, and an additional \$6.5 million in value was removed in 2023. Additional property may become exempt in the future, if comes to be owned by one of the four tribes that are party to the 1854 Treaty, or a member of one of those tribes.

While the total value of taxable property among the affected taxing jurisdictions was reduced by the Court of Appeals decision, the total levies that the jurisdictions could collect under state law were not affected. As a result, the same total levies were collected from a reduced tax base in 2022(23), which in turn results in higher property tax bills for properties that remained taxable. While most of this tax shift occurred with property tax levies in 2022(23), a further shift is likely in 2023(24), associated with the property that was removed from tax rolls in 2023. Additional tax shifts may occur in the future, if additional property becomes exempt from local property tax.

The removal of property from tax rolls, and the subsequent property tax shifts, affects all taxing jurisdictions where such property is located. The effects of the tax shifts have been most pronounced for municipalities, as municipalities tend to have smaller tax bases compared to counties, school districts, and technical college districts. Accordingly, the municipal taxes that would have been levied on property that became exempt following the decision of the Court of Appeals shifted to a smaller number of properties that remained taxable, resulting in larger impacts on municipal property tax bills compared to property tax bill increases for other taxing jurisdictions, which are spread over larger tax bases. Table 1 indicates the total values of property, by municipality, that was removed from tax rolls in 2022 and 2023 as a result of the Court of Appeals decision.

**TABLE 1****Property Removed from Tax Rolls Following Court of Appeals Decision**

<u>Town</u>	<u>County</u>	<u>2022 Property Values</u>	<u>2023 Property Values</u>	<u>Total Property Values</u>
Ashland	Ashland	\$373,000	\$0	\$373,000
Gingles	Ashland	5,780,400	30,300	5,810,700
Sanborn	Ashland	14,708,700	951,300	15,660,000
White River	Ashland	192,000	32,000	224,000
Russell	Bayfield	6,588,300	269,400	6,857,700
Sherman	Iron	438,100	0	438,100
Bass Lake	Sawyer	0	2,083,400	2,083,400
Couderay	Sawyer	1,177,900	0	1,177,900
Hayward	Sawyer	929,100	767,500	1,696,600
Radisson	Sawyer	644,600	0	644,600
Sand Lake	Sawyer	355,600	0	355,600
Boulder Junction	Vilas	20,000	0	20,000
Lac du Flambeau	Vilas	<u>12,510,900</u>	<u>2,400,500</u>	<u>14,911,400</u>
Total		\$43,718,600	\$6,534,400	\$50,253,000

*Delinquent Taxes.* A second implication of the federal Court of Appeals decision relates to the ability of counties to collect delinquent property taxes that had been levied on property that became tax-exempt as a result of the decision. Between 2015 and 2021, a number of tribal property owners within the Bad River, Lac Courte Oreilles, Lac du Flambeau, and Red Cliff reservations did not pay property taxes, as they contended that the 1854 Treaty exempted them from doing so. Those taxes were subsequently deemed delinquent.

Generally, municipalities and counties collect property taxes on behalf of other local taxing jurisdictions, and share responsibility for distributing the collected taxes to those other taxing jurisdictions. The county treasurer is required to settle in full all real property taxes and special taxes collected by August 20 of each year with the underlying taxing jurisdictions, including any portion of any unpaid property taxes. As a result, if the property taxes of any taxing jurisdiction remain unpaid, the county is the entity that receives less than the amounts initially levied, and must recover these delinquent amounts. State statutes include mechanisms by which counties may recover delinquent taxes, including the issuance of tax certificates and tax sales.

The mechanisms by which counties may recover delinquent taxes do not apply to the taxes that were not paid on property exempt from taxation under the 1854 Treaty of La Pointe, as the Court of Appeals decision ruled that the property taxes were not legally levied. Therefore, the affected counties cannot recover those delinquent taxes following the court decision, and remain responsible for any delinquent amounts. Table 2 indicates the counties that are unable to recover their delinquent taxes, as well as the amounts of delinquent taxes for which each county remains responsible.

**TABLE 2**

**Delinquent Taxes by County**

<u>County</u>	<u>Delinquent Taxes</u>
Ashland	\$2,802,086
Bayfield	526,806
Iron	6,908
Sawyer	109,100
Vilas	<u>168,100</u>
Total	\$3,613,000

*Refund of Prior Year Taxes.* A further implication of the Court of Appeals decision relates to the refund of property taxes paid under protest in prior years. In addition to individuals who did not pay property taxes levied on their property, a number of individuals (primarily in the Town of Sanborn in Ashland County) paid property taxes under protest between 2015 and 2021 while the federal case was under consideration. Following the decision of the Court of Appeals, which affirmed that the taxes were improperly levied, state statutes allow taxpayers to receive a refund payment of taxes paid under protest that are later determined to be illegally imposed, as well as any interest that has accrued on those amounts. Interest is assessed at the average annual discount rate determined by the last auction of 6 month U.S. Treasury bills, before the date that the claim was filed. Refunds of property taxes are generally issued by municipalities. After issuing the refunds, the affected municipality may request reimbursement from its overlying taxing jurisdictions, for property taxes collected on their behalf as part of the settlement process by submitting a chargeback request to DOR for the tax amounts. If DOR approves the chargeback request, the other taxing jurisdictions are required to repay their tax amounts, as certified by DOR to the municipality by February 15 of the year following the determination. Chargeback requests must be submitted to DOR by October 1, and DOR must approve or deny the request by November 15. DOR notifies both the municipal clerk and the affected taxing jurisdictions of its determination, as well as the certified amounts billed to each taxing jurisdiction, by November 15.

In July, 2023, the Town of Sanborn was required to issue refunds of the property taxes that had been paid under protest between 2015 and 2021. The amount of property taxes to be repaid plus the accrued interest on those amounts is approximately \$1 million. Because the Town did not have the funds available to issue these refunds, it applied for and received a loan from the Board of Commissioners of Public Lands (BCPL). BCPL approved a loan of \$610,000, which the Town indicated was sufficient to issue refunds for property taxes levied between 2015 and 2018. The Town later determined that the actual amounts levied on the affected properties in those years was \$582,253, of which the Town was responsible for \$189,013. After issuing those refunds, the Town submitted an initial chargeback request to DOR, including the remaining \$393,240 to be paid from its overlying taxing jurisdictions, which has been approved. The amount that the Town will receive from each taxing jurisdiction is indicated in Table 3. The approval of the chargebacks means that the Town will receive approximately \$393,240 from its overlying taxing jurisdictions. The Town has indicated to BCPL that it will use these funds to issue refunds for property taxes levied on the affected properties for tax years 2019 to 2021. The Town has also indicated to BCPL that it intends to submit

a second chargeback request for those refunds, with the intention of using the chargeback amounts to pay down the principal on the BCPL loan. The first round of chargebacks will be paid from the chargeback assessments on 2023(24) property tax levies of the overlying taxing jurisdictions, and the second round, if approved, will be paid from the 2024(25) levies of those jurisdictions.

**TABLE 3**

**Initial Chargebacks Approved for the Town of Sanborn -- 2023(24)**

<u>Taxing Jurisdiction</u>	<u>Chargeback Amount</u>
State of Wisconsin	\$1,807
Ashland County	150,356
School District of Ashland	231,775
Northwood Technical College District	<u>9,302</u>
Total	\$393,240

**2023 Act 19**

Under 2023 Act 19 (the 2023-25 budget act), \$3,613,000 PR in tribal gaming revenues was reserved in the Committee's supplemental appropriation [s. 20.865(4)(g)] for distribution to local governments affected by the Court of Appeals decision through a newly-created appropriation [s. 20.835(1)(k)]. As passed by the Legislature, the appropriation was intended to provide payments to counties with delinquent property taxes on their rolls that could not be collected following the decision of the Court of Appeals. Accordingly, the amount appropriated totaled the amounts of delinquent property taxes that the affected counties could no longer collect (as shown in Table 2 above). A partial veto removed the language specifying that the payments be made to counties. As a result, the appropriation may be used to direct funds to any unit of local government.

**Tribal Gaming Revenues Appropriation Condition**

With regard to the funding source for the request, any available revenue that remains in the tribal gaming receipts appropriation at the end of each fiscal year will be deposited to the general fund. Table 4 provides updated projections reflecting certain tribal payments that were made earlier than anticipated, in 2022-23. As shown in the table, no general fund deposit would be made if program allocations and reserves are fully expended.

On October 31, 2023, the Joint Committee on Finance released \$9.0 million of a potential \$11.0 million from its PR supplemental appropriation to the Department of Administration appropriation for tribal grants. As a result, \$2.0 million for tribal grants remains in the Committee's PR supplemental appropriation for potential release in the 2023-25 biennium. [On November 20, 2023, DOA submitted a request under s.13.10 for the release of the \$2.0 million for tribal grants.] If the \$2.0 million for tribal grants is not released by the Committee in 2023-24 but the \$3,613,000 for aid payments to counties is released, the closing balance of the tribal gaming receipts appropriation would be reestimated at -\$29,034,000 in 2023-24. If the \$2.0 million for tribal grants is not released in the 2023-25 biennium, it is estimated that a general fund deposit of \$561,800 would be made in 2024-25.

**TABLE 4**

**Tribal Gaming Receipts Appropriation Condition**

	<u>2023-24</u>	<u>2024-25</u>
Opening Balance	\$0	-\$31,034,000
Estimated Tribal Payments	\$16,221,800	\$61,921,400
Regulatory Payments	350,000	350,000
Unobligated Fund Reversions	<u>300,000</u>	<u>699,900</u>
Total Revenue	\$16,871,800	\$62,971,300
Program Allocations to State Agencies	\$42,070,100	\$33,138,400
Program Reserves		
Aid Payments to Taxing Jurisdictions	3,613,000*	0
Tribal Grants	2,000,000	0
Pay Plan Supplements	<u>222,700</u>	<u>237,100</u>
Closing Balance	-\$31,034,000	-\$1,438,200

\* Funding for aid payments to taxing jurisdictions affected by the 1854 Treaty of La Pointe.

**ANALYSIS**

Under the request, a portion of the \$3,613,000 reserved in the Committee's supplemental appropriation would be distributed to the municipalities where property exempt from tax under the 1854 Treaty of La Pointe is located. The remaining funds would be distributed to counties with delinquent property tax that cannot be recovered, following the decision of the Court of Appeals.

As previously discussed, the decision of the Court of Appeals resulted in the removal of approximately \$50.3 million in value from property tax rolls in 2022 and 2023. This results in a shift in property taxes to property that remained taxable, which led to increased tax bills for those property owners. Additionally, for reasons discussed earlier, this tax shift was especially pronounced for the municipal portion of the property tax bill. DOR indicates that the proposed distribution to municipalities is intended to offset a portion of the municipal levies that shifted to other taxable properties. The Department indicates that it intends to require municipalities to certify that these funds will be used to either lessen the effect of the court decision on individual taxpayers or maintain a consistent level of municipal services without relying on the tax shift imposed by the court decision.

The property that was removed from property tax rolls in 2022 resulted in a property tax shift for 2022(23) property taxes, while the property that was removed from property tax rolls in 2023 is expected to result in a further shift for 2023(24) taxes. DOR proposes providing a payment to municipalities that would be sufficient to mitigate the tax shifts in both years. Accordingly, the Department calculated the amount of property taxes that shifted in 2022(23) and the amount expected to shift in 2023(24), as well as an amount equal to 80% of the combined property tax shift. The total payment provided to each municipality would be the sum of those two amounts, as shown in Table 5 below.

**TABLE 5****DOR's Proposed Distribution to Municipalities to Offset Tax Shifts**

<u>Town</u>	<u>County</u>	<u>Estimated Property Tax Shift</u>	<u>80% of Estimated Property Tax Shift</u>	<u>Total Payment</u>
Ashland	Ashland	\$510	\$408	\$918
Gingles	Ashland	18,358	14,687	33,045
Sanborn	Ashland	123,570	98,856	222,425
White River	Ashland	1,174	940	2,114
Russell	Bayfield	23,356	18,685	42,041
Sherman	Iron	547	437	984
Bass Lake	Sawyer	1,659	1,327	2,987
Couderay	Sawyer	1,401	1,121	2,522
Hayward	Sawyer	2,327	1,861	4,188
Radisson	Sawyer	2,145	1,716	3,860
Sand Lake	Sawyer	343	274	617
Boulder Junction	Vilas	62	50	112
Lac du Flambeau	Vilas	<u>13,242</u>	<u>10,594</u>	<u>23,836</u>
Total		\$188,695	\$150,956	\$339,650

Under the request, the remainder of the available funds (totaling \$3,273,350) would be provided to reimburse counties for the amounts of delinquent taxes that can no longer be collected following the court decision. As discussed above, a number of taxpayers in five counties did not pay property taxes between 2015 and 2021 on property that the Court of Appeals subsequently found to be exempt from taxation under the 1854 Treaty of La Pointe. As a result, the usual mechanisms for the recovery of delinquent property taxes are not available to those five counties. The amount of delinquent property taxes, as shown earlier in Table 2, is estimated to be \$3,613,000, the amount reserved under Act 19 in the Committee's supplemental appropriation for the purposes of making the affected counties whole for the amounts of delinquent property tax that they cannot collect. Because the Department's request would distribute a portion of the available funds to municipalities, the amount available for distribution to counties is less than the estimated amounts of delinquent property tax held by each county. Accordingly, DOR would provide each affected county a payment equal to approximately 90.6% of the amount of delinquent property tax. Table 6 below indicates both the amount of delinquent taxes held by each county, as well as the payment it would receive under DOR's request. [Alternative 1]

**TABLE 6****Proposed Distribution to Counties**

<u>County</u>	<u>Delinquent Taxes</u>	<u>County Payment</u>
Ashland	\$2,802,086	\$2,538,668
Bayfield	526,806	477,282
Iron	6,908	6,259
Sawyer	109,100	98,844
Vilas	<u>168,100</u>	<u>152,297</u>
Total	\$3,613,000	\$3,273,350

As discussed earlier, the \$3,613,000 appropriated for the distribution of these payments was derived from the amount of delinquent taxes owned counties, and was intended to be distributed to counties that had been affected by the federal Court of Appeals decision. The Committee could therefore opt to release the funds from the supplemental appropriation, but direct the Department to distribute the funds only to the counties. Under this alternative, each county would receive a payment equal to the amount of delinquent property tax for which it is liable, as shown in Tables 2 and 6 above.

As shown in Table 1 above, the majority of the property that became exempt from taxation was removed from tax rolls in 2022 (\$43.7 million). Further, the value of property that was removed from tax rolls in 2023 was much less than the value removed in 2022. Thus, the most pronounced tax shift has already occurred in those municipalities in 2022(23). While the Department's submitted request would require municipalities to certify that the payments received would be used to either lessen the effects of the tax shift on individual taxpayers or maintain municipal services without relying on the tax shift, the request would not require municipalities to lower their levies by the amount of payment received. As a result, providing an aid payment to municipalities would not undo any shifts that already occurred in 2022(23). [Alternative 2]

## **ALTERNATIVES**

1. Approve the request to transfer \$3,613,000 PR in 2023-24 from the Joint Committee on Finance's supplemental funding appropriation under s. 20.865(4)(g) to the Shared Revenue and Tax Relief appropriation under s. 20.835(1)(k) to provide payments to local governments affected by the Court of Appeals decision *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. Evers*. Specify that \$339,650 be distributed to municipalities and \$3,273,350 be distributed to counties, as specified in the Department's request.
2. Approve the request to transfer \$3,613,000 PR in 2023-24 from the Joint Committee on Finance's supplemental funding appropriation under s. 20.865(4)(g) to the Shared Revenue and Tax Relief appropriation under s. 20.835(1)(k) to provide payments to local governments affected by the Court of Appeals decision *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. Evers*. Specify that \$3,613,000 be distributed to counties, according to the amount of delinquent property tax for which each county is liable.
3. Deny the request.

Prepared by: Noga Ardon