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# Wisconsin Legislative Council

## ACT MEMO

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### 2021 Wisconsin Act 80 [2021 Senate Bill 254]

### Waiver of Property Tax Penalties and Interest, Waiver of Timely Filing Requirement for Certain Property Tax Claims, Extension of Certain Approvals

2021 Wisconsin Act 80 allows taxation districts to waive interest and penalties for 2021 property tax payments and extends the timeline for a person to contest unlawful or excessive property taxes. The act also allows a holder of certain construction approvals that are subject to administrative, judicial, or appellate proceedings to obtain an automatic extension of that approval. The provisions relating to property taxes correspond to changes incorporated for property taxes in 2020 under 2019 Wisconsin Act 185.

## WAIVER OF PROPERTY TAX PENALTIES AND INTEREST

### Background and 2019 Wisconsin Act 185

Generally, property taxes are due either January 31, if paid in full, or in two equal installments, one paid by January 31 and one paid by July 31. Current law specifies interest of one percent per month or fraction of a month for delinquent property taxes and authorizes a county, or the City of Milwaukee, to impose a penalty of up to 0.5 percent per month or fraction of a month on delinquent property taxes, in addition to the interest due. [ss. 74.11 and 74.47, Stats.]

2019 Wisconsin Act 185 allowed a taxation district (a city, village, or town) to waive interest and penalties on installment payments of property taxes due and payable after April 1, 2020, if all of the following occurred: (1) the total due and payable in 2020 was paid on or before October 1, 2020; (2) the county board adopted a resolution authorizing the waiver and establishing criteria to determine hardship; and (3) the taxation district subsequently adopted a similar resolution. It also specified the procedures for settling and distributing any taxes, interest, and penalties collected. [s. 70.511 (2) (a), Stats.; and 2019 Wisconsin Act 185, SEC. 105 (25).]

### The Act

The act allows the waiver of interest and penalties on property taxes due in 2021, which is similar to the waiver allowed under 2019 Wisconsin Act 185 for taxes due in 2020. It allows a taxation district to waive interest and penalties on installment payments of property taxes due and payable in 2021 if the taxation district makes a general or case-by-case finding of hardship and the total amount due is paid on or before October 1, 2021. Interest and penalties accrue after October 1, 2021, for any taxes payable in 2021 that are delinquent after that date.

Under the act, a taxation district may not waive interest and penalties unless the county board where the taxation district is located first adopts a resolution authorizing the waiver and establishing criteria for determining hardship, and the taxation district subsequently adopts a similar resolution. In a first class city (the City of Milwaukee), property tax interest and penalties may be waived if the city, rather

than the county board, adopts a resolution authorizing the waiver and establishing criteria for determining hardship.

If a county adopts a resolution authorizing the waiver of interest and penalties, the county must settle any taxes, interest, and penalties collected on or before July 31, 2021, on August 20, 2021, as provided under s. 74.29 (1), Stats., and must settle the remaining unpaid taxes, interest, and penalties on September 20, 2021. The August 20, 2021, settlement must be distributed proportionally to the underlying taxing jurisdictions.

## **CONTESTING UNLAWFUL OR EXCESSIVE PROPERTY TAXES**

### **Background and 2019 Wisconsin Act 185**

Under current law, a person may recover an unlawful<sup>1</sup> or excessive<sup>2</sup> property tax if the tax is timely paid. As was mentioned previously, property taxes are generally due either in full on January 31, or in two equal payments, with the first installment paid by January 31 and the second installment paid by July 31. 2019 Wisconsin Act 185 required that a taxation district consider as timely any property tax payment received by October 1, 2020, or by an installment date after October 1, 2020, for purposes of allowing a taxpayer to submit a claim to appeal an unlawful tax, an excessive tax, or a tax paid in protest due to an outstanding contested assessment. [ss. 74.35 (5) (c) and 74.37 (4) (b), Stats.]

### **The Act**

The act extends the timeline for a person to recover an unlawful or excessive property tax, which is similar to the extension in 2019 Wisconsin Act 185. For purposes of allowing a taxpayer to submit a claim to appeal an unlawful tax, an excessive tax, or a tax paid in protest due to an outstanding contested assessment, a taxation district must consider as timely a property tax payment for 2021, if it is received by October 1, 2021, or by an installment date after October 1, 2021.

## **CONSTRUCTION PERMIT EXTENSIONS**

The act creates a new provision that allows a person who has received a covered approval, as defined below, to obtain an automatic extension of that approval for 36 months plus the duration of the administrative, judicial, or appellate proceedings to which the approval is subject. This provision first applies to a covered approval that is subject to a pending administrative, judicial, or appellate proceeding on the effective date of the bill.

### **Covered Approvals**

The act defines a covered approval as a challenged permit or challenged plat or survey. A challenged permit means a permit or approval that meets all of the following criteria:

- Authorizes a construction project, which is any organized improvement to real property that includes the construction or redevelopment of at least one building for occupancy.
- Was obtained through an application that includes a description of the construction project.

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<sup>1</sup> An unlawful tax is a general property tax where one of the following errors was made: a clerical error in the description of the property or in the computation of the tax; the assessment included real property improvements that did not exist on the date for making the assessment; generally, if the property is exempt from taxation; the property is not located in the taxation district for which the tax roll was prepared; a double assessment was made; or a mathematical error was made. A tax due to an allegedly excessive valuation does not qualify as an unlawful tax. [ss. 74.33 (1) (a) to (f) and 74.35 (1), Stats.]

<sup>2</sup> A claim for an excessive property tax alleges that the assessment of the property was excessive. [s. 74.37 (1), Stats.]

- Was issued by a governmental unit (the Department of Natural Resources, the Department of Transportation, a city, a village, a town, a county, or a special purpose district).
- Has or had a finite term or duration that has not expired.
- Is the subject of administrative, judicial, or appellate proceedings that may result in its invalidation, reconsideration, or modification, and that were brought by a person other than the approval holder (unless the proceedings are reviewing another decision, and the original proceedings were brought by a person other than the approval holder).

A challenged plat or survey means a plat or certified survey map approval that is the subject of administrative, judicial, or appellate proceedings that may result in the approval's invalidation, reconsideration, or modification, and that were brought by a person other than the approval holder (unless the proceedings are reviewing another decision, and the original proceedings were brought by a person other than the approval holder).

### **Extension of Covered Approvals**

To obtain the automatic extension, the approval holder must provide written notification to the governmental unit that issued the approval between 30 and 90 days before the approval would expire if not extended, and must specify the approval to be extended.

However, the approval may not be extended if any of the following apply:

- An extension is prohibited under federal law.
- The approval is under a programmatic, regional, or nationwide general permit issued by the U.S. Army Corps of Engineers.
- The approval authorizes a water pollutant discharge under s. 283.31, 283.33, or 283.35, Stats., or the construction or operation of a stationary source under s. 285.60, Stats.
- The governmental unit that issued the approval determines the approval holder to be in significant noncompliance with the conditions of the approval, as evidenced by a written notice of violation or the initiation of a formal enforcement action.

The act also specifies that if an approval is extended, it remains subject to any order concerning the approval that is issued in an administrative, judicial, or appellate proceeding, including a suspension, injunction, restraining order, invalidation, reconsideration, or modification, and that it is subject to any applicable governmental regulations requiring the property to be maintained in a safe and sanitary condition.

Finally, the act establishes what law governs the approval in the event that there is a change in law after the approval holder obtains the approval. Specifically, under the act, any laws, regulations, ordinances, or other properly adopted requirements that are in effect at the time the approval was issued apply to the approval during the extension period, unless a governmental unit demonstrates an immediate threat to public health or safety.

**Effective date:** October 17, 2021

**Initial applicability:** The provisions relating to the automatic extension of covered approvals first apply to a covered approval subject to pending administrative, judicial, or appellate proceedings on the effective date.

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