

Board of Tax Exemption Proposal
BOTE
Special Committee Studying Residential Housing

Background: The Wisconsin Association of Assessing Officers (WAAO) understands that modifications to the exemption process to receive better information are necessary to ensure exemption decisions are made uniformly. In fact, we have been actively working with the Department of Revenue (DOR) to increase professionalism and promote credibility in the assessment process including processes related to exemptions over many years. Specifically, property tax exemptions and proposals to limit exemptions have been studied many times over the past 25 years. Probably the most recent and all encompassing studies were undertaken in 1995 as part of an Assessment Practices report. That report included four recommendations to enhance and create more uniformity in the exemption process; 1) Standardize the way assessor make decisions on exemption issues, 2) Create a law to provide for an application process, 3) Create a statewide review authority and 4) Eliminate the broad interpretation of exemption issues. At the request of the Secretary of DOR Bugher a team of WAAO assessors met to specifically outline how those goals could be met.

The recommendation from WAAO included the following:

1. Develop a timetable to include mandatory data for application (March 1 for January 1 status)
2. Estimate a reasonably frequency for reconsideration
3. Mandatory notification for change in use, status, or ownership
4. Penalty for Non-notification
5. Full disclosure of relevant information that may affect exempt status
6. Develop and require a standardized application form and exemption notification form
7. Develop a statewide review authority
8. Promote and encourage legislative change to clarify benevolent, charitable, not for profit, educational, religious etc.

9. Establish exemption test for benevolent, charitable, not for profit, educational, religious etc.

Of the recommendations, working with DOR and the legislature we have enacted legislation and procedures that cover recommendations numbers 1, 3, 5 and 6.

In January of 2001 WAAO formed an exemption committee to study further possibilities for developing more uniformity between municipalities and the idea of a "Board of Tax Exemption" (BOTE) was developed. This idea was proposed to DOR in early 2003. In light of the issues this committee is addressing, the idea of BOTE might be one this committee and other legislators might be interested in.

Components of the Solution: WAAO would be interested in legislation that would transfer the decision-making regarding exemptions to a body that would make more uniform and consistent evaluations of exemption requests. We feel that this could occur within the framework of DOR's current and planned reorganization. A brief discussion of the components are:

1. Applications would continue to be requested and filed with the local assessor. The assessor would forward the applications and any local comments to a Committee that is formed at the District Equalization level (Cities with a Board of Assessors would make decisions at their Board of Assessors). If all applications were required to be electronically filed the need for the committee to actually meet to make decisions would be minimal.
 - a. This would take the political aspects of exemptions away from the local level.
 - b. Exemption decisions would be more uniform statewide.
2. Exemption organizations would be required to refile for their exemption at statutory intervals.
 - a. This would enable more control in the exemption process and a better understanding of the benefits that an exempt organization brings to the state.

- b. Exempt organizations would need to demonstrate and keep abreast of their mission in order to maintain their exemption.
- 3. Appraisals would be required with each application and reapplication allowing a good rendition of the market value of each exemption and the amount of benefit that is being received through property tax exemptions. This would benefit both the legislature and the public.
- 4. Appeal from the committee's decision would be to a Board of Tax Exemptions (BOTE) comprised of personnel from State and Local Finance.
- 5. Appeal from BOTE would be handled by the Attorney General and filed in Dane County Circuit Court.
- 6. In order to fund the process we would propose an application and reapplication fee to be incorporated into the procedure.

Exhibit 1 gives a flow chart of current law versus the WAAO proposal. Exhibit 2 outlines the advantages of the proposal.

Exhibit 1

January 1
Assessment Date
Sec 70.01 & 70.10

Existing Law

March 1 Exemption
Application Due
70.11 preamble

Presumption of
Taxability 70.109

Assessor, Municipal Employee
makes decision applying state law 70.11

No Notice to Tax Payer: No notice is required to be
given to taxpayer of the Assessor's exemption decision.
Tax Bill could be 1st notice tax payer gets. Budgets
are already set by this time

December Tax Bill gets mailed

January 31 Payment of Tax Bill

74.35(2m) Exclusive Procedure to challenge Exemption
Tax Payer pays under protest & files claim for refund
Anomaly: Governing body does not make exemption decision
Jan 31 = Deadline to pay & file claim
If no action by governing body w/in 90 days, the claim is denied
claim is denied
If governing body acts & send notice to disallow, the
Taxpayer must file suit w/in 90 datys

74.39 (new Discovery. Nankin set oral arguments)
If Tax Payer brings 74.35 action to court, court should
hold initial hearing. They decide one of the following:
1) Can court decide matter on it's own?
2) Is court able to determine amt. of unlawful tax with
reasonable certainty?
3) Is it in the best interest of all parties for court to
decide matter on its own?
If, after initial hearing, court decides not to decide
matter on its own, court stays case & sends matter
ack to council, who made/ didn't repond to 74.35 Request

New Law

February 1 Exemption Application Date
(all applications to be filed electronically)
70.11 preamble

Presumption of Taxability 70.19

Assessor receives Exemption Request
and all supporting documents/w appraisal
Assessor acts as go between & instucts owner

Assessor forwards completed application, City's
recommendation & supporting docs to Committee
or City Board of Assessors

Determination Level: Committee or Bd of Assessors

Committee = Dist Sup, 3 assessors, 1 attorney
City Board of Assessors = as currently determined by statute
Makes initial exemption decision

Notice to Taxpayer & Assessor from committee by March 15

1st Level of Appeal: BOTE: Board of Tax Exemptions
By June 1, aggrieved taxpayer or muni files claim w/ BOTE
(copy to both parties)
BOTE issues decision

If no decision by tax bill due date, taxpayer still
has to timely pay under protest.
BOTE comprised of: 3 members from SLF, 1 DOR
attorney, 1 DOR appointee

2nd Level of Appeal: Dane County Circuit Court
Taxpayer or Municipality may appeal the BOTE
decision.

Attorney General defends BOTE decision.
Dane County Circuit holds a de novo hearing

Exhibit 2

BOTE Advantages:

- Makes more sense. It's logical.
- Removes local governing boards from decision-making process under 74.35. These boards shouldn't be involved in the first place since they don't have authority to declare property exempt.
- Gives taxpayers more notice, more due process, better ability to plan for possible tax bill. They'll know sooner that assessor thinks property is taxable. They can establish reserves to pay tax under protest.
- Gives municipalities more certainty in budget-setting process. They'll know by at least June 1st those taxpayers who are challenging exemption decision. Municipalities can take that into account when setting tax levies. They can establish reserves to cover possibility of having to make refund.
- BOTE will allow for more uniform application of state tax and exemption laws consistent with legislative intent, Wis. Stat. Ch. 70, and Constitution's uniformity clause.
- State BOTE better able to address exemption issues. More expertise. DOR writes the Manual and has supervisory control over local assessor.
- Removes local politics from exemption disputes by getting local boards out of 74.35 claim process and by shifting BOTE judicial defense of taxpayer appeal to state attorney general.
- "Attorney General, Dane Co." litigation procedure removes current problem of some municipalities knowingly making incorrect exemption decisions (and wrongly allowing exemptions) to avoid municipal expense of defending a correct exemption-denial decision in court.
- Less expensive and more efficient to litigate before BOTE.
- In line with DOR's assessment practices study group recommendations and with WAAO's ad-hoc committee's comments to those recommendations. See 10/16/95 "Assessment Practices Study Team Report." DOR Assessment Practices Study group recommended (recommendation no. 5) that DOR develop consistent property tax exemption criteria, a standardized process for local determination of eligibility, a process for review of local determinations. Ad-hoc committee believed advantages of such outweigh disadvantages, and called for creation of state-wide review authority.
- Endorsed by WAAO.
- More in tune with reality. Addresses problems with current law, and is more responsive to needs of taxpayer and government.
- Attorney general defense of BOTE at circuit court level acts as a crosscheck against the DOR and possible DOR/governor "state politics".
- Will bring DOR "in the loop" with respect to 70.11 exemption disputes throughout the state, thus enabling DOR to give more-informed presentations at annual state-wide assessor meetings, and will allow for better, more timely, and more efficient Manual updates.