



WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: Study Committee on Property Tax Assessment Practices

FROM: Anna Henning, Senior Staff Attorney; and Scott Grosz, Principal Attorney

RE: Proposed Revisions for Discussion at the January 9, 2019 Meeting

DATE: January 2, 2019

This memorandum summarizes proposed revisions to LRB-0394/2 and LRB-0485/3 – two of the bill drafts on the agenda for the committee’s January 9, 2018 meeting.¹ LRB-0394/2 and LRB-0485/3 incorporate certain changes to LRB-0394/1 and LRB-0485/1 for which the committee reached consensus at its December 11, 2018 meeting. The revisions described below include proposals discussed at the committee’s December 11, 2018 meeting for which no consensus was reached, and other proposals submitted to Legislative Council staff by committee members after the December 11, 2018 meeting.

PROPOSED REVISIONS TO LRB-0394/2

Background

LRB-0394/2 authorizes an assessor to request an enumerated list of documents at an earlier stage in the assessment process than is authorized under current law. Specifically, the bill authorizes an assessor, by March 1 of the current assessment year, to request a person to provide one or more of a specified list of documents that were executed, prepared, or submitted within the current assessment year or the three years prior to the current assessment year. The bill prohibits a person who has received such a request from objecting to a valuation before the board of review if the person did not provide the requested information by March 31 of the current assessment year.

The bill requires the Department of Revenue (DOR) to prescribe a form listing the documents enumerated in the bill. Under the bill, the form and documents are confidential

¹ Alternative versions of another bill draft – LRB-0484/1 – have been prepared in draft form.

records of an assessor's office and must remain under seal before the board of review and on appeal. Finally, the bill provides that documents provided under the bill are not controlling and specifies that the bill does not limit an assessor's authority to seek additional evidence regarding a property's value.

Proposed Revision #1 (Millis) – documents held by property owner (when other than the taxpayer)

LRB-0394/2 states that, if a person challenging an assessment is a tenant and is not in possession of documents authorized to be requested under the bill, then the requirement to provide the documents applies to the owner.

Mr. Millis suggests replacing that language with a provision authorizing requests for documents to be served on either a property owner or tenant. The provision would also specify that if an owner fails to provide information in response to such a request, a court may preclude the taxpayer from offering a document in subsequent litigation concerning the assessment, if the court determines both of the following: (1) the taxpayer knew about the request; and (2) the taxpayer had the ability to compel the owner to provide the document in a timely fashion. Mr. Millis's proposed amendment further provides that the option for precluding a document does not apply if a precluded document is later utilized by an assessor or witness in the proceeding.

Proposed Revision #2 (Seibel) – define “objector”

As an alternative to proposed revision #1, described above, Ms. Siebel recommends amending current law to define who may object to a property tax assessment, specifically by defining an “objector” as a property owner, but specifying that a property owner may designate a person (e.g., a tenant) as the owner's agent for purposes of making an objection.

Ms. Siebel notes that this approach is used in many other states. For example, in a 2018 decision, the Ohio Supreme Court held that, under Ohio law, a tenant lessee does not have independent standing to challenge a property tax assessment, unless it is acting as the property owner's agent. [*Beavercreek Towne Station, L.L.C. v. Green County Board of Revision*, Slip. Op. No. 2018-Ohio-4300 (October 25, 2018).]

Proposed Revision #3 (Millis) – “penalty” for noncompliance

Under LRB-0394/2, if a person fails to provide documents requested pursuant to the bill by March 31, the person may not appear before a board of review or testify to the board by telephone or object to a valuation.

Mr. Millis suggests that a person should instead be prohibited from taking such actions unless the person substantially complies with a request for documents by March 31.

Proposed Revision #4 (Millis) – access to information by other property owners

LRB-0394/2 retains certain language under current law regarding the confidentiality of documents submitted to an assessor under the bill but specifies that such documents must remain under seal before a board of review and on appeal.

Mr. Millis suggests revising the bill to specify that a person objecting to an assessment must be given access to “any information and documents collected by or on behalf of” an assessor to “set or defend the assessment of that property, including documents received under [the bill].” In addition, he suggests that, in certain circumstances, the person challenging an assessment may petition a court to gain access to information and documents collected under the bill, if the information and documents were used to set or defend the assessment of the person’s property or are otherwise relevant to the assessment. The proposed revision would further direct a court considering such a petition to “balance the need to keep the information and documents confidential with the ability of the assessor to defend the assessment and the ability of” the person challenging an assessment to pursue the challenge.

Proposed Revision #5 (Millis) – presumption of relevance

LRB-0394/2 does not specifically address the relevance of documents submitted to an assessor under the bill.

Mr. Millis suggests adding a provision stating that there is no presumption that any document submitted pursuant to the bill is relevant to a property assessment.

Proposed Revision #6 (Siebel) – codify *Metropolitan Associates* holding

Responding in part to proposed revisions #4 and #5, above, **Ms. Siebel** suggests the bill be revised to codify the Wisconsin Supreme Court’s 2018 decision in *Metropolitan Associates v. City of Milwaukee*. In that decision, the Wisconsin Supreme Court held that tax assessments being challenged as “excessive” under s. 74.37, Stats., are entitled to a presumption that they are “justly and equitably” made, giving rise to a presumption of correctness. The court stated that the presumption can be overcome only if the challenging party presents significant contrary evidence. [2018 WI 4, ¶ 50.]

Proposed Revision #7 – expand to manufacturing property

LRB-0394/2 applies only to commercial property, and not to manufacturing property or other assessment categories.

At the December 11, 2018 meeting, some committee members inquired whether the bill should be revised to also apply to manufacturing or other categories of property.

PROPOSED REVISION TO LRB-0485/3

Background

LRB-0485/3 authorizes a taxation district to convene a joint board of assessment, consisting of representatives of the taxation district, as well as the county, school district, and technical college district that have power to levy taxes on a property subject to assessment. Generally, the board must convene prior to the date on which the assessment of property is required to be completed. Once convened, the board may vote to share costs related to the assessment of a property, including costs of hiring expert help to assess the property, as well as costs of defending the assessment before the board of review, DOR, or tax appeals commission,

or in any court action. If a joint board of assessment approves any motion for cost-sharing, costs described in the motion must be proportionately charged back and recovered from each taxation jurisdiction in the same manner that refunded taxes are charged back and recovered under current law.

In addition, the bill modifies current law to generally require interest to be charged back to all taxing jurisdictions.

Proposed Revision #1 (Gundrum) – majority vote on board

LRB-0485/3 provides that a motion for cost-sharing under the bill must be approved by a board of assessment by majority vote. In practice, if all four members of the board are present, the bill requires three of the four members to vote in favor of a motion for it to succeed.

Representative Gundrum suggests modifying the bill to specify that a majority of all members, not merely members present, must vote in favor of a cost-sharing motion. That amendment would have the effect of retaining the three-vote requirement when a member of the board is absent from a meeting.

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