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To: Senate Committee on Financial Institutions and Revenue  
From: Toni Herkert, Government Affairs Director, League of Wisconsin Municipalities  
Date: January 11, 2022  
Re: SB 396 – Interest Claims of Excessive Assessment and the Recovery of Unlawful Property Taxes

The League of Wisconsin Municipalities supports SB 396 relating to the interest paid on property tax refunds. The League worked with the authors to draft this bill in an effort to modernize the calculation of interest and to make the treatment of interest consistent with how the tax refund is treated between the various taxing jurisdictions.

In this legislative effort two specific areas of the statutes are addressed relating to the calculation and payment of interest on tax refunds. Making both of these changes will positively impact city, village, and town taxpayers.

**Calculation of Interest on Tax Refunds:**

Currently there are two statutes that address the calculation of interest paid on tax refunds. The resulting amount of interest varies dramatically based on how the property owner challenges their assessment.

- Sec. 74.35, Wis. Stats, Recovery of Unlawful Taxes. One of the most common ways this provision is utilized is to claim that a property was exempt from taxation. Adhering to this section a municipality must calculate the interest rate 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.
- Sec. 74.37, Wis. Stats, Over Assessment. In this section of the statutes 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.

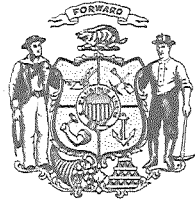
From 1987 to 2007 the interest rate of .8% per month was the same under both statutes. Recognizing the two-decade span between updating the calculation, when the Legislature passed Act 86 in 2007, which made several changes to the process for challenging over assessments of property, the interest calculation under sec. 74.37 was modernized. The 2007 Law did not update sec. 74.35 and as a result the interest calculated under this statute is much higher than required to be refunded under the over assessment statute. SB 396 rectifies the variation in interest calculation by tying the interest rate in both provisions to the 6-month treasury bill.

## **Payment of Refunded Interest:**

Current law requires all local taxing jurisdictions contribute proportionately to the cost of the municipal tax refunds. However, only the city, village, or town pays the interest on the refund. SB 396 aligns the interest refund to the process for refunding the actual property taxes and allows the city, village, or town to collect its proportionate share of the interest paid on property tax refunds from each underlying taxing jurisdiction including the county and school district. 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.
- Shannon Krause, the City of Wauwatosa Assessor is here to provide an example involving a tax lawsuit brought by the Medical College of Wisconsin that will further explain the current disproportionate impact to municipal taxpayers. 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 urge the committee to vote in favor of recommending passage of SB 396. Thank you.



# JERRY PETROWSKI

WISCONSIN STATE SENATOR

## Senate Bill 396

January 11, 2022

Good morning Mr. Chairman and committee members and thank you for taking the time to hear Senate Bill 396, addressing interest rates on excessive assessments. This bill 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 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 state statute 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 individual filed the claim. This equals a 9.6 percent annual interest rate.

Property owners seeking to claim an overpayment of property taxes cause 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 section 74.37, the interest on refund payments is calculated at the average annual discount rate for the period of time between the time 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 percent 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 makes the interest calculation under both statutes the same one again by tying the interest rate in both provisions to the six-month treasury bill.

The other change this bill makes 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 from each underlying taxing jurisdiction its proportionate share of the interest paid on property tax refunds.

29TH SENATE DISTRICT

Finally, back in July, I introduced Senate Amendment 1 to provide a delayed effective date of January 1, 2021 for the bill so that the Department of Revenue would have time to make needed changes to their forms and software. Given that we are now past that date, I've introduced Senate Amendment 2 moving the effective date to January 1, 2023.

Thank you again for holding this hearing today. I would be happy to answer any questions.



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# ROBERT BROOKS

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STATE REPRESENTATIVE • 60<sup>TH</sup> ASSEMBLY DISTRICT

**Senate Committee on Financial Institutions and Revenue**

**Tuesday, January 10, 2021**

**10:00 A.M.**

**Room 411 South**

Chairman Kooyenga and members of the Senate Committee on Financial Institutions and Revenue, thank you for affording me with the opportunity to testify in favor of Assembly Bill 399/Senate Bill 396.

Assembly Bill 399/Senate Bill 396 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 exempt 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, 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/Senate Bill 396 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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# ROBERT BROOKS

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STATE REPRESENTATIVE • 60<sup>TH</sup> ASSEMBLY DISTRICT

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.

Assembly Bill 399 was passed unanimously, via voice vote, by the Wisconsin State Assembly on October 27, 2021.

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