

CITY OF MADISON, WISCONSIN

REPORT OF THE CITY ATTORNEY

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DATED: 3/10/2015

TO THE MAYOR AND COMMON COUNCIL:

RE: UNLAWFUL TAXATION: Joseph Pickart, Whyte Hirschboeck Dudek S.C., for NES Equipment Services Corp. - unlawful taxation - \$30,900.00.

Claimant NES Equipment Services Corporation is seeking recovery of allegedly unlawful tax pursuant to Wis. Stat. § 74.35 for their personal property. The claim alleges the personal property is exempt Rental Property, pursuant to Wis. Stat. § 70.111(22). They are seeking the refund in the amount no less than \$30,900 for their 2014 taxes.

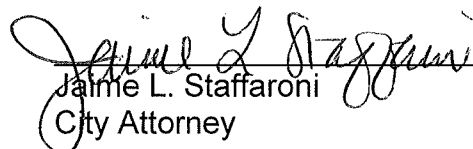
For tax year 2014 Wis. Stat. § 70.111(22) was recently amended to create subsection (2) which provides exemption for specific types of rental property which is rented for 364 days or less per year for exemption. However, subsection (2) also requires that the "owner of the property is not a subsidiary or affiliate of any other enterprise which is engaged in any business other than personal property rental." The same language is also contained in subsection (1) of Wis. Stat. § 70.111(22) and was litigated in 2005 in *United Rentals, Inc. v. City of Madison*, 2007 WI App 131, 302 Wis. 2d 245, 733 N.W. 2d 322. The City argued that Untied Rentals could not qualify for exemption because they were a subsidiary or affiliate of another enterprise which was engaged in business other than personal property rental. The Court found in favor of the City on another issue raised in that case and therefore did not decide this issue.

The City Attorney and Assessor have consulted on this matter and without limiting our position, have determined that the property does not satisfy the requirements for exemption, pursuant to Wis. Stat. § 70.111(22). Based on the information available to the City, NES Equipment Services Corporation has other subsidiary and affiliate businesses which are not engaged in personal property rental.

For the foregoing reasons, I recommend denial of the subject claim.

Note: This claim was received on January 29, 2015, and pursuant to Wis. Stat. § 74.35(3)(a) if no action is taken on these claims by the Common Council within ninety(90) days of filing the claim, it is considered disallowed.

Respectfully submitted,



Jaime L. Staffaroni
City Attorney