

CITY OF MADISON, WISCONSIN

REPORT OF THE CITY ATTORNEY

AUTHOR: Jaime L. Staffaroni

DATED: October 6, 2020

TO THE MAYOR AND COMMON COUNCIL:

RE: Notice of Circumstances of Claims pursuant to Wis. Stat. § 893.80 (1d): Items 50-51:

Claimants are seeking a refunds for a portion of interest and penalty collected for late property tax installment payments specifically, installments due Jan. 31 and March 31, 2020. Claimant served the City with a Notice of Claim under § 893.80 (claim against governmental bodies or officers) which we typically do not see in Chapter 74 tax litigation. However, since the Notice of Claim was filed, we are following the statutory procedures contained in § 893.80 that require placing the item on the Common Council agenda and a vote by the body to approve or disallow.

Wis. Stat. § 74.12 mandates the collection of penalty and interest for property tax installments and MGO § 4.07 establishes four property tax installment payments in the City of Madison, specifically, Jan 31, March 31, May 31 and July 31. 2019 Wisconsin Act 185 in response to the COVID-19 Pandemic adopted a provision which allows municipalities to waive interest and penalties for installments due after April 1, 2020 but paid in full by Oct. 1, 2020, if the respective county adopts a hardship resolution. Dane County and the City of Madison adopted a hardship resolution authorizing the waiver of interest and penalties on installments due after April 1, 2020 if paid by Oct.1, 2020.

The amendments to the 2019 Wisconsin Act 185 did not include any waiver for the first or second installment of tax (January 31 and March 31), but rather specifically designated installments due after April 1, 2020. Pursuant to Wis. Stat. § 74.12 (7) and (8) and MGO § 4.07 (5) and (6), if a first or second installment payment is delinquent the entire remaining tax owed on the parcel becomes delinquent; no further installments are permitted. 2019 Wisconsin Act 185 did not amend subsections (7) or (8) of Wis. Stat. 74.12 and the City is required to collect penalty and interest in accordance with the statute. For the foregoing reasons the Office of the City Attorney recommends denial.

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

Respectfully submitted,

Jaime L. Staffaroni
Assistant City Attorney