

CITY OF MADISON, WISCONSIN

REPORT OF THE CITY ATTORNEY

AUTHOR: Jaime L. Staffaroni

DATED: 2/27/2019

TO THE MAYOR AND COMMON COUNCIL:

RE: UNLAWFUL TAXATION: S. Kjome, Skogen's Festival Foods - \$35,604.23

Claimant, Festival Foods, has filed a claim unlawful tax pursuant to Wis. Stat. § 74.35 for personal property tax for 2018 which they assert to be exempt as machinery under Wis. Stat. § 70.111 (27)(a) for their property located at 810 E Washington Ave. Claimant asserts that the majority of its personal property is exempt as machinery pursuant to a Wisconsin Attorney General's statement dated January 3, 2019. Claimant is seeking a refund of \$35,604.23 plus interest.

The statutory scheme (including the Biennial Budget) of Wis. Stat. § 70.111 (27)(a) includes a repayment to municipalities to "make them whole" for a period of time after exempting a specific schedule of personal property: Schedule C Machinery, Tools, and Patterns. This fiscal note was based upon 2017 filings in that Schedule statewide as provided by the Wisconsin Department of Revenue. Subsequent to that fiscal note being determined, the statutory language was amended to include a new definition of "machinery." The new definition can be argued to include items from another schedule of personal property as well: Schedule D Furniture, Fixtures, and Equipment. The potential impact of including both Schedules in the exemption without amending the fiscal note is to diminish the payment to municipalities and, ultimately, shift the tax burden to residential home owners. However, this is a flawed position as the fiscal note was specifically attached to Schedule C prior to amending the definition of machinery in the statute. Please see: <https://www.lwm-info.org/1514/Personal-Property-Exemption-Aid> from the League of Wisconsin Municipalities.

Former Attorney General Brad Schimel provided an informal analysis regarding this exemption just prior to the expiration of his term on January 3, 2019. In it, he claims that the fiscal note attached to the statute is irrelevant, further, that the new definition of machinery does impact both Schedule C and D of the PA-003 Statement of Personal Property (<https://www.revenue.wi.gov/DORForms/pa-003f.pdf>). We disagree with this analysis.

2018 Wisconsin Property Assessment Manual, Chapter 19, page 22 provides in relevant part: "2017 Wisconsin Act 59, effective January 1, 2018, exempted machinery, tools and patterns. This is the property reported on Schedule C of the 2017 Statement of Personal Property. The exemption does not apply to manufacturing property."

The City Assessor and personal property appraiser have walked through the Claimants store to review the items of personal property that the Claimant asserts is exempt and have determined that the personal property in question is not exempt under the law.

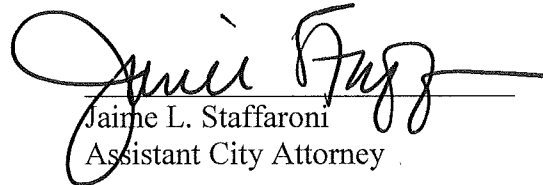
Furthermore, this claim was received via Certified Mail by the Madison City Clerk on February 1, 2019. Wis. Stat. § 74.35(5)(a) provides in relevant part: "... a claim under this section shall be filed by January 31 of the year in which the tax is payable." Additionally, Wis. Stat. § 74.35(2)(b)(5) requires personal service of the claim on the clerk of the taxation district pursuant to Wis. Stat. § 801.11(4).

Both Wisconsin State Statutes and case law require strict compliance with condition precedents prior to filing a claim.

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

Note: This claim was received on February 1, 2019, 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
Assistant City Attorney