



FOX POINT

files

by Douglas H. Frazer

Fox Point Leads Successful Effort to Change Chargeback Law

The Village of Fox Point recently won an important legal victory first in court and then in the legislature. Here is the story.

The village portion of a property owner's property tax bill is only about 25% of the total. The balance represents taxes from other taxing jurisdictions that by law the village is obligated to collect. These other taxing jurisdictions include the State of Wisconsin, County of Milwaukee, Milwaukee Metropolitan Sewerage District, Milwaukee Area Technical College, and our elementary and high school districts.

If a property owner succeeds in winning a lower assessment, the village issues a partial tax refund and then initiates a procedure administered by the Department of Revenue (DOR) to "charge back" the other taxing jurisdictions for their proportionate share of the money the village returned to the property owner.

In 2012, Fox Point settled two residential valuation lawsuits and issued refunds commensurate with the reduced values. Fox Point then sought a \$36,000 charge back. The DOR said no.

In other words, even though the village kept only about 25% of the subject tax, the DOR was requiring the village to (1) pay out from its own coffers 100% of the subject tax refund and (2) fund the entire cost of litigating the valuation challenges.

This made no sense to the village board. Moreover, in Village Attorney Eric Larson's view this result was inconsistent with the statute.

The village board directed Larson to take the matter to court.

The statute at issue, Wis. Stat. § 74.41, governed the DOR's obligations when faced with a chargeback request. First, the DOR was required to determine the amount of the change, if any, in the equalized valuation of the requesting taxation district, which served as the measure of the chargeback calculation. The legislature directed the DOR to process the chargeback if it resulted in a tax refund of at least \$5,000.

In contrast to assessed value, equalized value is the state's alternative market value computation for purposes of setting the levy for taxing jurisdictions whose boundaries include territory outside a single municipality, like counties. The Wisconsin constitution requires tax uniformity. An equalized value formula is required to achieve tax uniformity because (1) each municipality has its own assessor and (2) municipalities perform revaluations in different years.

At odds was the method the DOR used to calculate equalized value for chargeback purposes. The DOR added two additional elements: calculating a second measure of value called residential economic change and rounding the residential economic change measure to the nearest one-tenth of one percent.

The DOR determined that if the residential economic change—expressed in percentage terms after rounding—had stayed the same, the refund did not change the equalized value. That, according to the DOR, was the case with the Fox Point refund and thus denied the chargeback request.

Fox Point argued that the DOR's additional computational elements were not authorized by statute or rule.

On August 27, 2015, Milwaukee County Circuit Court Judge Pedro Colon held the DOR's interpretation of the statute was unreasonable and ordered the DOR to honor the chargeback request.

Judge Colon concluded that the DOR's practice of rounding residential



economic change created inaccurate calculations for which more accurate information existed. The judge found that the tax refunds at issue were over \$17,000 per year—more than three times the \$5,000 floor set by legislature. Rounding the residential economic change to the nearest tenth of a percent yielded a result that effectively nullified the minimum amount required by the chargeback statute.

The DOR appealed on the basis that the legislature had given it discretion to interpret the statute and in this case had done so in a reasonable fashion.

While the appeal was playing out, other municipalities contacted Village Attorney Larson and his colleague Stan Riffle for representation in connection with their own charge-back denials—including the City of Oshkosh with a rejected chargeback request of \$300,000! Based on the fact that this was a statewide issue and given the victory in the circuit court, Larson and Riffle believed that the time was right for a legislative correction to the problem. They enlisted the support of the League of Wisconsin Municipalities and interested legislators.

In concert with the village's attorneys, League Assistant Director Curt Witynski went to work. Sen. Rick Gudex (R-Fond du Lac) and Rep. Todd Novak (R-Dodgeville) introduced the bill and guided it through the legislative process at the end of the session. Riffle worked with the DOR and the Legislative Reference Bureau (the legislature's nonpartisan bill drafting agency) to construct the language.

The bill eliminated the requirement to evaluate the change in equalized value and replaced it with a straightforward, predictable, and fair formula: all taxing jurisdictions that receive tax revenue in error must pay back their share.

On the last day of their respective legislative sessions the Assembly and Senate unanimously passed the bill. On March 30, 2016, the governor signed the legislation into law.

None of this would have happened without the Village of Fox Point leading the way.

On April 6, 2016, the DOR notified Fox Point that on the basis of the new law it was approving the village's chargeback request.

Douglas H. Frazer is a Fox Point resident and neighborhood contributor. The views expressed are his own and not necessarily those of Best Version Media, LLC.

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