

OUTAGAMIE COUNTY

CORPORATION COUNSEL

MEMORANDUM

TO: Finance Committee, Jeff Nooyen, County Board Chair

FROM: Joe Guidote, Corporation Counsel

DATE: May 1, 2019

ISSUES

Is the county authorized to impose a county sales tax?

If the county is authorized to impose a sales tax, are there statutory requirements and parameters that limit the implementation and utilization of such a tax and its net proceeds?

OPINION

I. Any County May Impose a County Sales Tax

Sec. 77.70 Wis. Stat. specifically enables any county to impose a sales tax under the following provisions:

1. The rate of the tax imposed is .5 percent of the sales price or purchase price.
2. The county sales tax may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided by the statute.
3. The county must adopt an ordinance imposing the sales tax, stating its purpose and referring to Ch. 77.70 Wis. Stat.
4. The ordinance shall be effective on the first day of January, April, July or October.
5. A copy of the ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date.

II. Sales Tax Revenues Must Directly Reduce the Levy

There has been some controversy over interpretation of the statutory direct property tax levy reduction mandate. At least one private citizen group takes the position that the levy is not reduced if the sales tax revenues are applied towards new projects, reasoning that new projects actually raise the levy, and applying sales tax to a new project does not effectively reduce the levy, it only reduces the amount the levy is increased.

That issue was squarely addressed by the Attorney General in OAG 1-98, which is attached for reference purposes. The Attorney General (AG) opined that the levy can be directly reduced in a couple of ways: 1. the overall property tax levy can be directly reduced by subtracting the net proceeds of the county sales tax, and 2. the net proceeds of the sales tax can be used to offset the cost of individual items contained within the county budget. With regard to option 2, the AG specifically stated:

With respect to the funding of specific items, I have considered the possibility that the statute could be construed to require that the net proceeds of the sales and use tax be used only to defray the cost of existing projects, as opposed to new items. A statute, however, should be construed so as to avoid unreasonable and absurd results. ... It would be unreasonable to construe the statutory restriction so that counties which had already started certain projects could use sales and use tax revenues to complete them while other counties contemplating the initiation of similar projects could not use sales and use tax revenues to fund them at all. OAG 1-98, pp. 3-4.

The AG's opinion stands to reason as any new project(s) must be authorized by the county board and would, therefore, be part of the adopted budget for the following year. That budget fixes the property tax levy and that levy would be reduced by offsetting a new project's costs with net sales tax revenues.

III. SALES TAX CAN BE SHARED WITH MUNICIPALITIES AND SCHOOL DISTRICTS

"The county may retain the amount it receives or it may distribute all or a portion of the amount it receives to the towns, villages, cities, and school districts in the county. " §77.76(3) Wis Stat. The remaining question is whether the distribution of all or a portion of net sales tax proceeds must be distributed to all towns, villages, cities, and school districts within the county, or whether the county has the discretion to pick and choose which municipal entities it distributes to. In construing the statute, it would appear that the commas between "towns, villages, cities and school districts in the county" are to be construed as an "and" rather than an "or," consistent with the conjunction "and" placed between the words cities and school districts. It is, therefore, my opinion that a full or partial distribution must be distributed in an equitable fashion to all towns, villages, cities, and school districts in the county – with a couple of provisos:

1. The distributed net sales tax proceeds must still be utilized by the receiving municipal entities for the purpose of directly reducing the property tax levy for that entity. Thus, if a municipality intends to utilize the proceeds for a purpose other than direct levy reduction, it would not qualify for distribution.
2. The county, by ordinance, mandates that the net sales tax proceeds, distributed to municipal entities, be utilized for a **specific** purpose that directly reduces the property tax levy. In the event a municipality or school district has either stated its intent not to comply with the specified purpose, or lacks a project or the jurisdiction to

implement a project within the specified purpose, then such an entity would not qualify for distribution of net sales tax proceeds. An example might be a designation that such funds be utilized for the purpose of constructing, reconstructing or maintaining public roads within municipal boundaries. In such an instance, a school district may not qualify for a share of the net sales tax proceeds as it may lack the jurisdiction to construct, reconstruct or maintain public roads.

In summary, a county may, by ordinance impose a .5 percent sales tax for the purpose of directly reducing the property tax levy. The county may share all or a portion of the net sales tax proceeds with municipalities and school districts within the county subject to the guidelines highlighted above.

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cc: County Executive Thomas Nelson



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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OAG 1-98

May 5, 1998

Mr. Dennis E. Kenealy
Corporation Counsel
Ozaukee County
Post Office Box 994
Port Washington, WI 53074-0994

Dear Mr. Kenealy:

You ask, in effect, how funds received from a county sales and use tax imposed under section 77.70, Stats., may be budgeted by the county board.

In my opinion, such funds may be budgeted to reduce the amount of the overall countywide property tax levy or to defray the cost of any item which can be funded by a countywide property tax.

Section 77.70 provides in part:

Any county desiring to impose county sales and use taxes under this subchapter may do so by the adoption of an ordinance, stating its purpose and referring to this subchapter. The county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided in this subchapter.

Prior to 1985, counties had the authority to impose sales and use taxes, but the Wisconsin Department of Revenue was required to distribute all of the net proceeds of such taxes to towns, cities and villages within the county imposing the tax. See sec. 77.70, Stats. (1983) and sec. 77.76(4), Stats. (1983). In 1971, the Attorney General opined that a county board could not require by ordinance that the net proceeds of a county sales and use tax be used solely to reduce property taxes levied by the various taxing jurisdictions but must instead be distributed to towns, cities and villages with no conditions attached. See 60 Op. Att'y Gen. 387 (1971). Prior to 1985 few, if any, counties imposed a sales and use tax, presumably because none of the proceeds of the tax could be used by county government and because counties could not control

how the net proceeds of such taxes would be used by other local units of government within the county.

In 1985, the Legislature amended the statute to allow county governments to retain the net proceeds of the sales and use tax, if those proceeds are used "only for the purpose of directly reducing the property tax levy." See sec. 77.70, Stats. (1985), as amended by 1985 Wisconsin Act 41. Although many counties have enacted sales and use taxes since 1985, I am aware of no litigation concerning the meaning of the quoted restriction on the use of county sales and use tax revenues since the passage of 1985 Wisconsin Act 41. It is likely that there has been no litigation because the property tax is almost the only source available to counties to raise revenues of their own accord.

Some counties illustrate property tax reductions by showing the receipt of sales and use tax revenues on individual property tax bills. Counties, however, lack statutory authority to implement a direct system of tax credits to individual property owners through distribution of property tax bills, the contents of which are specified by the Department of Revenue.

The countywide property tax levy is usually shown as a single line revenue source in the budget. The net proceeds of the sales and use tax are also a revenue item. The countywide property tax levy is clearly reduced to the extent that the net proceeds of the sales and use tax are shown as a budget item which is subtracted directly from the total property tax before determining the net property tax that must be levied. That budgeting method directly reduces the amount of countywide property tax which must be paid by each taxpayer.

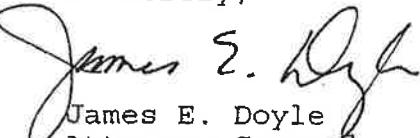
Some counties have also budgeted the net proceeds of the sales and use tax as a revenue source used to offset the cost of individual items contained in the county budget. The same amount of countywide property tax reduction occurs whether the county board chooses to budget revenues from net proceeds of the sales and use tax as a reduction in the overall countywide property tax levy or as an offset against a portion of the costs of specific items which can be funded by the countywide property tax. With respect to the funding of specific items, I have considered the possibility that the statute could be construed to require that the net proceeds of the sales and use tax be used only to defray the cost of existing projects, as opposed to new items. A statute, however, should be construed so as to avoid unreasonable and absurd results. Estate of Evans, 28 Wis. 2d 97, 101, 135 N.W.2d 832 (1965). It would be unreasonable to construe the statutory restriction so that counties which had already started certain projects could use sales and use tax revenues to complete them while other counties contemplating the initiation of similar projects could not use

sales and use tax revenues to fund them at all. Since there is no such county-by-county limiting language in the statute, it is my opinion that the extent of the authority to use sales and use tax revenues in connection with individual budget items does not vary from county to county. Counties may therefore also budget the net proceeds of the sales and use tax as an offset against the cost of any individual budgetary item which can be funded by the countywide property tax.

I recognize that, if possible, meaning should be ascribed to the word "directly" in section 77.70. Ordinarily, statutory language should not be rendered superfluous. State ex rel. Taylor v. Linse, 161 Wis. 2d 719, 723, 469 N.W.2d 201 (Ct. App. 1991). It is a basic principle of statutory construction that terms are ordinarily construed by our courts according to their ordinary and accepted meaning, by resort to a recognized dictionary, if necessary. State v. McCoy, 143 Wis. 2d 274, 287, 421 N.W.2d 107 (1988). Insofar as is relevant to your inquiry, Webster's Third New International Dictionary 641 (1986) defines the term "directly" as "without any intermediate step." The term "directly" has meaning in those instances where budgetary items cannot be funded through a countywide property tax. For example, under section 43.64(2), property taxpayers in certain taxation districts are exempt from any property tax levy for funding public library service. Similarly, under section 251.08, property taxpayers in certain taxation districts are exempt from any property tax levy for funding county health departments. Sales and use tax revenues may not be budgeted as a revenue item used to offset the cost of any specific budget item which cannot be funded through a countywide property tax. Although any revenue source frees up other funds to be used for other budgetary purposes, the budgeting of sales and use tax proceeds to defray the cost of items which cannot be funded by a countywide property tax constitutes indirect rather than direct property tax relief.

I, therefore, conclude that funds received from a county sales and use tax under section 77.70 may be budgeted by the county board to reduce the amount of the countywide property tax levy or to defray the cost of any budget item which can be funded by a countywide property tax.

Sincerely,


James E. Doyle
Attorney General

Mr. Dennis E. Kenealy
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CAPTION:

Funds received from a county sales and use tax under section 77.70, Stats., may be budgeted by the county board to reduce the amount of the countywide property tax levy or to defray the cost of any item which can be funded by a countywide property tax.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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OAG 2-98

May 11, 1998

Mr. Matthew F. Anich
Corporation Counsel
Ashland County
220 Sixth Avenue West
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Dear Mr. Anich:

You have asked whether all remainderpersons are required to sign Wisconsin Register of Deeds Association Form HT-110 (11/96), entitled, "Termination of Decedent's Property Interest," when more than one remainderperson survives the deceased holder of a life estate in property, and whether a register of deeds should refuse to record Form HT-110 if all remainderpersons have not signed the document. Because section 867.045, Wis. Stats., neither requires that all remainderpersons appear before the register of deeds for purposes of verifying the information required to complete the form, nor that any remainderperson sign the form, it is my opinion that all remainderpersons need not sign the form before it may be recorded.

Section 867.045, Stats., provides, in relevant part:

Administrative joint tenancy or life estate termination for certain property. (1) Upon the death of any person having an interest as a joint tenant or life tenant in any real property or in the vendor's interest in a land contract or a mortgagee's interest in a mortgage, the surviving joint tenant or remainderman may obtain evidence of the termination of that interest of the decedent by providing to the register of deeds of the county in which such property is located a certified copy of the death certificate for the decedent and by providing, on applications supplied by the register of deeds for that purpose, the name and address of the decedent and of the surviving joint tenant or remainderman and the date of the decedent's death. The surviving joint tenant or remainderman shall provide to the register of deeds the following information:

(j) In the case of real property, a copy of the property tax bill for the year preceding the year of the decedent's death and a legal description of the property, which description shall be imprinted on or attached to the application. The register of deeds shall record the bill.

(k) In the case of a joint tenancy or life estate, a copy of the deed that creates the interest.

(2) The register of deeds or other person authorized under s. 706.06 or 706.07 shall complete a statement at the foot of the application, declaring that the surviving joint tenant or remainderman appeared before him or her and verified, under oath, the correctness of the information required by sub. (1).

• • •
(4) Upon the recording, the application shall be presumed to be evidence of the facts recited and shall terminate the joint tenancy or life estate

The statute requires no remainderperson's signature on the form known as HT-110. Rather, the statute provides that the remainderperson appear before the register of deeds and verify, under oath, the correctness of the information required under section 867.045(1). Therefore, it is my opinion that, upon verification, the properly completed form may be recorded without the appearances of all remainderpersons before the register of deeds, and without the signatures of all remainderpersons, where there is more than one remainderperson.

You have commented that the practice of registers of deeds varies from county to county with respect to the signature requirements of Form HT-110. This varied practice may have its origins in the requirements of a previous version of Form HT-110 showing a revision date of March 1977. The 1977 version of the form expressly required the signatures of all joint tenants. The Department of Revenue ("DOR") drafted this earlier version, pursuant to its statutory duty to prepare and furnish such forms to registers of deeds (see sec. 867.045(5), Stats. (1989-90)) prior to the amendment to section 867.045, that became effective on April 10, 1992 (1991 Wisconsin Act 133). The earlier requirement that all tenants sign the DOR-drafted form stemmed from DOR's desire to provide joint tenants with notice that tax consequences might ensue from such transfer at that time.

Inheritance tax is no longer employed in Wisconsin. Under current estate tax law, individual notification of such transfers

is not a concern. The drafting notes of 1991 Wisconsin Act 133 include analysis by the Legislative Reference Bureau, which states, in relevant part:

Under current law, there are several ways to terminate a joint tenancy or life tenancy upon the death of a person who holds an interest in the property that is held in that form. The department of revenue has distributed forms for that purpose but, because of the repeal of the inheritance tax, the department will discontinue that practice. Under this bill, the registers of deeds will assume responsibility for the form.

1991 Senate Bill 342. The version of Form HT-110 in use today, showing a revision date of November 1996, was prepared by the Wisconsin Register of Deeds Association and nowhere states that all persons receiving property thereunder must sign the application.

That the signatures of all remainderpersons, and that the appearances of all remainderpersons before the register of deeds are not required for proper completion of Form HT-110 pursuant to section 867.045, may be further supported by reference to the language of related statute section 867.046. Current Form HT-110 expressly may be used either to perfect the record as to the termination of a decedent's interest as a joint tenant or life tenant in any real property under section 867.045, or to perfect the record as to the termination of a decedent's interest in any real property, including an interest in survivorship marital property, under section 867.046.

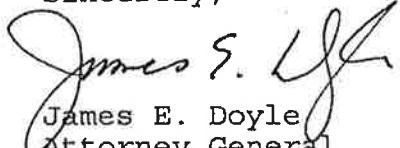
Interrelated statutes must be construed to produce harmonious results. Under sec. 867.046(2), Stats., "the decedent's spouse or a beneficiary of a marital property agreement may obtain evidence of the termination of that interest of the decedent and confirmation of the petitioner's interest in the property" by providing specified documents as well as information on an application supplied by the register of deeds. Thus, where section 867.046 provides that a beneficiary may use the application procedure provided in section 867.046(2), to perfect the record as to the termination of a decedent's property interest, it follows that not all such beneficiaries receiving property under section 867.046 need appear before the register of deeds to verify the information required for completion of the form, and sign Form HT-110.

Hence, in order to harmonize sections 867.045 and 867.046, it must be concluded that all remainderpersons who receive property under section 867.045 likewise need not appear before the register

Mr. Matthew F. Anich
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of deeds to verify the required information, and sign Form HT-110, before the form may be recorded.

Sincerely,



James E. Doyle
Attorney General

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CAPTION:

Ashland County Corporation Counsel requests opinion clarifying the number of signatures required on Wisconsin Register of Deeds' "Termination of Decedent's Property Interest" form which is used upon death of a joint tenant in property, savings/checking accounts, securities to surviving joint tenants.

COUNTY AND SPECIAL DISTRICT SALES AND USE TAXES

77.70 Adoption by county ordinance. Any county desiring to impose county sales and use taxes under this subchapter may do so by the adoption of an ordinance, stating its purpose and referring to this subchapter. The rate of the tax imposed under this section is 0.5 percent of the sales price or purchase price. Except as provided in s. 66.0621 (3m), the county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided in this subchapter. That ordinance shall be effective on the first day of January, the first day of April, the first day of July or the first day of October. A certified copy of that ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The repeal of any such ordinance shall be effective on December 31. A certified copy of a repeal ordinance shall be delivered to the secretary of revenue at least 120 days before the effective date of the repeal. Except as provided under s. 77.60 (9), the department of revenue may not issue any assessment nor act on any claim for a refund or any claim for an adjustment under s. 77.585 after the end of the calendar year that is 4 years after the year in which the county has enacted a repeal ordinance under this section.

History: 1985 a. 41, 120; 1987 a. 27; 1991 a. 39; 2009 a. 2, 28; 2015 a. 197 s. 50; 2017 a. 17, 58.

A county may not impose a tax upon admissions to amusements except as part of a general sales and use tax at the statutorily prescribed rate of one-half of 1 percent. 58 Atty. Gen. 212.

A county board may not control municipal use of county sales tax revenue. 60 Atty. C 387.

Funds received from ~~Wisconsin~~ states ~~and~~ use tax may be budgeted by the county board to reduce the amount of the county wide property tax levy or to defray the cost of any item that can be funded by a county-wide property tax. OAG 1-98.

77.705 Adoption by resolution; baseball park district. A local professional baseball park district created under subch. III of ch. 229, by resolution under s. 229.68 (15), may impose a sales tax and a use tax under this subchapter at a rate of no more than 0.1 percent of the sales price or purchase price. Those taxes may be imposed only in their entirety. The resolution shall be effective on the first January 1, April 1, July 1, or October 1 that begins at least 120 days after the adoption of the resolution. Any moneys transferred from the appropriation account under s. 20.566 (1) (gd) to the appropriation account under s. 20.835 (4) (gb) shall be used exclusively to retire the district's debt. Any moneys received under s. 341.14 (6r) (b) 13. b. and credited to the appropriation account under s. 20.835 (4) (gb) shall be used exclusively to retire the district's debt.

History: 1995 a. 56; 1999 a. 167; 2005 a. 25; 2009 a. 2, 28.

77.706 Adoption by resolution; football stadium district. A local professional football stadium district created under subch. IV of ch. 229, by resolution under s. 229.824 (15), may impose a sales tax and a use tax under this subchapter at a rate of 0.5 percent of the sales price or purchase price. Those taxes may be imposed only in their entirety. The imposition of the taxes under this section shall be effective on the first January 1, April 1, July 1, or October 1 that begins at least 120 days after the certification of the approval of the resolution by the electors in the district's jurisdiction under s. 229.824 (15). Any moneys transferred from the appropriation account under s. 20.566 (1) (ge) to the appropriation account under s. 20.835 (4) (ge) shall be used exclusively to retire the district's debt.

History: 1999 a. 167; 2005 a. 25; 2009 a. 2.