OUTAGAMIE COUNTY SALES TAX ANALYSIS

PREPARED BY

Outagamie County Financial Services
4/11/2019

In December of 2018, a request was made by the Outagamie County Finance Committee Chairperson to the Finance Department to complete an objective analysis of a possible county-wide half-percent sales tax. This report is the product of that analysis and provides information regarding the legal authority, background from comparable counties, various uses' advantages and disadvantages, revenue projections, various implementation options and estimated impacts on Outagamie County taxpayers. The Outagamie County Corporation Counsel and Outagamie County Development and Land Services Departments also assisted with portions of this report.

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WHAT'S THE BOTTOM LINE?

EXECUTIVE SUMMARY

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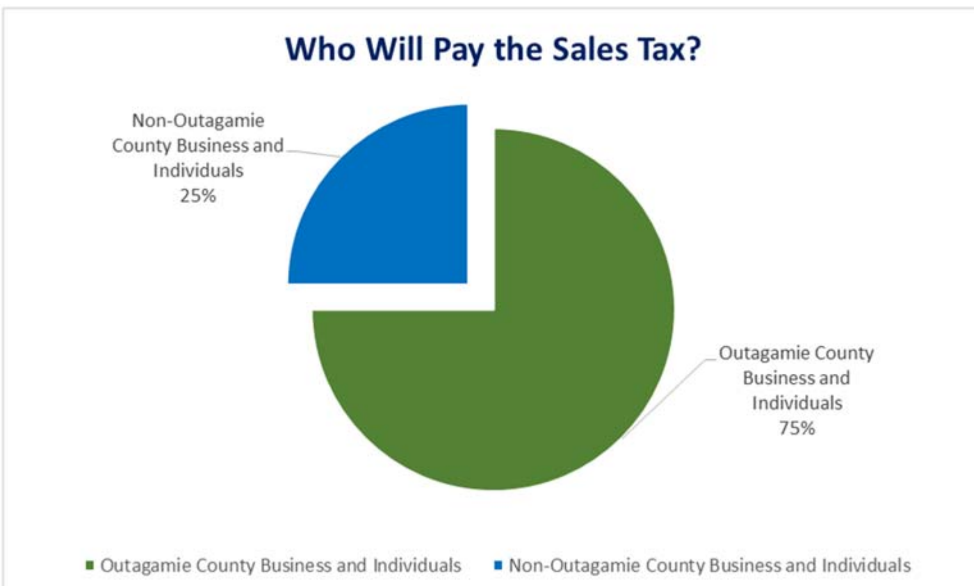
The first several pages of this analysis include a high level Executive Summary. The complete report should be reviewed to gain an understanding of the assumptions, estimates, amounts and options presented in the abbreviated Executive Summary. For example, four different options of how sales tax revenue could be used by Outagamie County are included in the analysis. The complete report must be read to understand both the short-term impacts (including the advantages and disadvantages of each), and the long-term impacts as well.

- ***ESTIMATED COUNTY SALES TAX REVENUE FOR 2020 — $20 MILLION***
- ***ESTIMATED PERCENTAGE OF SALES TAX REVENUE COLLECTED FROM NON-OUTAGAMIE COUNTY (OC) RESIDENTS/BUSINESSES — 25%***



Examples of additional 0.5% sales tax on common items:

Coffee of $2.00	would be $2.01	increase of a penny
Fish Fry of $10.00	would be $10.05	increase of a nickel
Clothing of $100.00	would be $100.50	increase of 50 cents
Flat Screen TV of $800.00	would be $804.00	increase of $4.00
Vehicle purchase of $25,000	would be $25,125	increase of $125.00

USE AND IMPACT OF SALES TAX REVENUE – FOUR OPTIONS

The tables below show the impact of implementing the sales tax under the four different options presented and the impact on an average Outagamie County household in the first year of possible implementation - 2020 and projected in the 10th year following implementation – 2029 (as compared to the projections without the sales tax).

OPTION 1 – ($20,000,000 = Use $7,000,000 Direct Reduction of Levy, Use $5,000,000 Direct Reduction of Debt Service Levy, Use $5,000,000 To pay for Capital Expenditures, Share 15% of total or $3,000,000 with Local Municipalities and School Districts)

ESTIMATE OF ANNUAL DIRECT/INDIRECT OC TAXPAYER IMPACT	**2020**	**2029**
ESTIMATED AVERAGE OC PROPERTY TAX REDUCTION	$134	$216
ESTIMATED AVERAGE OC HOUSEHOLD SALES TAX INCREASE	(109)	(130)
SUBTOTAL ESTIMATED AVERAGE OC HOUSEHOLD NET SAVINGS	**$25**	**$86**
EST AVERAGE OC HOUSEHOLD MUNI/SD INDIRECT TAX BENEFIT	33	39
ESTIMATED AVERAGE OC HOUSEHOLD NET SAVINGS	**$58**	**$125**

OPTION 2 – ($20,000,000 = Use $10,000,000 Direct Reduction of Levy, Use $5,000,000 Direct Reduction of Debt Service Levy, Use $5,000,000 to pay for Capital Expenditures)

ESTIMATE OF ANNUAL DIRECT OC TAXPAYER IMPACT ONLY	**2020**	**2029**
ESTIMATED AVERAGE OC PROPERTY TAX REDUCTION	$167	$259
ESTIMATED AVERAGE OC HOUSEHOLD SALES TAX INCREASE	(109)	(130)
ESTIMATED AVERAGE OC HOUSEHOLD NET SAVINGS	**$58**	**$129**

OPTION 3 – ($20,000,000 = Use $15,000,000 Direct Reduction of Levy, Use $5,000,000 Direct Reduction of Debt Service Levy)

ESTIMATE OF ANNUAL DIRECT OC TAXPAYER IMPACT ONLY	**2020**	**2029**
ESTIMATED AVERAGE OC PROPERTY TAX REDUCTION	$222	$272
ESTIMATED AVERAGE OC HOUSEHOLD SALES TAX INCREASE	(109)	(130)
ESTIMATED AVERAGE OC HOUSEHOLD NET SAVINGS	**$113**	**$142**

OPTION 4 – ($20,000,000 = Use $20,000,000 Direct Reduction of Levy)

ESTIMATE OF ANNUAL DIRECT OC TAXPAYER IMPACT ONLY	**2020**	**2029**
ESTIMATED AVERAGE OC PROPERTY TAX REDUCTION	$222	$273
ESTIMATED AVERAGE OC HOUSEHOLD SALES TAX INCREASE	(109)	(130)
ESTIMATED AVERAGE OC HOUSEHOLD NET SAVINGS	**$113**	**$143**

IMPORTANT NOTE: All information presented is based on a January 1st, 2020 implementation date. If a later date was chosen, the revenue projection and household savings estimates would be reduced accordingly. This report is based upon the best information available at this time. Subsequent information obtained during the county budget process may impact final estimates.

IS IT LEGAL?

STATUTORY AUTHORITY, LEGAL INTERPRETATIONS,

PENDING BROWN COUNTY LAWSUIT

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Wisconsin State Statute 77.70 allows Wisconsin counties the ability to impose a sales tax. The statute is included below (emphasis added):

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.

In May of 1998, Ozaukee County requested an opinion from Wisconsin's Attorney General on the meaning of the term "directly reducing the property tax levy" as stated in State Statute 77.70. The Attorney General at that time, Jim Doyle, concluded the following: "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".

As noted later in this report, several counties use sales tax revenue for funding capital projects/expenditures and referred to the portion of the Attorney General's opinion that stated an acceptable way to use the sales tax was to "defray the cost of any budget item which can be funded by a countywide property tax". If these counties did not use the sales tax revenue (cash) to fund these projects, they would have to issue debt to fund them. In order to repay the principal and interest on the debt, they would have to raise the tax levy – thus – they are using the sales tax to essentially "defray" the cost of the debt service that would have to be paid by property taxes. The full Attorney General's opinion can be found in **Appendix A**.

Item of Note - Pending Lawsuit on Use of Sales Tax Revenues – Brown County

There is currently a lawsuit pending from the Brown County Taxpayers' Association regarding Brown County's implementation of the half-cent sales tax. Brown County plans to use sales tax revenue to pay for current and future capital projects. Brown County's response to the lawsuit has been that the tax levy would be going up to pay for these projects since the county would have to issue debt and the debt would have to be repaid with an increase in the tax levy – thus they are reducing what would be paid with property taxes in future budgets. The Taxpayers' Association has stated that, according to the State Statute, the sales tax should be used to "directly" reduce the current tax levy and not future levies. This lawsuit is still pending with oral arguments scheduled for April 26, 2019. Brown County, as well as the other counties noted later that use the sales tax for current and future capital projects/expenditures, have relied on the Attorney General's opinion referenced above as the basis for using the sales tax in that manner. The Wisconsin Counties Association filed an Amicus Brief in the lawsuit, which can be found in **Appendix B**.

Wisconsin State Statute 77.76(3) allows Wisconsin counties to share all or a portion of sales tax revenue with underlying municipalities and school districts. The statute is included below (emphasis added):

77.76(3) From the appropriation under s. 20.835 (4) (g) the department of revenue shall distribute 98.25 percent of the county taxes reported for each enacting county, minus the county portion of the retailers' discounts, to the county and shall indicate the taxes reported by each taxpayer, no later than 75 days following the last day of the calendar quarter in which such amounts were reported. In this subsection, the "county portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross county sales and use taxes payable and the denominator of which is the sum of the gross state and county sales and use taxes payable. The county taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments of the county taxes previously distributed. Interest paid on refunds of county sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (g) at the rate paid by this state under s. 77.60 (1) (a). ***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.*** After receiving notice from the department of revenue, a county shall reimburse the department for the amount by which any refunds, including interest, of the county's sales and use taxes that the department pays or allows in a reporting period exceeds the amount of the county's sales and use taxes otherwise payable to the county under this subsection for the same or subsequent reporting period. Any county receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

Outagamie County Corporation Counsel Joe Guidote was consulted on the legality of the proposed use of sales tax revenues contained in this analysis. He has confirmed that the various uses of sales tax revenues in all four options included in this report are consistent with the guidelines established by the Attorney General's opinion. In addition, he has concluded that sharing sales tax revenue with municipalities and school districts is allowable under the statutes. A copy of his opinion is included in **Appendix C**. Currently not included but will be included upon receipt from Corporation Counsel.

WHAT DO OTHER COUNTIES DO?

COMPARABLE COUNTY'S USE OF SALES TAX REVENUE

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As of January 2019, 66 of the 72 Wisconsin's Counties have enacted the half-percent county sales tax. The six that haven't include Manitowoc, Menominee, Outagamie, Racine, Waukesha and Winnebago. The Manitowoc County Board is currently reviewing implementing the sales tax. The last four counties to enact the sales tax were Calumet (effective April 2018), Brown (effective January 2018), Kewaunee (effective April 2017) and Sheboygan (effective January 2017).

As part of this analysis, nine counties were contacted to determine how they use and account for sales tax revenues. The counties surveyed included the four noted above who most recently enacted the sales tax (Calumet, Brown, Kewaunee and Sheboygan) as well as five similar-sized counties (Marathon, La Crosse, Chippewa, Fond du Lac and Rock). These counties indicated they use sales tax revenues in several different ways:

- General county operational expenditures (levy reduction)
- Capital projects/expenditures
- Debt service payments
- Share with local municipalities
- A combination of all or some of the above

Specifically, here is the feedback from the counties contacted:

Calumet (enacted 2018) – Uses sales tax revenue to pay for capital projects/expenditures instead of borrowing (which essentially reduces future years' levies) or to reduce debt service levy. Excess collections above the budgeted amount go towards paying for the next year's capital budget.

Kewaunee (enacted 2017) – Uses sales tax revenue as a general fund revenue to reduce overall property taxes (basically, the revenue was used to replace the Utility Aid portion of the State Shared Revenues that was lost when the Kewaunee Nuclear Facility was closed). Excess collections above the budgeted amount go back into the general fund balance.

Brown (enacted 2018) - Uses sales tax revenue to pay for specific capital expenditures instead of borrowing (which essentially reduces future years' levies). Excess collections above budgeted amount go towards paying for the next year's capital budget or future capital projects. Sunsets after 6 years since it was enacted for specific projects/expenditures.

Sheboygan (enacted 2017) – Uses sales tax revenue to pay for capital expenditures (must be transportation related) instead of borrowing (which essentially reduces future years' levies) as well as sharing $1.5 million (approximately 16%) with local municipalities on an equalized value basis. Entered into Intergovernmental Agreements (IGA's) with their local governments for this share. Excess collections above budgeted amount go towards paying for the next year's capital budget.

Marathon (enacted 1987) – Uses sales tax revenue to directly reduce the overall general property tax levy. Excess collections above the budgeted amount go towards paying for the next year's capital budget.

La Crosse (enacted 1990) – Uses sales tax revenue to directly reduce the overall general property tax levy. Excess collections above the budgeted amount go towards paying for the next year's capital budget.

Chippewa (enacted 1991) – Uses approximately $1.5 million of sales tax revenue to directly reduce the overall general property tax levy and uses approximately $1.7 million for debt service. Amounts over the $1.5 million and $1.7 million amounts (approximately $2.8 million in 2019), go towards capital projects. Excess collections above budgeted amount go towards paying for the next year's capital budget or future years' projects.

Rock (enacted 2007) – Uses $7.5 million of sales tax revenue to directly reduce the overall general property tax levy. (Decision made many years ago and the county keeps the reduction at that level.) Amounts over the $7.5 million (approximately $6 million in 2019), go towards capital projects. Excess collections above that year's capital projects budget go towards paying for the next year's capital budget.

Fond du Lac (enacted 2010) – Uses sales tax revenue for economic development activity, specifically related to retaining major manufacturer Mercury Marine in the community. Included a sunset provision that the County Board rescinded March of 2019. The county has yet to decide how they specifically will use the sales tax. However, the County Board also voted to recommend sharing revenue (a flat $1,000,000 or approximately 12.5%) with municipalities beginning in 2022.

Although a statewide survey of all 66 Wisconsin counties with the county sales tax was not conducted, this sample represents a fair cross-section of counties and how they use sales tax revenues. Other counties not surveyed may take different approaches.

PROS & CONS?

ADVANTAGES & DISADVANTAGES OF SALES TAX USE OPTIONS

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As noted previously, counties are using sales tax revenues to fund expenditures in different ways. They are summarized below as follows:

1) Reduce overall tax levy only.
2) Reduce overall tax levy by budgeted amount and use remaining amounts above budget to pay for current or future capital projects.
3) Pay for specific capital projects/expenditures and use remaining amounts above budget to pay for other current or future capital projects.
4) Share with local municipalities and school districts – (Sheboygan County was the first county to share a portion of their sales tax revenue according to press reports. Although the statutes state that the sales tax revenues may be shared with local municipalities *and* school districts, Sheboygan currently only shares with local municipalities. They also require that it be used specifically for transportation-related expenditures. Fond du Lac County voted in March 2019 to recommend sharing sales tax revenue with municipalities in 2022.)

Noted below are advantages and disadvantages of each of the four use options.

1) Reduce overall tax levy only.
    a. **Advantage** – Direct and immediate reduction for all taxpayers on property tax bill – mainly a one-time reduction and the tax bill would remain at this lower level into the future.
    b. **Disadvantage** – Allows for little flexibility in dealing with capital projects and will most likely have to fund any current and future capital projects with debt. These debt payments would raise the levy in future years' budgets. Reduction on tax bills is mainly one-time. Once the tax levy is lowered for operations, the ability to increase the levy for net new construction in the Tax Levy Limit Calculation is reduced due to the fact that the tax levy (at its reduced level) is a factor in the levy limit calculation.

2) Reduce overall tax levy by budgeted amount and use remaining amounts above budget to pay for one-time capital projects.
    a. **Advantage** – Direct and immediate reduction for all taxpayers on property tax bill – mainly a one-time reduction and the tax bill would remain at this lower level into the future. Will also reduce future

budgets' debt service levies due to funding some capital projects with excess sales tax collections above budget instead of bonding.

b. **Disadvantage** – Allows for little flexibility in dealing with capital projects and most likely results in funding future capital projects/expenditures with debt. These debt payments will raise the levy in future years' budgets. Once the tax levy is lowered for operations, the ability to increase the levy for net new construction in the Tax Levy Limit Calculation is reduced due to the fact that the tax levy (at its reduced level) is a factor in the levy limit calculation.

3) Pay for one-time capital projects/expenditures and use remaining amounts above budget to pay for future one-time capital projects.

   a. **Advantage** – Will reduce future budgets' debt service levies due to funding some capital projects with current sales tax collections as well as future capital projects by using the excess collections above budget instead of bonding. Will have an impact on mainly future years' property tax bills by not having to repay debt service – both principal and interest. If sales tax declines, a county can still issue debt for projects and repay debt service by increasing the debt service levy (which is an exception in the tax levy limit formula).

   b. **Disadvantage** – Limited direct and immediate impact on lowering average property tax bill. Taxpayer savings are realized in future years, rather than immediately upon implementation.

4) Share with local municipalities and school districts.

   a. **Advantage** – Would assist other local municipalities and school districts in funding their expenditures for local direct transportation/infrastructure or other needs as determined by the county or their governing entity. Those contributing to the sales tax are not only utilizing the county highway system but local roads and infrastructure and other municipal or school district services as well. Greater support from local municipalities and school districts if they receive a portion of the sales tax. Should/could reduce municipal or school district property taxes, either current year or in future years. Would have an indirect impact on Outagamie County taxpayers who also pay municipal and school district taxes.

   b. **Disadvantage** – The portion shared with local municipalities and school districts would not be able to be used directly by the county to offset the county levy or assist in funding other county expenditures.

Other Considerations

Once fully implemented, a decline in the sales tax revenues due to an overall local, regional or national economic downturn and/or a reduction in local or regional retail sales will impact all of the options noted above. The greater the flexibility a county has to deal with any economic downturn, the better.

Once the tax levy is lowered for operations, the ability to increase the levy for net new construction in the Tax Levy Limit calculation is reduced due to the fact that the tax levy (at its reduced level) is a factor in the levy limit calculation. The reduction will vary depending on how the county uses the sales tax in its budgets. However, based on recent years, sales tax collection growth year over year for various counties (and included in this report's revenue projections at a 3% increase) has increased greater than the net new construction increase allowed under the Tax Levy Limit calculations (ranging from 1.5% to 2% over the past several years).

HOW MUCH WOULD BE COLLECTED?

2020 OUTAGAMIE COUNTY SALES TAX REVENUE PROJECTION

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In order to estimate the county sales tax revenue that could be generated in 2020, a report completed by the UW-Extension Local Government Center entitled "Sales Tax Forecasting for Wisconsin Counties" was used. That report, completed in 2011, estimated the "2012 County Sales Tax Yield Potential" for the 10 counties that did not have the sales tax at that time. Based on this report, 2012 was used as the base year for this estimate. This was essentially the same method used by Calumet, Sheboygan and Kewaunee counties to estimate their first year's sales tax revenues. They have all stated the UW-Extension report's 2012 estimates were a very good basis for estimating their sales tax collections. Each county used the 2012 estimate as a base year and then increased the projection by a certain percentage annually through their target implementation date. (NOTE – Brown County used the actual .5% sales tax collected by the Brown County Stadium District in 2015 and calculated increases from that point. That sales tax was enacted to support improvements at Lambeau Field.)

The actual annual increase of the nine comparable counties (Eau Claire, Fond du Lac, Kenosha, La Crosse, Marathon, Portage, Rock, Ozaukee and Washington) was calculated using 2012 as the base year. The average annual increase was 4.9%. To be conservative, this analysis used a 3% annual growth from the 2012 base year to estimate 2020 sales tax revenue for Outagamie County.

Once that estimate was calculated based on the 2012 base and increased 3% per year, that gross amount was reduced by approximately 10% for the following reasons:

- **IMPLEMENTATION LAG** - There is a time lag following implementation for some businesses to change their systems to collect the adjusted sales tax amount and remit it to the state as well as potential non-compliance.

- **ECONOMIC UNCERTAINTY** - Perhaps more importantly, this reduction accounts for the possibility of a significant economic downturn, such as the "Great Recession". The average sales tax collections of eight of the nine counties noted above dropped an average of **5%** from 2007 to 2010 due to the 2008 recession. (For Rock County, 2008 was used as the base year since they first implemented the sales tax in 2007 and 2009 was used for La Crosse collections since that was less than their 2010 collections. Fond du Lac was not included as they implemented the sales tax in 2010).

- **RETAIL TRENDS** - This reduced estimate also recognizes the impact online sales is having on more traditional bricks and mortar retail sales. The area has had several closures of major brick and mortar stores in the past several years. While the implementation of on-line sales tax collections is increasing, it is important to account for this retail trend.

The 10% reduction in projected sales tax revenue is a conservative and prudent measure to take at this time. Adjustments would be made in subsequent years based on actual collections, retail trends, economic growth and other factors.

Based upon this methodology, Outagamie County would collect an estimated $20 million in sales tax revenue in 2020, if implemented on January 1st. *(Per WI State Statutes, implementation of a county sales tax can only take effect on the following dates: January 1st, April 1st, July 1st or October 1st).*

Several other methods of estimating sales tax revenues were reviewed to determine if this projection is sound. A second method of projecting sales tax revenues in 2020 utilized a study completed by the Wisconsin Taxpayers Alliance. That study estimated Outagamie County's sales tax collections for 2015, which was then increased by 3% annually. This methodology resulted in a 2020 estimate of *$20.6 million.*

Finally, a per capita sales tax amount was calculated using Brown County's 2019 budgeted sales tax revenue amount of $29 million divided by their population of 260,616. This per capita sales tax amount was then applied to Outagamie County's population of 184,541 and increased by 3% to arrive at a 2020 sales tax revenue estimate of *$21.2 million.* Other comparable counties were evaluated using this same per capita methodology which validated this approach.

Both of these methods appeared to confirm the sales tax revenue estimate of $20 million used in this analysis is reasonable.

WHO WOULD PAY?

ESTIMATED COLLECTIONS FROM OUTSIDE OUTAGAMIE COUNTY

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Visitors are heavy users of the Outagamie County transportation network and impact other county services such as public safety and recreation. Implementing a county sales tax would essentially collect a user fee from these visitors to help support the costs of building and maintaining the highways, roads, bridges and other services necessary for visitors to take advantage of all of the shopping, services, events and amenities Outagamie County has to offer. Outagamie County residents pay this extra 0.5% sales tax anytime they purchase taxable items in any of the other 66 counties that have enacted the county sales tax, including neighboring counties like Brown, Calumet and Waupaca.

Several different sources were contacted to obtain direct out-of-county resident spending data, including the Wisconsin Department of Revenue, Wisconsin Department of Administration, Wisconsin Department of Tourism and Fox Cities Convention and Visitors Bureau. Some useful data was provided, but no precise data could be obtained. None of the other counties surveyed had any projections completed regarding out-of-county spending data. Therefore, what follows is Outagamie County's independent analysis that provides a reasonable basis for estimating the proportional share of sales tax revenue.

The data evaluated was from the 2017 Consumer Expenditure Survey conducted by the U.S. Department of Labor's Bureau of Labor Statistics. Two different tables were utilized:

- **Average Annual Expenditures – Table 1800: Midwest Region**
- **Average Annual Expenditures – Table 2400: Urban County (100,000 – 249,999)**

Categories of spending subject to sales tax were tabulated, discounting several specific categories based on the type of expenditure. For example, natural gas and electricity were discounted 50% because they are exempt from sales tax in the winter (November – April). In addition, the vehicle rental category was discounted 80% given the majority of car rentals occur away from home. Other categories were reduced conservatively to account for the fact that the Fox Cities metro spans three counties yet functions as one urban area, resulting in some routine expenses like food, beverages and apparel occurring in neighboring counties.

As the table below demonstrates, ***an average Outagamie County household is estimated to incur $102 in county sales tax using the Urban County table and $116 in county sales tax using the Midwest Region table in 2020***.

Taxable Expenditures by Outagamie County Households - 2017 ***Spending Category***	***Midwest Region***	***Urban County (100,000 - 249,999)***
Bakery (reduced by 5%)	$ 345.00	$ 344.00
Candy	162.00	144.00
Nonalcoholic Beverage (reduced by 30% - soft drinks not exempt)	278.00	285.00
Food Away From Home/Restaurants - (reduced by 20%)	2,504.00	2,441.00
Alcoholic Beverages (reduced by 10%)	467.00	397.00
Housing maintenance, repairs, insurance, other expenses	1,393.00	1,176.00
Natural Gas (reduced by 50% - exempt Nov. - April)	271.00	94.00
Electricity (reduced by 50% - exempt Nov. - April)	640.00	746.00
Telephone Services (reduced 2% due to Fire/EMS Fees exempt)	1,308.00	1,295.00
Household Operations	1,241.00	1,270.00
Housekeeping Supplies	705.00	642.00
Household Funishing & Equipment	1,999.00	1,542.00
Apparel (reduced by 10%)	1,512.00	1,281.00
Vehicle Purchases (net outlay)	3,617.00	3,728.00
Vehicle Maintenance & Repairs	1,025.00	697.00
Vehicle rental, leases, licenses & other (reduced by 80%)	159.00	75.00
Entertainment (Fees/Admissions reduced by 30%)	2,976.00	2,079.00
Personal Care Products & Services	739.00	631.00
Reading (reduced by 20% - newspapers/periodicals exempt)	91.00	66.00
Tobacco products & smoking supplies	397.00	275.00
Ave Total Taxable Exp. per HH	21,829.00	19,208.00
Ave State Sales Tax (5%) per HH	1,091.45	960.40
Ave County Sales Tax (.5%) per HH	***109.15***	***96.04***
Adust for inflation 2018 (2%)	111.33	98.44
Adjust for inflation 2019 (2%)	114.11	100.41
Adjust for inflation 2020 (2%)	**$ 116.39**	**$ 102.42**

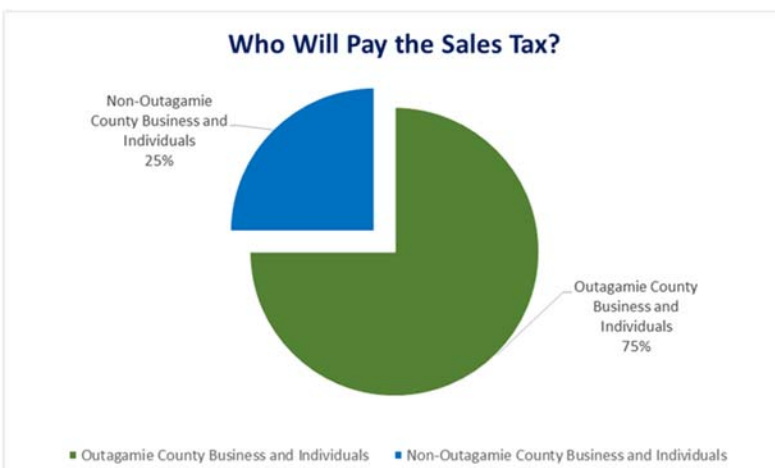
Source: HH Expenditure Data; Table 1800/2400, BLS, CES, 2016-2018, Midwest HH Averages/Urban County HH Averages
Total HH 75,875 - 2017 ACS, U.S. Census Bureau

While conservative, averaging these results provides a reasonable estimate that an average Outagamie County household would pay approximately $109 in county sales tax in 2020.

To estimate the percentage of sales taxes paid by non-Outagamie County consumers and businesses, the total estimated sales tax revenues of $20 million was divided by the .5% county sales tax to equal total taxable sales of $4 billion. This $4 billion was then divided between business sales and consumer sales. This was based on a 2018 Council on State Taxation study, which indicated that 42% of sales tax revenues are generated by business sales while 58% are generated by consumer sales in Wisconsin.

- Business (42% of Total Taxable Sales): The business portion was divided between Outagamie County business sales (80%) and outside business sales (20%) based on a reasonable estimate. This calculation results in the outside business sales portion totaling ***8.4% of total taxable sales***.
- Consumer (58% of Total Taxable Sales): The consumer portion is comprised of three components; Visitor (assume from outside of Outagamie County), Outagamie County consumer/residents and outside (local, non-Outagamie) consumer.
    - Visitor: Based on WI Department of Tourism data, direct visitor spending (with visitor defined as someone staying overnight) is estimated to account for ***9.2% of total taxable sales***.
    - Outagamie County Consumer: Based on the estimate that the average Outagamie County household would pay $109 in county sales tax, the Outagamie County consumer portion was then calculated to be 41.4% of total taxable sales.
    - Outside (non-Outagamie) Consumer: The Visitor and Outagamie County Consumer totals were subtracted from the total consumer taxable sales to arrive at an estimate for the outside consumer category of ***7.4% of total taxable sales.***

Adding the outside business, visitor and outside consumer categories of 8.4%, 9.2% and 7.4% respectively, results in a reasonable estimate that 25% of county sales taxes would be incurred by non-Outagamie County consumers and businesses.



WHAT ARE THE OPTIONS?

FOUR APPROACHES FOR IMPLEMENTATION

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As noted previously, there are a variety of options available to the county to use and account for sales tax revenues. Options include all or some of the following:

A) DIRECT LEVY REDUCTION - OPERATIONS – Revenues could be used to directly reduce the current overall property tax levy by paying for a portion of general county operational expenditures. **This would be an immediate reduction to the overall property tax levy.**

B) DIRECT LEVY REDUCTION – DEBT SERVICE – Revenues could be used to pay for all or a portion of the county's current general government debt service levy. This would not include the county's enterprise funds (Airport, Brewster Village, Solid Waste or Single Stream Recycling) as these funds would still be responsible for repaying their own debt service. **An immediate reduction of approximately $5 million to the overall tax levy is estimated if the county paid for all of the estimated 2020 debt service using sales tax revenue**.

C) PAYING FOR CAPITAL PROJECTS (REDUCE BORROWING) – Revenues could be used to pay for all or a portion of general government capital projects that would normally be funded by taking out debt. The tax levy savings are generated by not having to repay the principal and interest on the debt service issues over the next 7 to 15 years. [7 to 15 years is the typical time frame we have repaid our general government debt, or an average close to 10 years.] The county budgets approximately $5 million of general government capital projects using debt annually. [$5 million dollars was computed by averaging the annual amount of debt we have issued in the past 5 years as well as projected for the 2019 budget for a total of 6 years. This amount does <u>not</u> include the approximate $18 to $20 million dollars of debt issued for downtown facility expansion and renovation project currently under way. There are no major plans for any general government projects of this size or magnitude in the foreseeable future.] These amounts would generally not include any enterprise fund capital projects as those would typically be funded by their respective fund's operations. Based on these projections, in the 10^{th} year of implementation, **county taxpayers are projected to save approximately $1,200,000 or more in debt service interest payments *<u>annually</u>* if the county fully funded general government capital projects with sales tax revenues.**

D) SHARING WITH LOCAL MUNICIPALITIES AND SCHOOL DISTRICTS – Revenues could be shared with local municipalities and school districts that they could apply towards capital projects (transportation infrastructure, equipment, school safety/security enhancements, etc.), debt service payments or direct levy reduction. This is allowed under Wisconsin State Statute 77.76(3).

E) EXPEDITE DEBT REDUCTION/FUND FUTURE CAPITAL PROJECTS – Revenues in excess of the budgeted amount could be accumulated in an assigned fund balance account to pay off general obligation bonds when callable or help fund future capital projects.

Based upon the county's current general obligation debt schedules and callable dates of those debt issues, the county has $19,220,000 of debt that is callable between the years 2022 and 2027. If excess sales tax collections above budget would be used to pay off this debt, the county would save an additional $2,894,237 of interest savings over the remaining years of these debt issues. *These amounts are not included in any future projected tax levy savings but it is noted here as a possible use of any excess sales tax collections.* The debt issues, general government portion, and the callable principal and interest amounts and callable dates are listed below:

Issue	Callable Date	Callable Amount	Interest Amount
GO Bonds 2012A	12/01/2022	$1,880,000	$236,876
GO Notes 2015	10/21/2023	775,000	23,500
GO Notes 2016B	12/01/2024	1,320,000	59,700
GO Notes 2017A	11/01/2025	870,000	31,675
GO Notes 2018B	11/01/2026	1,915,000	449,610
GO Notes 2016A	12/01/2026	1,805,000	352,788
GO Notes 2017C	11/01/2027	9,870,000	1,740,088
Total		***$19,220,200***	***$2,894,237***

<u>FOUR POSSIBLE OPTIONS</u> of how Outagamie could use its sales tax collection revenues are detailed below. These four options consist of a combination of the various implementation options noted previously.

<u>OPTION 1</u> <u>- A) Pays for current debt service levy, B) Pays for direct property tax levy reduction for operations, C) Pays for capital projects instead of borrowing, and D) Shares with local municipalities and school districts.</u>

This proposed use of the county's sales tax revenue is summarized in the following table:

Item	Approximate Amounts
A) Direct Reduction of Current Tax Levy for Debt Service	$5,000,000
B) Direct Reduction of Current Tax Levy for General Operations	7,000,000
Subtotal Direct Reduction of Current Tax Levy	**$12,000,000**
C) Cash Payments for Capital Projects/Expenditures	5,000,000
D) Share with Local Municipalities and School Districts	3,000,000
Total	**$20,000,000**

NOTE: It is important to note that the average county property tax reduction calculated later in this analysis only takes into account the county property tax reduction resulting from the $12,000,000 direct levy reduction above. In addition to this direct and immediate savings, taxpayers may also see their local property tax bills reduced due to the municipal/school district sharing component and future county property tax savings due to the reduction of bonding and associated debt service costs.

<u>OPTION 2</u> <u>- A) Pays for current debt service levy, B) Pays for direct property tax levy reduction for operations, and C) Pays for capital projects instead of borrowing (No revenue sharing).</u>

This proposed use of the county's sales tax revenue is summarized in the following table:

Item	Approximate Amounts
A) Direct Reduction of Current Tax Levy for Debt Service	$5,000,000
B) Direct Reduction of Current Tax Levy for General Operations	10,000,000
Subtotal Direct Reduction of Current Tax Levy	**$15,000,000**
C) Cash Payments for Capital Projects/Expenditures	5,000,000
Total	**$20,000,000**

NOTE: It is important to note that the average county property tax reduction calculated later in this analysis only takes into account the county property tax reduction resulting from the $15,000,000 direct levy reduction above. In addition to this direct and immediate savings, taxpayers would also see their future local property tax bills reduced due to future county property tax savings resulting from the reduction of bonding and associated debt service costs.

OPTION 3 - A) Pays for current debt service levy, and B) Pays for direct reduction of tax levy for operations (No payments for capital projects or revenue sharing).

This proposed use of the county's sales tax revenue is summarized in the following table:

Item	Approximate Amounts
A) Direct Reduction of Current Tax Levy for Debt Service	$5,000,000
B) Direct Reduction of Current Tax Levy for General Operations	15,000,000
Total	**$20,000,000**

NOTE: It is important to note that the average county property tax reduction calculated later in this analysis only takes into account the county property tax reduction resulting from the $20,000,000 direct levy reduction above. However, taxpayers would see an increase in their future local property tax bills resulting from the increase in bonding and associated debt service costs.

OPTION 4 - A) Pays for direct reduction of tax levy for operations (No payments for capital projects, revenue sharing or current debt service levy).

This proposed use of the county's sales tax revenue is summarized in the following table:

Item	Approximate Amounts
A) Direct Reduction of Current Tax Levy for General Operations	$20,000,000
Total	**$20,000,000**

NOTE: It is important to note that the average county property tax reduction calculated later in this analysis only takes into account the county property tax reduction resulting from the $20,000,000 direct levy reduction above. However, taxpayers would see an increase in their future local property tax bills resulting from the increase in bonding and associated debt service costs.

What would happen if sales tax revenue estimates do not meet the projection calculated previously and how would that impact the county budget?

The county would have to either utilize levy funding for debt service obligations, take out debt to finance capital expenditures or some combination of both. Based on the current Tax Levy Limit formula, the county would be able to increase the tax levy to pay for these types of obligations. The county would not be able to increase the tax levy for operations above the net new construction increase allowed without a separate county referendum.

WHAT'S THE IMPACT?

COUNTY LEVY, AVERAGE HOMEOWNER & AVERAGE HOUSEHOLD IMPACTS

****

Based on the assumptions of using the Outagamie County sales tax revenue as proposed in the four options above, noted in the table below is the Impact on the County Tax Levy, Tax Rate and Average Property Owner. In addition, the impact of the sales tax on the Average Household and the net difference between the property tax reduction and sales tax increase is provided. **Please note this is a very high level projection as the county has not started development of a much more detailed 2020 budget projection and some things could change between this analysis and assumptions made, and the actual 2020 budget.** It is also very important to note the following tax levy assumptions used in this analysis:

- No major changes in State Aids or other general government revenue sources.
- No major changes to the current tax levy limit law.
- No major changes in any tax levy funded county department's expenditures.
- The increase in Net New Construction is similar to the 2019 and 2018 budgets (2.0%).
- The economic increase in overall equalized valuation and specifically, for residential property is similar to the 2019 and 2018 budgets (4.0% and 3.0% respectively).
- There are no other state law changes that would impact or shift the property tax from one area to another area such as from residential to commercial or vice versa.
- The lawsuit against Brown County does not prevail.
- Without the sales tax, the county would increase the current 2019 levy by approximately $1.5 million. This is estimated to be the net new construction allowed increase of approximately $1.3/$1.4 million as well as using most of the current available levy capacity remaining of $100,000 to $200,000.

Year 2020 Projection:

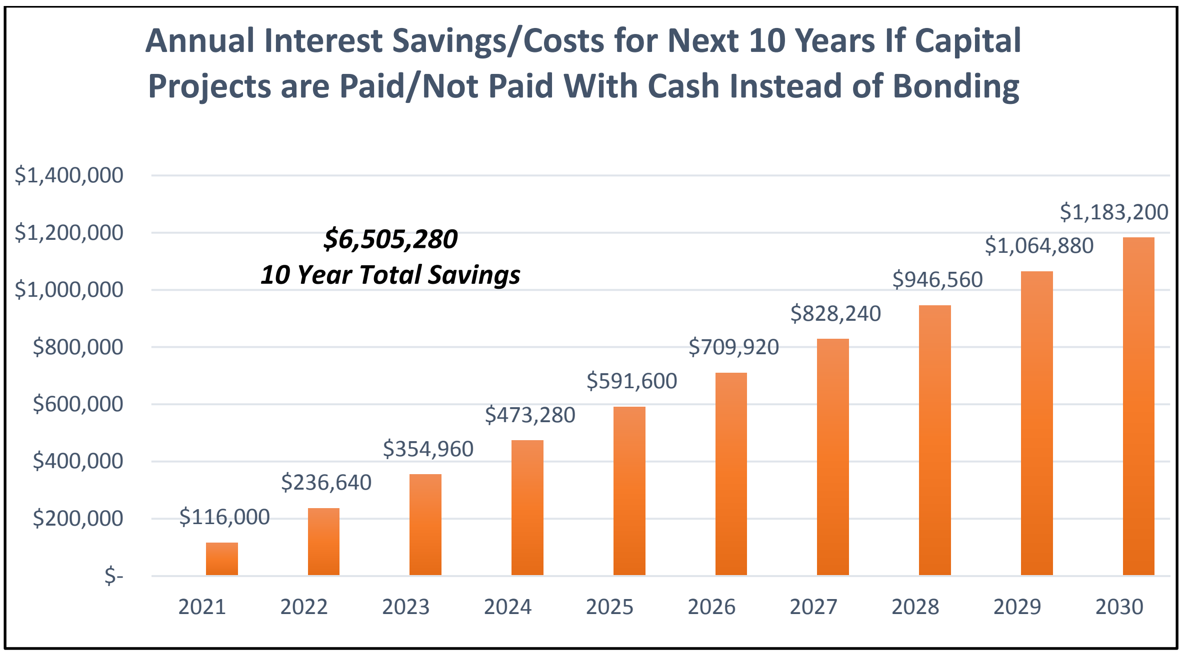
Item	Projected 2020 WITHOUT SALES TAX	Projected 2020 <u>WITH SALES TAX – OPTION 1</u>	Projected 2020 <u>WITH SALES TAX – OPTION 2</u>	Projected 2020 <u>WITH SALES TAX – OPTION 3</u>	Projected 2020 <u>WITH SALES TAX – OPTION 4</u>
Tax Levy	$73,864,240	$61,659,934	$58,659,934	$53,659,088	$53,659,934
Tax Rate	$4.680	$3.906	$3.716	$3.400	$3.400
Average Property Owner Share	$809.78	$675.98	$643.09	$588.28	$588.28
Average Property Owner Change	-	-$133.80	-$166.69	-$221.50	-$221.50
Average Household Sales Tax Change	-	+$109.00	+$109.00	+$109.00	+$109.00
Average Household Net Change	**-**	**-$24.80**	**-$57.69**	**-$112.50**	**-$112.50**
Average Household Percent Change	**-**	**-3.1%**	**-7.2%**	**-13.9%**	**-13.9%**

Without the sales tax, the increase to the average property tax owner in 2020 would be $9.25 when compared to the prior year (2019 average property owner share is $800.53). With the sales tax, in all four options, Outagamie County taxpayers would see an overall savings. The savings as a result of implementing the sales tax vs. not implementing would be $133.80 for 2020. For Option 2, the difference is $166.69, Option 3 difference is $221.50 and Option 4 difference is also $221.50. These amounts exclude the average household sales tax increase estimated at $109.00 as noted above.

As previously stated, it is important to continually note that the options vary in the short term vs. longer term due to financing capital projects with cash versus bonding. The gap narrows over time for the reasons noted on the next page and as shown on the ten year graphical presentation on page 24.

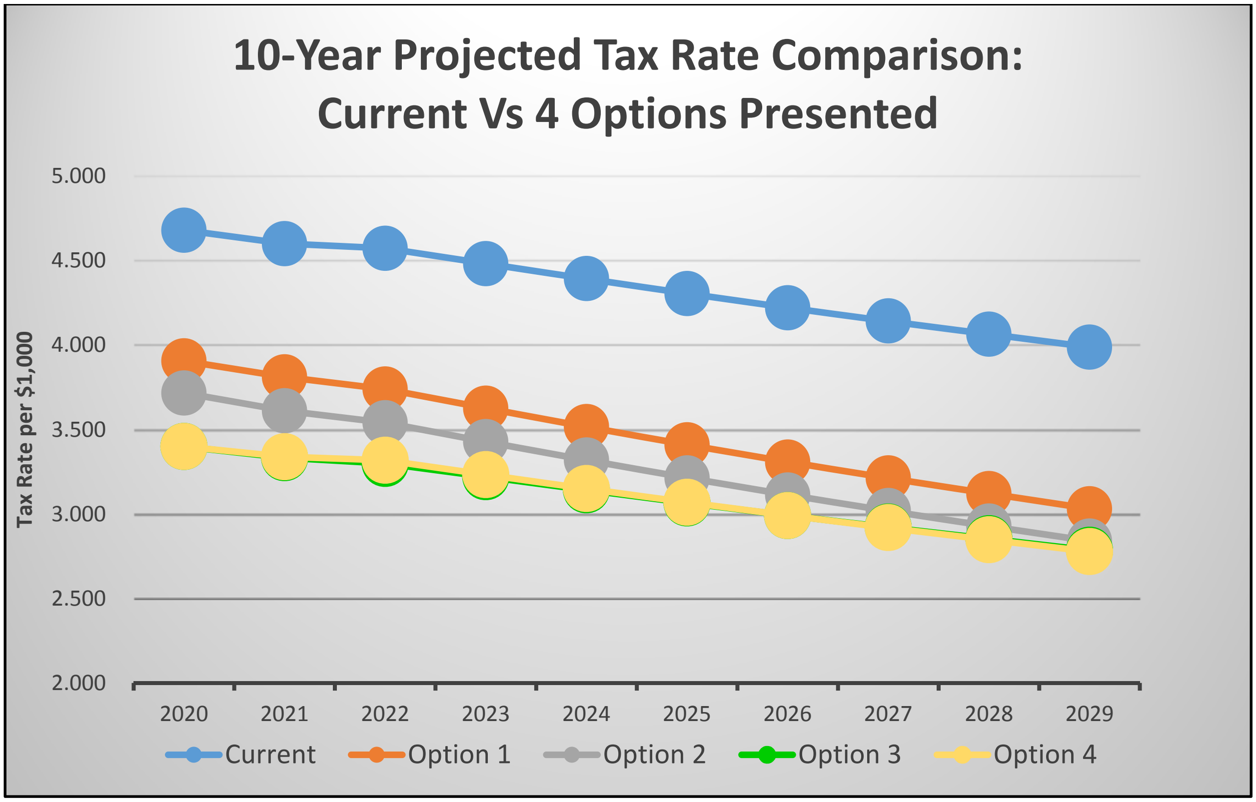
<u>Additional information relating to paying for capital projects with sales tax revenues instead of borrowing under both Options 1 and 2.</u>

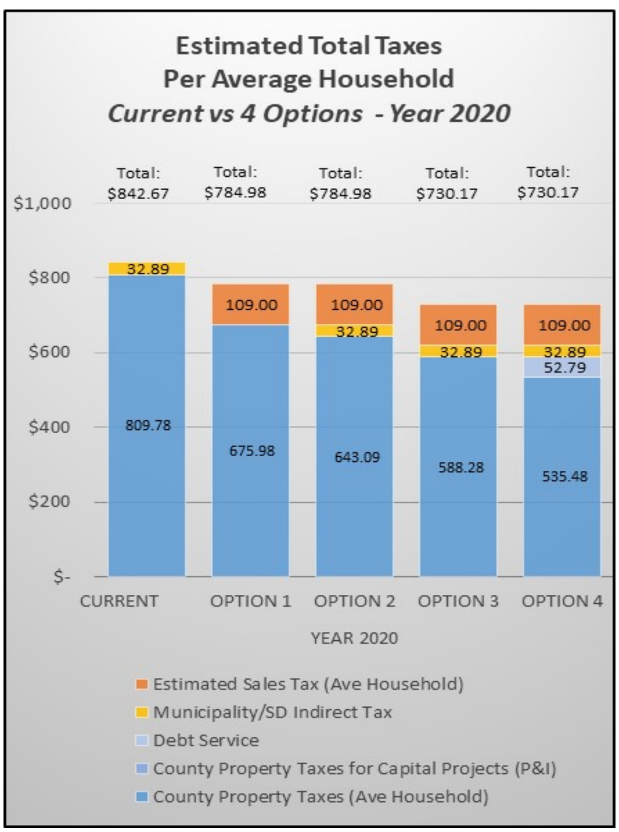
As noted in the sales tax use section, in the options where the county pays for capital projects with sales tax revenues instead of borrowing, county taxpayers would save an additional ***$6,505,280*** in debt service interest payments over a 10 year period and then approximately ***$1.2 million annually***. The graph below illustrates those savings. <u>Contrarily, if the county would continue to bond for these capital projects, the county would continue to incur these interest costs over the same 10 year period.</u>

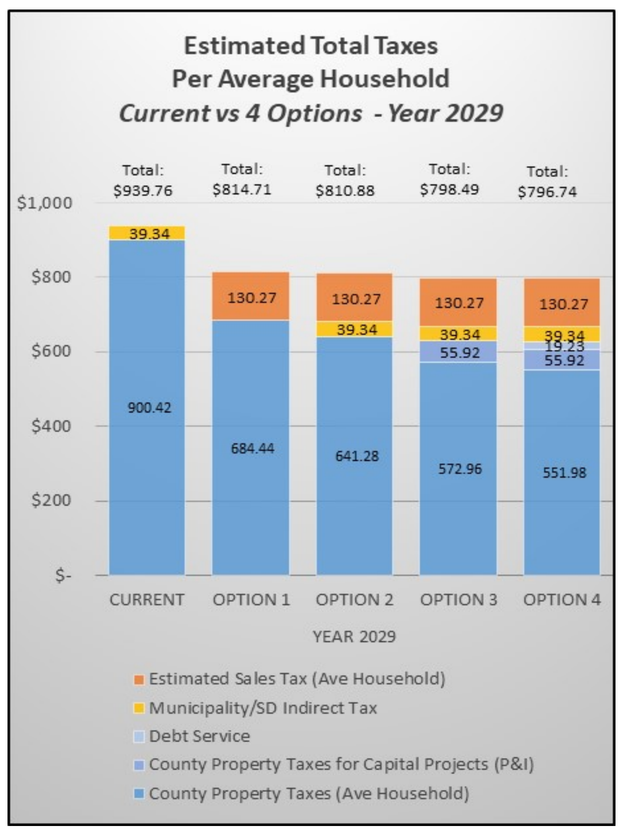


<u>Future Year Projections:</u>

While the table on the previous page reflects the greatest immediate savings under Options 3 and 4, it is important to look at the current AND future projections relating to the different options presented. Therefore, the first graph on the following page illustrates a 10 year projection of the tax rate under the current and four different options presented. The subsequent two graphs illustrate the composition of the estimated annual tax per household for all options presented for the proposed year of implementation (Year 2020) as well as the tenth year (Year 2029). In order to complete these projections, certain assumptions had to be made. These assumptions are listed after the graphs and are best estimates at this time based upon prior year historical and current year data.


10-Year Projected Tax Rate Comparison:
Current Vs 4 Options Presented
Tax Rate per $1,000
5.000
4.500
4.000
3.500
3.000
2.500
2.000
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
Current
Option 1
Option 2
Option 3
Option 4


Estimated Total Taxes
Per Average Household
Current vs 4 Options - Year 2020
Total: $842.67
Total: $784.98
Total: $784.98
Total: $730.17
Total: $730.17
$1,000
$800
$600
$400
$200
$-
32.89
809.78
109.00
675.98
109.00
32.89
643.09
109.00
32.89
588.28
109.00
32.89
52.79
535.48
CURRENT
OPTION 1
OPTION 2
OPTION 3
OPTION 4
YEAR 2020
Estimated Sales Tax (Ave Household)
Municipality/SD Indirect Tax
Debt Service
County Property Taxes for Capital Projects (P&I)
County Property Taxes (Ave Household)


Estimated Total Taxes
Per Average Household
Current vs 4 Options - Year 2029
Total: $939.76
Total: $814.71
Total: $810.88
Total: $798.49
Total: $796.74
$1,000
$800
$600
$400
$200
$-
39.34
900.42
130.27
684.44
130.27
39.34
641.28
130.27
39.34
55.92
572.96
130.27
39.34
19.23
55.92
551.98
CURRENT
OPTION 1
OPTION 2
OPTION 3
OPTION 4
YEAR 2029
Estimated Sales Tax (Ave Household)
Municipality/SD Indirect Tax
Debt Service
County Property Taxes for Capital Projects (P&I)
County Property Taxes (Ave Household)

Assumptions Used in All 5 Analyses (Current plus 4 Options)

- Net New Construction: 2% annual increase.
- Equalized Value: 4% annual increase (base value 1/1/18 - $15,176,940,000).
- Home Values: 3% annual increase (base year value 1/1/18 - $168,001).
- Consumer Price Index (CPI): 2% annual increase.
- The operations portion of the tax levy would increase by the net new construction (approximately 2%).

Additional Assumption Used in Options 1, 2 & 3 (Not applicable in Current and Option 4)

- $5,000,000 used for payment of annual debt obligation (P&I); if annual obligation is less than $5 million, the balance is used to reduce operations levy (property taxes).

Additional Assumption Used in Options 1, 2, 3 & 4 (Not applicable in Current projection)

- The sales tax revenues would increase at a 3% factor. For the sales tax applied to direct reduction of the levy, 50% of the increase would be used to reduce the operations portion of the levy and 50% would be used for increased operations costs.

Additional Assumption Used in Current and Options 3 & 4 (Not applicable in Options 1 & 2)

- New debt of $5 million issued annually for capital projects, interest rate 4% with 10-year repayment term.

One-time Property Tax Reduction for General Operations:

- Option 1: $7,000,000 direct levy reduction - (balance of $13,000,000 is used for $5,000,000 debt repayment; $5,000,000 new capital projects; $3,000,000 sharing with Municipalities/School Districts).
- Option 2: $10,000,000 direct levy reduction - (balance of $10,000,000 is used for $5,000,000 debt repayment; $5,000,000 new capital projects).
- Option 3: $15,000,000 direct levy reduction - (balance of $5,000,000 is used for debt repayment).
- Option 4: $20,000,000 direct levy reduction.

HOW WOULD REVENUE SHARING WORK?

SHARED REVENUE METHODOLOGIES

****

As noted above, Option 1 includes sharing a portion of sales tax revenue with local municipalities and school districts. While there are a variety of ways in which this could be structured, an option follows which could be further refined through additional conversations between County Administration, the County Board and Corporation Counsel.

The first step in the methodology is **A)** How to share the distribution between the municipalities and school district entities. The second step is **B)** How to distribute the funding between the two subsets (B1 – municipalities and B2 – school districts). While we have included some methodology of allocating funding to municipalities and school districts in this proposal, there are other considerations that would have to be taken into account with this approach. We have included some of those in **C)** Additional considerations for shared revenue approach. These steps are further described below.

A) *Allocating the Funding Between Local Municipalities and Local School Districts*

The first step in the process is to allocate funding between the local municipalities and school districts. This allocation was completed by considering each municipality/school district as one unit of government. If a municipality or school district is located in more than one county, the share of equalized value located within the county versus that individual unit of government's overall equalized value was used. For example, if 75% of a municipality/school district's equalized value is within the county, that municipality/school district would be considered as a 0.75 unit. Based upon this analysis and a total of $3,000,000 to be distributed to municipalities and school districts, 80% of the allocation would be made to local municipalities ($2,400,000) and 20% would be made to local school districts ($600,000). See tables in **Appendix D** for details.

B) Sharing the Funding between the two subsets – B1 Local Municipalities and B2 School Districts

B1 – Local Municipalities – This example uses the following three-pronged methodology to distribute the estimated $2,400,000 million in sales tax to the local municipalities within the county: **1) Equalized value** at 33.33%, **2) Population** at 33.33%, **3) Lane miles** at 33.34%.

1) **EQUALIZED VALUE** - 33.33% to be allocated based upon Equalized Value (including TIFs). Equalized value is the current method used to calculate the county's tax rate. [Note - While the current tax rate calculation for the county share excludes the TIF

valuations, we have used the gross equalized valuation since this more accurately reflects the overall equalized value of the municipalities within the county.] This is consistent with the current approach to allocating tax increases (or decreases) to all local units of government. The equalized values are obtainable from the Wisconsin Department of Revenue and the values used would be the same values the county uses for its budget and tax levy apportionments. This approach also recognizes that the municipalities generating much of the sales tax revenue have a majority of the equalized value in the county. [Note - Sheboygan County uses only equalized value for allocating 100% of their local municipality amounts.]

2) **POPULATION** - 33.33% to be allocated based upon population. This portion would be based on the premise that the entire population within the county would be paying county sales tax. Therefore, residents in each municipality would benefit from the county contribution back to the local municipalities. The numbers used would be based on the latest Wisconsin Department of Administration's Demographics Service Centers' estimates.

3) **LANE MILES** - 33.34% would be based on the number of lane miles within each jurisdiction (and only within Outagamie County's borders). The entire county's infrastructure needs to be well maintained and improved in order to support economic growth and development. Due to tax levy limits and the lack of state aid increases over the past 15 years, local governments have not been able to maintain or improve their transportation infrastructure. This additional source of revenue would provide resources to municipalities to do so. The number of lane miles each local municipality is responsible for is available from the Wisconsin Department of Transportation on an annual basis.

This balanced, three-pronged approach would reasonably and equitably distribute the sales tax back to the local municipalities based on the allocated share of the county's levy (equalized value), those that have paid it (population based) and those that need it to fund transportation or other infrastructure or related expenditures (lane miles). The estimated allocations for each local municipality based on this methodology are noted in **Appendix E**.

<u>B2 – Local School Districts</u> - We have used the following two-pronged methodology to distribute the estimated $600,000 in sales tax to the local school districts within the county: **1) Equalized value** at 50% and **2) Enrollment** at 50%.

1) **EQUALIZED VALUE** - 50% to be allocated based on Equalized Value (Including TIFs). Equalized Value is the current method used to calculate county's tax rate. [While the current tax rate calculation for the county share excludes the TIF valuations, we have

used the gross equalized valuation since this more accurately reflects the overall equalized value for them within the county.] This portion would maintain the current approach to allocating tax increases (or decreases) to all local units of government. The equalized values are obtainable from the Wisconsin Department of Revenue and the values used would be the same values the county uses for its budget and tax levy apportionments.

2) **STUDENT ENROLLMENT** - 50% to be allocated based upon school enrollment. This ensures that local school districts with higher student counts would receive a slightly higher portion of the school districts' allocation. The numbers used would be based on the latest Wisconsin Department of Public Instruction enrollment data or on other reasonable allocation methods if enrollment data by county is not readily obtainable.

This balanced, two-pronged approach would reasonably and equitably distribute the sales tax back to the local school districts based on the allocated share of the county's levy (equalized value) and student enrollment. The estimated allocations for each local school district based on this methodology are noted in **Appendix F**.

C) ***Additional Considerations for Shared Revenue Approach***

This section of the analysis would need further deliberation by and between County Administration, the County Board, County Corporation Counsel and the participating municipalities/school districts as the following questions would have to be answered. Please note that these questions are not meant to be all inclusive as there may be other items that come to light during future discussions.

a. First and foremost, the County Board would have to approve of sharing the county sales tax revenue.

b. If the County Board chooses to share sales tax revenues, how much of the county sales tax would be allocated or shared with local municipalities/school districts? Note: Option 1 in this analysis uses a 15% share.

c. How would the county be assured the shared revenues are being used in accordance with the intended purpose and in accordance with the state statutes? Would annual certifications be required from municipalities and school districts that would attest that the shared revenue is being utilized in conformance with Outagamie County Corporation Counsel's legal opinion?

d. Would the County require Intergovernmental Agreements with the municipalities and school districts?

e. Would the shared revenue be a fixed amount annually or percentage of total sales tax revenue generated?

f. Would the shared revenue calculations be based on prior year information or current year estimates (such as equalized value amounts, populations, lane miles or enrollment data)?

g. What would happen if a municipality or school district chooses not to participate, or fails to adhere to the annual certifications, or doesn't meet the requirements of the use of the sales tax? If required, how does the county monitor compliance?

Additional Historical Note – In 2001, the County Executive at that time, Robert "Toby" Paltzer, proposed the sales tax for the 2002 budget. The sales tax was voted down at that time by the County Board.

This concludes the Outagamie County Sales Tax Analysis Report. The following pages include various Appendices used to support information used in this analysis.

APPENDIX A

WISCONSIN ATTORNEY GENERAL'S 1998 OPINION ON COUNTY SALES TAX

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STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221

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

James E. Doyle
Attorney General

JED:FTC:cla

APPENDIX B

WISCONSIN COUNTIES ASSOCIATION AMICUS BRIEF

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FILED
01-23-2019
Clerk of Circuit Court Brown County, WI 2018CV000640

STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY

Brown County,

Plaintiff,

v.

Case No. 18-CV-640

Brown County Taxpayers Association, et al.,

Defendants/Third-Party-Plaintiffs

v.

Richard Chandler,
Secretary, Wisconsin
Department of Revenue,

Third-Party Defendant.

AMICUS BRIEF OF THE WISCONSIN COUNTIES ASSOCIATION

INTRODUCTION

Wisconsin Counties' Association ("WCA") seeks leave to file this amicus brief for several reasons. First, this case is not simply a case about the legality of a single county ordinance. Instead, it is an attempt to overturn over 20 years of settled law and uniform practice by counties across Wisconsin. Second, adopting Defendants/Third-

Party Plaintiffs' (together "BCTPA") unique and unfounded construction of Wis. Stat. § 77.70 would fundamentally change county budget and financial practices and procedures. Finally, and contrary to BCTPA's claim that the sales and use tax is just another mechanism to tax county residents, the sales and use tax provides the very tax relief contemplated by Wis. Stat. § 77.70. Accordingly, the WCA asks this Court to consider the information provided below as it decides the parties' cross motions for summary judgement.

I. This Court Should Adhere To The Plain Language of Wis. Stat. § 77.70 And The Attorney General's Opinion Which Has Guided Counties' Actions For Over Twenty Years.

As noted in the Parties' opening briefs, the Attorney General issued a formal Opinion interpreting Wis. Stat. § 77.70 in 1998 - over twenty years ago. The Attorney General interpreted the plain language of the statute and correctly concluded that a county sales and use tax "directly reduce[s] the property tax levy …" (section 77.70) if the "funds received from a county sales and use tax [are] budgeted 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 property tax levy." 1998 Wis. Att'y Gen. 2, 2. This reading of Wis. Stat. § 77.70 comports with its plain meaning. Contrary to BCTPA's arguments, nothing in the actual language of the statute requires a county to set its budget and levy and then conduct a dollar-for-dollar reduction of the property tax levy based upon sales and use tax proceeds, presumably with estimates of the next year's collections or the actual receipts from the prior year.

Under BCTPA's approach, a county would be required to set its levy for a year based on estimated sales and use tax revenues and then hope that the budget would be met by the end of that fiscal year. If the estimated sales and use tax revenues are not met, then the county's budget would not be met. To make matters worse, a county's levy limit would then be artificially low because Wis. Stat. § 66.0602 establishes the prior year's levy as the baseline for the levy limit calculation. This is an absurd result and one that would provide none of the supposed taxpayer protections BCTPA claims its interpretation would yield. The Attorney General's Opinion avoids this absurdity in favor of a rational reading that the only limitation on sales and use tax revenues is that revenues be allocated to budget items that could otherwise be funded by the property tax levy. The Opinion is faithful to both the language of the statute and the realities of county budgeting.

BCTPA next claims that the enactment of levy limits in 2006 now renders the Attorney Opinion moot. BCTPA has it exactly backwards. In 2005, the legislature enacted Wis. Stat. § 66.0602. That statute has placed a limit on the annual increase of a county's operating levy. A county's debt levy is exempt from levy limits. Wis. Stat. § 66.0602. That statute has been amended over 20 times since its enactment. In most instances, the amendments alter what types of expenditures are exempt from the levy limits. *See* 2005 Wis. Acts. 25 & 484; 2007 Wis. Acts 20, 115 & 129; 2009 Wis. Act 28; 2011 Wis. Acts 32, 63, 75, 140, 145 & 258; 2013 Wis. Act 20;

2013 Wis. Act 165; 2013 Wis. Acts 222 & 310; 2015 Wis. Acts 55, 191 & 256; 2017 Wis. Acts

59, 207, 223, 243, 317 & 365.

For the majority of the amendments, the Legislature has considered how the levy is to be calculated, whether it should be capped, and what expenditures should be excluded from the cap. If the Legislature thought the Attorney General's Opinion was incorrect, it would have taken corrective action. But it did not. In light of this reality, this Court should refrain from adopting BCTPA's new interpretation of Wis. Stat. § 77.70.

Judicial restraint is also what the law requires. In *Schill v. Wisconsin Rapids School District*, 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177, the Wisconsin Supreme Court opined that the lack of legislative action to correct an Attorney General's interpretation of a statute coupled with other legislative activity on the same subject means that a court is to "regard [the opinion] as presumptively correct." *Id.* at ¶126, *see also* ¶ 125 (noting that inaction on the specific question coupled with other legislative action "shows that the legislature has "contemplated the specific problem at hand" and "acquiesce[ed] in the attorney general's long-standing opinion …").

The policy undergirding the doctrine of *stare decisis* also supports judicial restraint here. As the Wisconsin Supreme Court has made clear,

> One of the fundamental justifications for the rule of *stare decisis* is to provide a consistent predictable rule of law upon which society ... may properly order its affairs, i.e., engage in rational business decision-making, without the continuous, ominous threat of the legal bases for those decisions being changed.

Progressive Northern Insurance Company v. Romanshek, 2005 WI 67, ¶ 44, 281 Wis.2d 300, 697 N.W.2d 417; *see also Khan v. State Oil Co.*, 93 F.3d 1358, 1367 (7th Cir. 1996) (Ripple, J., concurring) ("[W]e ought to ensure, through strict application of the doctrine of *stare decisis* and precedent, that the law is sufficiently predictable and certain to permit businesses to order their affairs with a clear understanding of what the law requires.")

Sixty-six county governments across this State have organized their affairs (e.g. setting tax levies, approving capital projects, setting mill rates for real property, issuing bonds, incurring debt, etc.) around the well-reasoned opinion of the Attorney General. A change to the interplay between the levy and the sales tax would be catastrophic and would create uncharted territory for county budgeting.

Indeed, since the year 2000 (just 2 years after the Attorney General issued its opinion), fifteen counties have enacted a sales and use tax ordinance. Not a single county had a corresponding dollar-for-dollar reduction in their levy to account for the sales tax revenue. *See* Affidavit of Knapp, Exs. A & B. Altering the longstanding interpretation of Wis. Stat. ¶ 77.70 would upend the settled law and introduce uncertainty to the most important county function – budget setting.

II. A Change in the Law Would Be Catastrophic To County Budgeting Across Wisconsin.

As noted above, every county that has enacted a sales and use tax since 2000 has implemented it in conformity with the Attorney General's Opinion – by budgeting funds received from a county sales and use tax 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 property tax levy.

The sales and use tax has been a significant source of revenue for the counties to reduce reliance on the property tax levy. For instance, in 2017 Milwaukee County generated over $74,000,000 of revenue from its sales and use tax - an amount equal to 25% of its levy. *See* Affidavit of Knapp, Exs. A & B. Dane County generated over $57,000,000 – an amount equal to 30% of its levy. *Id.* A dollar-for-dollar reduction in the levies would force counties to choose between cutting essential services or forgoing necessary capital improvement projects.

And, it is not just the larger counties that would be significantly impacted. In 2017, Pepin County (with a population of just 7,469 people) generated $535,543 from its sales and use tax. That figure represents 12.8% of its levy for the same year. *Id.* A dollar-for-dollar reduction of the levies based on sales and tax use revenue would be catastrophic.

This is where BCTPA's hypothetical breaks down. The counties are not wayward children, mired in debt who are jetting off to Europe on Daddy's money. The reality is much different. The counties are governmental entities comprised of duly-elected representatives, regulated by Wisconsin law, charged with ensuring their citizens are safe, well protected, have county resources at hand, and opportunities for economic growth. This Court should not adopt an unprecedented reading of Wis. Stat. § 77.70 that forces the Counties to choose between these important priorities.

III. A Sales and Use Tax Ordinance Under Wis. Stat. § 77.70 Provides Tax Relief to County Residents.

BCTPA misunderstands how sales and use taxes actually generate revenue. A consistent theme in their brief is that the sales and use taxes are just another way for counties to tax their residents. This is an incomplete and incorrect view of sales and use taxes. Because sales and use taxes apply to goods and services, and not real estate, they generate revenue from non-residents who shop, eat, vacation, enjoy various entertainment venues or stop for gas in a county. In other words, a sales and use tax spreads the tax burden to all of the people that use the infrastructure that the tax supports. As the tax base is broadened to include non-residents, county property taxpayers receive tax relief.

In 2017, dollars spent by non-residents ("Direct Visitor Spending" in the terminology of the tourism industry) accounted for $12.7 billion dollars of spending in the 72 counties. *See* Affidavit of Knapp, Ex. D. In turn, this spending generated $1.5 billion dollars in state and local taxes, a portion of which was county sales and use taxes. *Id.* In fact, by some estimates tourists or visitors spend 58.3% of their dollars on items (food and beverage, lodging, entertainment and general retail) that are subject to Wisconsin sales and use taxes. Affidavit of Olson, Ex A.

The impact of this visitor spending yields significant savings to the counties' residents. For instance, Florence County experienced $5.7 million in Direct Visitor Spending in 2017. Florence County adopted a sales and use tax in 2006. While, this new revenue source did not lead to a dollar-for-dollar reduction in the total county property tax levy, it did reduce the tax burden on Florence County taxpayers. In 2006, Florence County's Mill Rate was $7.02/$1,000. However, the Mill Rate immediately dropped to $6.27 the next year and $5.98 the following year. Indeed, the Florence County Mill Rate has not exceeded $6.87[1] in any year since the adoption of the sales and use tax. See Affidavit of Knapp, Exs. C & D.

This trend is not uncommon. Green County saw a similar reduction in its Mill Rate after the adoption of a sales and use tax in 2003. Within 3 years, the Mill Rate had dropped by $0.98 and it remained below the 2003 level for seven years. *Id.* Trempealeau County also saw an immediate reduction in the Mill Rate following the adoption of a sales and use tax in 2010. The County's Mill Rate stayed below the 2010 rate for 6 years. *Id.*

All of these examples serve as evidence that sales and use taxes necessarily provide tax relief to county property owners by broadening the tax base to include non-residents. Moreover, it is quite common for these new tax dollars to have a direct downward impact on the mill rate. The decrease in the mill rate yields immediate and tangible tax savings to county residents.

[1] Indeed, $6.87 is the peak Mill Rate since the adoption of the sales and use tax. In no other year since the 2006 adoption of the sales and use tax has the Florence County Mill Rate exceeded $6.64 and it averaged $6.40 in the years following the adoption of the sales and use tax. This represents real tax savings to Florence County residents.

CONCLUSION

The law has been settled. Wisconsin counties have ordered their budgets and capital projects in reliance on Wis. Stat. § 77.70 and the Attorney General's Opinion. A change brought about by litigation, as opposed to legislation, would be devastating to the counties and their residents. BCTPA has proffered a novel interpretation of Wis. Stat. § 77.70, that is unknown to the statute's history. It is directly at odds with the Attorney General's Opinion - an opinion the Legislature has left undisturbed for 20 years despite almost constant legislative activity on the subject of county tax levies. Any change in the operation of Wis. Stat. § 77.70 should come from the Legislature, not a single trial court reviewing a case that is ostensibly a challenge to a single ordinance adopted by a single county. The potential impacts on public funding, public services and public policy across Wisconsin warrant restraint in this case.

Dated this 23rd day of January, 2019.

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APPENDIX C

OUTAGAMIE COUNTY CORPORATION COUNSEL'S OPINION

To be inserted here

APPENDIX D

MUNICIPAL & SCHOOL DISTRICT ALLOCATION TABLES

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MUNICIPALITY	*TOTAL EQUALIZED VALUE	*OC EQUALIZED VALUE	UNIT SHARE
TOWNS			
BLACK CREEK	$ 102,821,000	$ 102,821,000	1.00
BOVINA	101,956,800	101,956,800	1.00
BUCHANAN	684,363,800	684,363,800	1.00
CENTER	378,915,000	378,915,000	1.00
CICERO	90,794,800	90,794,800	1.00
DALE	267,681,600	267,681,600	1.00
DEER CREEK	44,403,400	44,403,400	1.00
ELLINGTON	276,129,900	276,129,900	1.00
FREEDOM	533,827,200	533,827,200	1.00
GRAND CHUTE	2,657,993,100	2,657,993,100	1.00
GREENVILLE	1,323,094,600	1,323,094,600	1.00
HORTONIA	122,906,900	122,906,900	1.00
KAUKAUNA	140,412,400	140,412,400	1.00
LIBERTY	72,791,800	72,791,800	1.00
MAINE	75,697,100	75,697,100	1.00
MAPLE CREEK	46,737,000	46,737,000	1.00
ONEIDA	216,087,800	216,087,800	1.00
OSBORN	98,654,400	98,654,400	1.00
SEYMOUR	103,983,100	103,983,100	1.00
VANDENBROEK	172,130,300	172,130,300	1.00
VILLAGES			
BEAR CREEK	16,788,500	16,788,500	1.00
BLACK CREEK	69,657,000	69,657,000	1.00
COMBINED LOCKS	297,130,800	297,130,800	1.00
HORTONVILLE	199,760,600	199,760,600	1.00
HOWARD	1,809,530,400	25,000	0.00
KIMBERLY	524,142,700	524,142,700	1.00
LITTLE CHUTE	878,465,300	878,465,300	1.00
NICHOLS	9,157,000	9,157,000	1.00
SHIOCTON	41,281,400	41,281,400	1.00
WRIGHTSTOWN	254,760,200	43,542,300	0.17
CITIES			
APPLETON	5,443,435,200	4,586,364,300	0.84
KAUKAUNA	1,088,410,700	1,088,364,100	1.00
NEW LONDON	388,138,900	124,884,900	0.32
SEYMOUR	210,167,300	210,167,300	1.00
TOTALS	**$ 18,742,208,000**	**$ 15,601,113,200**	**31.34**

*WI Dept of Revenue - 2018 Statement of Changes in Equalized Values

SCHOOL DISTRICT		*TOTAL EQUALIZED VALUE		*OC EQUALIZED VALUE	UNIT SHARE
APPLETON	$	8,129,465,172	$	7,137,207,575	0.88
KIMBERLY		2,156,682,752		1,257,653,218	0.58
KAUKAUNA		2,393,293,273		1,814,423,363	0.76
LITTLE CHUTE		549,592,535		549,592,535	1.00
HORTONVILLE		2,202,756,864		2,202,756,864	1.00
SEYMOUR		823,012,881		804,836,610	0.98
FREEDOM		925,383,873		925,383,873	1.00
SHIOCTON		336,846,131		336,846,131	1.00
CLINTONVILLE		651,189,274		66,666,495	0.10
NEW LONDON		1,126,138,908		354,557,852	0.31
WEST DEPERE		2,265,512,409		41,611,601	0.02
WRIGHTSTOWN		719,987,676		109,111,540	0.15
PULASKI		1,815,504,581		453,011	0.00
MENASHA		1,406,322,239		12,532	0.00
TOTALS	**$**	**25,501,688,568**	**$**	**15,601,113,200**	**7.78**

* WI Dept of Education - The number of students enrolled on the 3rd Friday of Sept.

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MUNICIPAL & SCHOOL DISTRICT ALLOCATION TABLE:			
			County Distribution
MUNICIPAL UNITS	31.34	80%	$2,400,000.00
SCHOOL DIST UNITS	7.78	20%	$600,000.00
TOTALS	**39.12**	**100%**	**$3,000,000.00**

APPENDIX E

MUNICIPAL DISTRIBUTION TABLE

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Estimate of Potential Distributions to Local Government Municipalities
$2,400,000 allocated by: 33.33% Equalized Value, 33.33% Population, 33.34% Lane Miles

MUNICIPALITY	EQUALIZED VALUE SHARE	POPULATION SHARE	LANE MILES SHARE	TOTAL SHARE
TOWNS				
BLACK CREEK	$ 5,272	$ 5,400	$ 23,168	$ 33,840
BOVINA	5,232	5,024	18,248	28,504
BUCHANAN	35,096	30,208	24,880	90,184
CENTER	19,432	15,448	34,632	69,512
CICERO	4,656	4,824	26,024	35,504
DALE	13,728	12,360	24,992	51,080
DEER CREEK	2,280	2,808	17,840	22,928
ELLINGTON	14,160	13,000	31,416	58,576
FREEDOM	27,376	26,256	34,608	88,240
GRAND CHUTE	136,296	98,408	68,328	303,032
GREENVILLE	67,848	51,088	56,960	175,896
HORTONIA	6,304	4,736	10,864	21,904
KAUKAUNA	7,200	5,616	19,480	32,296
LIBERTY	3,736	3,800	12,584	20,120
MAINE	3,880	3,824	16,464	24,168
MAPLE CREEK	2,400	2,616	11,880	16,896
ONEIDA	11,080	20,504	43,176	74,760
OSBORN	5,056	5,240	15,032	25,328
SEYMOUR	5,336	5,152	20,808	31,296
VANDENBROEK	8,824	6,824	11,312	26,960
VILLAGES				
BEAR CREEK	864	1,920	2,096	4,880
BLACK CREEK	3,568	5,672	3,912	13,152
COMBINED LOCKS	15,240	15,280	9,264	39,784
HORTONVILLE	10,240	11,896	7,840	29,976
HOWARD	-	-	-	-
KIMBERLY	26,880	28,984	17,632	73,496
LITTLE CHUTE	45,048	48,208	27,320	120,576
NICHOLS	472	1,176	1,840	3,488
SHIOCTON	2,120	4,024	2,832	8,976
WRIGHTSTOWN	2,232	864	1,408	4,504
CITIES				
APPLETON	235,160	266,896	142,920	644,976
KAUKAUNA	55,808	69,592	41,624	167,024
NEW LONDON	6,400	7,424	7,544	21,368
SEYMOUR	10,776	14,928	11,072	36,776
TOTALS	**$ 800,000**	**$ 800,000**	**$ 800,000**	**$ 2,400,000**
	33.33%	33.33%	33.34%	100.00%

APPENDIX F

SCHOOL DISTRICT DISTRIBUTION TABLE

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Estimate of Potential Distributions to School Districts
$600,000 allocated by: 50% Outagamie Equalized Value, 50% Outagamie Student Enrollment

SCHOOL DISTRICT	ENROLLMENT SHARE	EQUALIZED VALUE SHARE	TOTAL SHARE
APPLETON	$ 136,140	$ 137,250	$ 273,390
KIMBERLY	28,800	24,180	52,980
KAUKAUNA	28,380	34,890	63,270
LITTLE CHUTE	15,240	10,560	25,800
HORTONVILLE	38,160	42,360	80,520
SEYMOUR	20,640	15,480	36,120
FREEDOM	15,300	17,790	33,090
SHIOCTON	6,660	6,480	13,140
CLINTONVILLE	1,230	1,290	2,520
NEW LONDON	6,840	6,810	13,650
WEST DEPERE	630	810	1,440
WRIGHTSTOWN	1,980	2,100	4,080
PULASKI	-	-	-
MENASHA	-	-	-
TOTALS	**$ 300,000**	**$ 300,000**	**$ 600,000**
	50.00%	50.00%	100.00%

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