

RESOLUTION R-15-13

RESOLUTION TO RETURN THE AUGUST SETTLEMENT TO WINNEBAGO COUNTY OF  
THE CITY'S PORTION OF 2011 PROPERTY TAXES FOR 1304 MIDWAY ROAD

Introduced by: Aldermen Taylor and Sevenich

On December 13, 2011 a property tax bill for the property at 1304 Midway Road for the year 2011 was created and sent to the Sikh Temple of the Fox Valley since the organization failed to respond to the city assessor's request to provide documentation of its tax-exempt status as required by statute.

Correspondence from the city assessor, the city clerk and the tax bill from the city treasurer were sent to the property owner of record at 1304 Midway Road.

Kamaljit Singh Paul M.S., Member of Board of Trustees of the Sikh Temple of the Fax Valley claims not to have received any correspondence from the city assessor, the city clerk or the tax bill from the city treasurer.

In August 2012, Kamaljit Singh Paul M.S., Member of Board of Trustees of the Sikh Temple of the Fax Valley, did provide documentation of the organization's tax-exempt status to the city assessor and the city assessor changed the property status to tax exempt for 2012.

All of the statutory deadlines to challenge the city assessor's decision to place the property on the tax roll for 2011 have expired.

On September 25, 2013, Kamaljit Singh Paul M.S., Member of Board of Trustees, Bhagwant Singh Balli, Priest of Sikh Temple, Rev. Mark Geisthardt, Religious Leader Chair of ESTHER and Pastor of First United Methodist Church, Neenah and Penny Robinson, President of ESTHER, sent a written request asking the City of Menasha to cancel the property tax bill for the year 2011 for the property at 1304 Midway Road.

Pursuant to Wisconsin statutes, the property tax bill for the year 2011 for the property at 1304 Midway Road was sent to Winnebago County for collection in August 2012.

The property tax bill for the year 2011 for the property at 1304 Midway Road remains unpaid but monies were received by the City of Menasha for the city portion of the tax bill as part of the statutory August settlement by Winnebago County to the City of Menasha.

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MENASHA, that the proper City staff are directed to return the city portion of the funds received from Winnebago County for the August settlement for the property tax bill for the year 2011 for the property at 1304 Midway Road.

Passed and approved this        day of        , 2013.

ATTEST:

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Donald Merkes, Mayor

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Deborah A. Galeazzi, City Clerk

To: Alderpersons Kevin Benner, Jim Englebort, Michael Keehan, Mark Langdon, Rebecca Nichols, Stan Sevenich, Michael Taylor, Dan Zelinski

Cc: Mayor Donald Merkes

September 25, 2013

Members of Menasha Common Council,

We write to you on behalf of the Sikh Temple of the Fox Valley, 1304 Midway Road, Menasha, in regards to the property taxes they were assessed in error by the city of Menasha for the year 2011. As a 501(c)3 religious organization the Sikh Temple like all other religious organizations in the state of Wisconsin is exempt from property taxes.

There has been a year's worth of time and effort put into understanding why this error occurred and after repeatedly being told that correcting the error was not possible due to statutory requirements we reluctantly alerted the press to this situation so that our case could be heard by a greater audience. In the process of broadening our appeal we learned there is a means to correct this error as outlined in the Wisconsin Statutes. The specific statute which addresses this is Wisconsin Statute 74.33(1) which reads:

*"After the tax roll has been delivered to the treasurer of the taxation district under s. 74.03, the governing body of the taxation district may refund or rescind in whole or in part any general property tax shown in the tax roll, including agreed-upon interest, if: . . . (c) The property is exempt by law from taxation."*

Enclosed with this letter is an example of how this statute was used in the City of Milwaukee to rectify a similar situation.

**The Common Council has the authority to correct this error and we are asking that this item be included on your agenda for your next Common Council Meeting scheduled for Monday, October 7<sup>th</sup> and proper action is taken to promptly resolve the matter.**

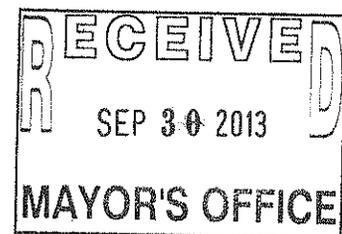
Sincerely,

Kamaljit Singh Paul M.D.  
Member of Board of Trustees, (920) 203-3597

Bhagwant Singh Balli  
Priest of Sikh Temple, Menasha

Rev. Mark Geisthardt  
Religious Leader Chair of ESTHER  
Pastor of First United Methodist Church, Neenah

Penny Robinson  
President of ESTHER, (920) 450-1519





# City of Milwaukee

Office of the City Clerk

200 E. Wells Street  
Milwaukee, Wisconsin 53202

Certified Copy of Resolution

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FILE NO: 100792

**Title:**

**Substitute resolution cancelling real estate taxes levied against a certain parcel, 9524 W. Good Hope Road, on the 2009 tax roll.**

**Body:**

Whereas, On December 3, 2008, Jerusalem Empowered African Methodist Episcopal Church purchased the property at 9524 W. Good Hope Road (tax key no. 1099994210-0) from King of Kings Lutheran Church; and

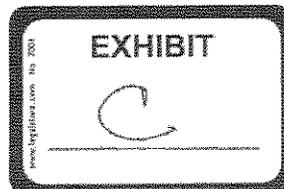
Whereas, The warranty deed for this transaction was recorded on January 12, 2009; and

Whereas, Because it already had non-profit status with the State of Wisconsin, Jerusalem Empowered was unaware that it needed to file for property-tax-exempt status for this property with the City of Milwaukee and, therefore, failed to meet the statutory deadline (March 1) to obtain tax-exempt status for the 2009 tax year; and

Whereas, The Common Council finds that Jerusalem Empowered African Methodist Episcopal Church is a religious and benevolent organization which should not be subject to property taxation on its church building and should not be required to pay 2009 property taxes based on a technicality; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the proper City officials are directed to cancel the 2009 property taxes, plus delinquent interest and penalties, for tax key no. 10999943210-0 (9524 W. Good Hope Road); and, be it

Further Resolved, That the proper city officers are authorized and directed to reflect the reduction in State Tax Credits as shown in this file by means of journal entries, charging the 2011 Remission of Taxes Fund, 0001 Org 9990 Program 0001 Sub-class S163 Account 006300, and crediting the State Tax Credit Fund.





I, Ronald D. Leonhardt, City Clerk, do hereby certify that the foregoing is a true and correct copy of a(n) Resolution Passed by the COMMON COUNCIL of the City of Milwaukee, Wisconsin on January 19, 2011.

*Ronald D. Leonhardt*

Ronald D. Leonhardt

February 03, 2011

Date Certified



## MEMORANDUM

TO: COMMON COUNCIL

FROM: PAMELA A. CAPTAIN

RE: September 25, 2013 Letter to the Common Council pertaining to 2011 property tax bill for the property at 1304 Midway Road.

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Please be advised that we made contact with the city assessor, Mark Brown, Associated Appraisal Consultants, Inc., who indicated that he has a prior commitment and is not able to attend the October 7 common council meeting. Mr. Brown said that he is available to attend the next common council meeting on October 21<sup>st</sup>.

The September 25, 2013 letter to members of the Common Council pertaining to the 2011 property tax bill assessed to the property at 1304 Midway Road references §74.33(1), Wis. Stats., as a basis upon which the common council may refund or rescind any general property tax shown in the tax roll to have been issued in error if the property is exempt by law from taxation.

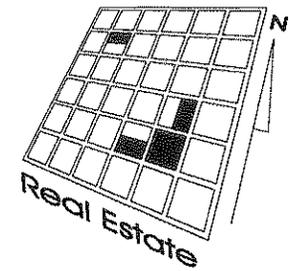
This statute is to be read in conjunction with §74.35, Wis. Stats., which provides a method for the recovery of unlawful taxes. Pursuant to §74.35(2m), Wis. Stats., "A claim that property is exempt, . . . may be made only in an action under this section. Such a claim may not be made by means of an action under s.74.33 or an action for a declaratory judgment under s. 806.04." In order to recover in an action for unlawful taxes, a claim had to have been filed by January 31 of the year in which the tax is payable (January 31, 2012) and the tax must be paid in full.

The September 25, 2013 letter leads the reader to believe that if an entity is a 501(c)3 religious organization that any property which the organization owns is automatically exempt from property taxes. That is not correct. There are 5 statutory tests to pass to qualify for tax exempt status under §70.11(4), Wis. Stats. A 501(c)3 religious organization may own both taxable and tax-exempt real and personal property. The city assessor has statutory authority to determine whether an entity's real and/or personal property is tax-exempt. There are multiple statutory procedures in place for challenging a city assessor's determination.



# Associated Appraisal Consultants, Inc.

Appleton ■ Hurley ■ Lake Geneva



September 23, 2013

APPLETON, WI – Associated Appraisal Consultants, Inc., has recently received inquiries regarding the tax exemption status of the Sikh Temple at 1304 Midway Road in the City of Menasha. This property currently appears on the assessment roll as exempt from property taxes; however, it was assessed and taxed in 2011.

Under Wisconsin law, property tax exemption is not guaranteed for any religious organizations. The process to obtain exemption is to file a Property Tax Exemption Request with the local assessor. The assessor will grant exemption if the information provided meets the requirements of the law. In a situation where a property owner is assessed and taxed on a property that they believe should be exempt, the procedure under law is to pay the taxes and file a Claim for Unlawful Tax by January 31<sup>st</sup> of the year in which the taxes are due. If the claim is allowed by the City, then the taxes would be refunded.

We have been in open communication with the Sikh Temple, Dr. Paul and their legal representation. They have since provided the necessary documentation to obtain property tax exemption. However, the property owner did not follow the necessary procedures to claim exemption or contest the 2011 property tax bill as required by law. The assessor has no authority to rescind or refund property taxes.

Associated Appraisal Consultants, Inc., is under contract with the City of Menasha to complete the City's annual assessment work. We have over 50 years of experience in municipal assessment and are diligent in following the processes and procedures as specified in the *Wisconsin Property Assessment Manual* and Wisconsin Statutes.

Further questions may be directed to us at [info@apraz.com](mailto:info@apraz.com).

Mark Brown  
Director of Project Management



As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district its proportionate share of taxes on improvements on leased land.

(3) **APPROVAL OF PAYMENT NOT REQUIRED.** The taxation district treasurer shall make payments required under subs. (1) and (2) whether or not the governing body of the taxation district has approved those payments. Following a payment required under subs. (1) and (2), the taxation district treasurer shall prepare and transmit a voucher for that payment to the governing body of the taxation district.

**History:** 1987 a. 378; 1991 a. 39; 1995 a. 408; 2001 a. 16; 2003 a. 33, 228; 2005 a. 241, 418; 2007 a. 97; 2009 a. 171.

**74.31 Failure to settle timely.** If the taxation district treasurer or county treasurer does not settle as required under ss. 74.23 to 74.30:

(1) **INTEREST CHARGE.** The taxation district or county which has not settled shall pay 12% annual interest on the amount not timely paid to the taxing jurisdiction, including this state, to which money is due, calculated from the date settlement was required.

(2) **PENALTY.** The taxing jurisdiction, including this state, to which money is due may demand, in writing, payment from the taxation district or county which has not settled. If, within 3 days after receipt of a written demand, settlement is not made, the taxation district or county shall pay the taxing jurisdiction, including this state, making the demand a 5% penalty on the amount remaining unpaid.

**History:** 1987 a. 387; 1991 a. 39.

**74.315 Omitted property.** (1) **SUBMISSION.** No later than October 1 of each year, the taxation district clerk shall submit to the department of revenue, on a form prescribed by the department, a listing of all the omitted taxes under s. 70.44 to be included on the taxation district's next tax roll, if the total of all such taxes exceeds \$5,000.

(2) **EQUALIZED VALUATION.** After receiving the form under sub. (1), but no later than November 15, the department of revenue shall determine the amount of any change in the taxation district's equalized valuation that results from considering the valuation represented by the taxes described under sub. (1). The department's determination under this subsection is subject to review only under s. 227.53.

(3) **NOTICE AND DISTRIBUTION.** If the department of revenue determines under sub. (2) that the taxation district's equalized valuation changed as a result of considering the valuation represented by the taxes described under sub. (1), the department shall notify the taxation district and the taxation district shall distribute the resulting collections under ss. 74.23 (1) (a) 5., 74.25 (1) (a) 4m., and 74.30 (1) (dm).

**History:** 2009 a. 171.

## SUBCHAPTER V

### ADJUSTMENT

**74.33 Sharing and charging back of taxes due to palpable errors.** (1) **GROUND.** After the tax roll has been delivered to the treasurer of the taxation district under s. 74.03, the governing body of the taxation district may refund or rescind in whole or in part any general property tax shown in the tax roll, including agreed-upon interest, if:

(a) A clerical error has been made in the description of the property or in the computation of the tax.

(b) The assessment included real property improvements which did not exist on the date under s. 70.10 for making the assessment.

(c) The property is exempt by law from taxation, except as provided under sub. (2).

(d) The property is not located in the taxation district for which the tax roll was prepared.

(e) A double assessment has been made.

(f) An arithmetic, transpositional or similar error has occurred.

(2) **EXCEPTIONS.** The governing body of a taxation district may not refund or rescind any tax under this section if the alleged error may be appealed under s. 70.995 (8) (c) or if the alleged error is solely that the assessor placed a valuation on the property that is excessive.

(3) **CHARGING BACK AND SHARING TAXES.** If an error under sub. (1) has been discovered, the governing body of the taxation district shall proceed under s. 74.41.

**History:** 1987 a. 378; 1991 a. 39; 1993 a. 307; 1995 a. 408.

A potential error in classifying a mobile home as real, not personal, property was not a clerical error under sub. (1) (a), nor could it be considered to be the inclusion of a real property improvement that did not exist under sub. (1) (b), as the property did exist. *Ahrens v. Town of Fulton*, 2000 WI App. 268, 240 Wis. 2d 124, 621 N.W.2d 643, 99-2466. Affirmed on other grounds, 2002 WI 29, 251 Wis.2d 135, 641 N.W.2d 423, 99-2466.

**74.35 Recovery of unlawful taxes.** (1) **DEFINITIONS.** In this section "unlawful tax" means a general property tax with respect to which one or more errors specified in s. 74.33 (1) (a) to (f) were made. "Unlawful tax" does not include a tax in respect to which the alleged defect is solely that the assessor placed a valuation on the property that is excessive.

(2) **CLAIM AGAINST TAXATION DISTRICT.** (a) A person aggrieved by the levy and collection of an unlawful tax assessed against his or her property may file a claim to recover the unlawful tax against the taxation district which collected the tax.

(b) A claim filed under this section shall meet all of the following conditions:

1. Be in writing.
2. State the alleged circumstances giving rise to the claim, including the basis for the claim as specified in s. 74.33 (1) (a) to (e).
3. State as accurately as possible the amount of the claim.
4. Be signed by the claimant or his or her agent.
5. Be served on the clerk of the taxation district in the manner prescribed in s. 801.11 (4).

(2m) **EXCLUSIVE PROCEDURE.** A claim that property is exempt, other than a claim that property is exempt under s. 70.11 (21) or (27), may be made only in an action under this section. Such a claim may not be made by means of an action under s. 74.33 or an action for a declaratory judgment under s. 806.04.

(3) **ACTION ON CLAIM.** (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail to take final action on the claim within 90 days after the claim is filed.

(b) The taxation district shall notify the claimant by certified or registered mail whether the claim is allowed or disallowed within 90 days after the claim is filed.

(c) If the governing body of the taxation district determines that an unlawful tax has been paid and that the claim for recovery of the unlawful tax has complied with all legal requirements, the governing body shall allow the claim. The taxation district treasurer shall pay the claim not later than 90 days after the claim is allowed.

(d) If the taxation district disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by certified or registered mail that the claim is disallowed.

(4) **INTEREST.** The amount of a claim filed under sub. (2) or an action commenced under sub. (3) may include interest computed from the date of filing the claim against the taxation district, at the rate of 0.8% per month.

(5) **LIMITATIONS ON BRINGING CLAIMS.** (a) Except as provided under par. (b), a claim under this section shall be filed by January 31 of the year in which the tax is payable.

(b) A claim under this section for recovery of taxes paid to the wrong taxation district shall be filed within 2 years after the last date specified for timely payment of the tax under s. 74.11, 74.12 or 74.87.

(c) No claim may be filed or maintained under this section unless the tax for which the claim is filed, or any authorized installment payment of the tax, is timely paid under s. 74.11, 74.12 or 74.87.

(d) No claim may be made under this section based on the contention that the tax was unlawful because the property is exempt from taxation under s. 70.11 (21) or (27).

**(6) COMPENSATION FOR TAXATION DISTRICT.** If taxes are refunded under sub. (3), the governing body of the taxation district may proceed under s. 74.41.

**History:** 1987 a. 378; 1989 a. 104; 1991 a. 39; 1997 a. 237; 2007 a. 19.

This section only authorizes courts to determine whether a taxpayer is exempt from taxes already paid, not taxes that might be assessed in the future. Tax exempt status, once granted, is not automatic. It is subject to continuing review, a notion inconsistent with a declaration that property is exempt from future property taxes. *Northwest Wisconsin Community Services Agency, Inc. v. City of Montreal*, 2010 WI App 119, 328 Wis. 2d 760, 789 N.W.2d 392, 09-2568.

**74.37 Claim on excessive assessment. (1) DEFINITION.** In this section, a "claim for an excessive assessment" or an "action for an excessive assessment" means a claim or action, respectively, by an aggrieved person to recover that amount of general property tax imposed because the assessment of property was excessive.

**(2) CLAIM.** (a) A claim for an excessive assessment may be filed against the taxation district, or the county that has a county assessor system, which collected the tax.

(b) A claim filed under this section shall meet all of the following conditions:

1. Be in writing.
2. State the alleged circumstances giving rise to the claim.
3. State as accurately as possible the amount of the claim.
4. Be signed by the claimant or his or her agent.
5. Be served on the clerk of the taxation district, or the clerk of the county that has a county assessor system, in the manner prescribed in s. 801.11 (4) by January 31 of the year in which the tax based upon the contested assessment is payable.

**(3) ACTION ON CLAIM.** (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail to take final action on the claim within 90 days after the claim is filed.

(b) The taxation district or county that has a county assessor system shall notify the claimant by certified or registered mail whether the claim is allowed or disallowed within 90 days after the claim is filed.

(c) If the governing body of the taxation district or county that has a county assessor system determines that a tax has been paid which was based on an excessive assessment, and that the claim for an excessive assessment has complied with all legal requirements, the governing body shall allow the claim. The taxation district or county treasurer shall pay the claim not later than 90 days after the claim is allowed.

(d) If the taxation district or county disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by registered or certified mail that the claim is disallowed.

**(4) CONDITIONS.** (a) No claim or action for an excessive assessment may be brought under this section unless the procedures for objecting to assessments under s. 70.47, except under s. 70.47 (13), have been complied with. This paragraph does not apply if notice under s. 70.365 was not given.

(b) No claim or action for an excessive assessment may be brought or maintained under this section unless the tax for which

the claim is filed, or any authorized installment of the tax, is timely paid under s. 74.11 or 74.12.

(c) No claim or action for an excessive assessment may be brought or maintained under this section if the assessment of the property for the same year is contested under s. 70.47 (7) (c), (13), or (16) (c) or 70.85. No assessment may be contested under s. 70.47 (7) (c), (13), or (16) (c) or 70.85 if a claim is brought and maintained under this section based on the same assessment.

**NOTE:** The supreme court in *Metropolitan Associates v. City of Milwaukee*, 2011 WI 20, held the amendment of par. (c) by 2007 Wis. Act 86 to be unconstitutional and severed from the remainder of the statute. Prior to the amendment by Act 86, par. (c) read:

(c) No claim or action for an excessive assessment may be brought or maintained under this section if the assessment of the property for the same year is contested under s. 70.47 (13) or 70.85. No assessment may be contested under s. 70.47 (13) or 70.85 if a claim is brought and maintained under this section based on the same assessment.

(d) No claim or action for an excessive assessment may be brought or maintained under this section if the taxation district in which the property is located enacts an ordinance under s. 70.47 (7) (c) or if the 1st class city in which the property is located enacts an ordinance under s. 70.47 (16) (c), except that this paragraph does not apply if the taxation district or the 1st class city did not comply with s. 70.365.

**NOTE:** The supreme court in *Metropolitan Associates v. City of Milwaukee*, 2011 WI 20, held the creation of par. (d) by 2007 Wis. Act 86 to be unconstitutional and severed from the remainder of the statute.

**(5) INTEREST.** The amount of a claim filed under sub. (2) or an action commenced under sub. (3) may include interest at the average annual discount rate determined by the last auction of 6-month U.S. treasury bills before the objection per day for the period of time between the time when the tax was due and the date that the claim was paid.

**(6) EXCEPTION.** This section does not apply in counties with a population of 500,000 or more.

**NOTE:** The supreme court in *Nankin v. Village of Shorewood*, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141, held sub. (6) to be unconstitutional and severed from the remainder of the statute.

**(7) COMPENSATION.** If taxes are refunded under sub. (3), the governing body of the taxation district or county that has a county assessor system may proceed under s. 74.41.

**History:** 1987 a. 378; 1989 a. 104; 1993 a. 292; 1995 a. 408; 2007 a. 86.

Sections 70.47 (13), 70.85, and 74.37 provide the exclusive method to challenge a municipality's bases for assessment of individual parcels. All require appeal to the board of review prior to court action. There is no alternative procedure to challenge an assessment's compliance with the uniformity clause. *Hermann v. Town of Delavan*, 215 Wis. 2d 370, 572 N.W.2d 855 (1998), 96-0171.

Sub. (6) is unconstitutional and severed from the remainder of the section. *Nankin v. Village of Shorewood*, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141, 99-1058.

Claimants who never received notice of a changed assessment under s. 70.365 were exempt from the obligation to proceed before the board of review. However, they were required to meet the January 31 filing date in sub. (2), regardless of the fact that they never received the notice. *Reese v. City of Pewaukee*, 2002 WI App 67, 252 Wis. 2d 361, 642 N.W.2d 596, 01-0850.

While certiorari review of an assessment is limited to the review of the board of assessment's record, sub. (3) (d) allows the court to proceed without regard to any determination made at an earlier proceeding. The assessor's assessment is presumed correct only if the challenging party does not present significant contrary evidence. The court may hear new evidence and can enter a judgment if it is in the best interest of the parties under s. 73.39 (3). *Bloomer Housing Limited Partnership v. City of Bloomer*, 2002 WI App 252, 257 Wis. 2d 883, 653 N.W.2d 309, 01-3495.

After *Nankin*, the state-wide application of this section must prevail over any statutes that would defeat its implementation. Special rules help harmonize provisions that were once fully compatible with this section but, as a result of *Nankin*, conflict with this section. *U.S. Bank National Association v. City of Milwaukee*, 2003 WI App 220, 267 Wis. 2d 718, 672 N.W.2d 722, 03-0724.

When a taxpayer brings an action to recover excessive taxes under this section, the least favorable outcome for the taxpayer, and the best possible outcome for the taxation authority, is for the court to conclude there were no excessive taxes. The court cannot impose a greater tax burden than the one the taxation authority already agreed to when it accepted the taxpayer's payment. Although the court need not defer to the board of review's determination, and there is a statutory presumption that the assessor's determination is correct, when the board of review reduces the original assessment the court cannot reinstate the assessor's original assessment. *Trailwood Ventures, LLC v. Village of Kronenwetter*, 2009 WI App 18, 315 Wis. 2d 791, 762 N.W.2d 841, 08-1221.

When a city assessor correctly applies the Property Assessment Manual and statutes, and there is no significant evidence to the contrary, courts will reject a party's challenge to the assessment. *Allright Properties, Inc. v. City of Milwaukee*, 2009 WI App 46, 317 Wis. 2d 228, 767 N.W.2d 567, 08-0510.

Over Assessed? Appealing Home Tax Assessments. *McAdams*. Wis. Law. July 2011.